STUDY REGARDING THE IMPACT OF THE FISCAL FACTOR ON THE PROFESSIONAL ACCOUNTANT BEHAVIOURAL MUTATIONS

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Abstract: *The study establishes as objective the identification and analysis of tax changes which occurred in the beginning of 2017, commented particularly in connection with the most significant impact within the mass of accounting professionals. For achieving this objective, a research methodology was used, which was based on inventory of tax related legal norms and of reactions of those affected by legislative amendments. The study subjects were selected, observed, challenged and analyzed by means of groups established based on financial accounting domain within the framework of the most used social network in our country. Even though it was obvious that the policy changes shall automatically generate fiscal changes as well, the accounting professional accuses the speed and lack of consistency of these changes. The essential contributions of the study concern the identification of certain elements according to which, the role and purpose of the professional accountant suffer major changes, mutations which have already been occurring for a long time and merely strengthen the negative trend. The national tax system is further placed, from different points of view, in an extremely volatile area, and it distances itself progressively from the principles which should govern it. Confusions and mixture of accounting and tax rules lead to interpretations and decisions which sometimes severally affect the purpose of financial statements. The taxation trap is felt in all environments of training and development of the professional accountant, and the accounting rule solely becomes subordinated to fiscal exigencies. Professional accountants become so infected with the fiscal aspects that no accounting regulation consideration or professional reasoning can be considered a remedy. Moreover, academia is also affected by the all the more frequent occurrences of the unconditional reflexes of the new principle: the prevalence of the tax system against the accounting rules. Reflections of the study should represent a starting point in identifying, analyzing and reconciling all the factors that erode the economic environment, the role and behaviour of the professional accountant.*

Keywords: *professional accountant; microenterprise; dividend income; social contributions; VAT.*

JEL classification: *M41.*

1. Introduction

The Romanian tax system continues to promote the unpredictability regarding establishment of taxes, dues and mandatory contributions. How many of the accounting professionals anticipated in December 2016 the tax changes that would occur? The answer is obvious. But how many accounting professionals predicted what kind of tax changes would come into force? Currently, the next question could

be added as well: starting which date these anticipated amendments are to be implemented solely as a principle, not as a structure?
We can't help but wonder about the level of observance regarding taxation principles set out in art. 3 of Law no. 227/2015 regarding the Fiscal Code: neutrality of fiscal measures, certainty of taxation, tax equity, taxation efficiency, taxation predictability. Fortunately, the professional accountant is far from naive, but unfortunately this does not seem to help. A law that violates its own principles should be declared unconstitutional from the beginning.
In default mode, any accounting professional with sufficient experience was aware that it shall bear the costs of the political factor in beginning of the financial year. Initially, this cost was metamorphosed into an element which stimulated the economic environment, reactions recorded were extremely positive. Subsequently, awakening was ensured through a series of acts and normative projects, of which the most reactive document is the Emergency Ordinance no. 3 of 6th of January 2017, amending and supplementing Law no. No 227/2015 on the Fiscal Code. Certain changes took immediate effect, others starting 1st of February 2017. This term successfully and from the beginning ensured the general confusion foreseen probably in a (tax) conspiracy theory.
The importance of the study aims at professional accountants, particularly in terms of understanding the motivations and behaviours underlying financial accounting systems' functionality. The main conclusion concerns the idea that inconsistency of the tax system does nothing but alienate the professional accountant from its true purpose, from the accounting rule, from the economic reality of transactions and excessive focus on fiscal rule.

2. Research methodology

Within the meaning of presentation and analysis of the impact of main tax changes, a qualitative research methodology was mainly used. In this sense, desk research, analytical research, opinion and comparative analysis were used as research strategies. Documentation was carried out based on existing regulations in this field today. Furthermore, the behavioural impact was analyzed through some of the many groups set up on the social network Facebook: Accounting all the time (14.128 members), Accountants on Facebook (10.042 members), Financial benefit-tax and accounting debates (6.833 members), Accounting (8.574 members) Tax Advisors Group (7.533 members). Analysis of these groups was achieved by 10th of April 2017. Interviews by means of questionnaires was avoided, considering that the opinions, experiences, solutions, interpretations presented in these groups provide much more relevant information than the answers to a predetermined set of questions related to a questionnaire.
One of the objectives of the study was to demonstrate the serious distortion of the accounting profession. Even the establishment of the aforementioned groups indicates a reaction and an attempt of the professional accountant to adapt to a hostile activity performance environment. The nature of the issues exposed on these groups reveals an excessive focus on fiscal incidence. The number of members, number of posts record explosive increase exactly during the implementation of new tax changes. Accounting regulation amendments have an almost insignificant impact compared to the fiscal ones.

3. Income tax versus microenterprise revenue tax

Changing the threshold from which an entity falls within the category of microenterprises shall lead to an overwhelming exodus of income tax payers to microenterprise income tax payers. The ceiling is increased from EUR 100.000 to the equivalent of EUR 500.000, set at the valid exchange rate at the end of the financial year. In consequence, the ceiling applicable for 2017 is 2.270.550 lei. The rest of the terms defining microenterprises remained valid.

According to Governmental Emergency Ordinance no. 3/2017 for 2017, Romanian legal persons paying income tax and which on December 31st, 2016 meet the conditions set forth for microenterprises, are required to pay microenterprise income tax starting February 1st, 2017, following to inform the territorial fiscal bodies of the tax system change until February 25th, 2017 inclusive. By this term, the income tax statement due for the taxable revenue obtained between 1st and 31st of January 2017 shall be submitted as well. The tax result is adjusted according to this tax period. The following inconvenience is outlined: the 101 annual income tax statement due for the taxable revenue obtained in 2016 has a deadline for submission on March 25th, 2017 (with afferent exceptions under art. 41 and 42 of the Fiscal Code). Hence, the incumbency of forced submission by February 25th, 2016 of the annual statement is outlined. This aspect will have adverse consequences on the time needed to duly complete procedures of annual inventory and shall subsequently translate into a large number of corrective statements.

Another aspect to be noted and stipulated by art. 48 (5^2) of the Fiscal Code related to decreasing the ceiling of registered capital over which an entity may elect the payment of income tax instead of microenterprise income tax: existing microenterprises which registered a share capital of at least 45.000 lei can choose to apply the income tax effective on 1st of January 2017 or the quarter in which this condition is met. The option is final, provided that the share capital value is maintained for the entire period of existence of the respective legal entity. If this condition is not observed, the legal person applies the microenterprises income tax starting with the fiscal year following the one in which the share capital is reduced below 45.000 lei, if the conditions for microenterprises are met. Leaving the taxation system for microenterprises as a result of the option shall be communicated to the competent tax authorities. Calculation and payment of income tax by microenterprises that choose to apply income tax shall be made taking into account revenues and expenditures made in that quarter.

Tax rates for microenterprises have been encouragingly modified: 1% for microenterprises with one or more employees; 3% for microenterprises without employees.

Law no. 170/2016 on specific activities tax (hotels, bars, restaurants etc.) comes into play as well as a maximum culmination of these changes. It is solely applicable to income tax payers. Although the law is clear in this regard, confusions still exist regarding the application of this tax for micro-enterprises as well, confusions maintained also by some communications of National Agency of Fiscal Administration, in response to taxpayers' requests for clarification.

Mixture of conditions defining a microenterprise, altering the ceiling for income, altering the ceiling of registered capital, enforcement of specific tax, lack of methodological norms, different deadlines for submission, different statements generated a true interpretative and declarative chaos in the financial and accounting

environment. This is evidenced by the endless posts on the same subject within professional groups. Situations in which one entity can find itself on 31.12.2016, as well as the manner of transition according to new regulations, are multiple, are not clearly specified and therefore, must be deduced with great consideration. Solely after the expiry of all declarative terms, a plan for classification and implementation of tax systems was posted on the website of the Ministry of Finances not sooner than 27.03.2017, plan which is categorized successfully as a true programming algorithm.
Same as the practical opinions regarding these changes, numerous tendencies for artificially influencing the microenterprises defining conditions are recorded. The occurrence of minimum wage employment contracts shall continue and increase in order to be eligible for the minimum rate of 1%. Influencing income ceiling occurs both ways, either by cancellation of invoices or by issuing additional invoices on behalf of the financial year 2016. Accordingly, efforts will be made for patching up artificial transactions and the breach of the matching principle. More and more applications for change of registered capital and activity codes are recorded by the Trade Register. All these elements are related to forecasting profitability analysis carried out by economic entities. These are entities with high expense structures, complex investment structures, for which a transfer to microenterprises income tax is not profitable. These entities will endeavour to remain in the area of income tax. Other entities will estimate that it is more profitable to become microenterprise income taxpayers. Perhaps many Self Employed Persons shall change their form of activity performance, turning into microenterprises. Pure accounting aspects will be heavily compromised by these manoeuvres occurred in response to tax law.

4. Social contributions or fiscal outlawry

Significant change concerning the social security contribution appears in the wages and assimilated income statement, being represented by the February 1st, 2017 by removing the ceiling of 5 gross average salaries for individual contribution, respectively removing the ceiling of 5 gross average salaries x number of employees for the employer's contribution. High-wage employees will be directly affected and entities' wage costs will increase accordingly, with no direct benefit to those who will pay the increased contribution. In practice, it was demonstrated that the need for social security services is much stronger for those with low income. We shall witness a redistribution of wages, salary changes, other classifications in employment contracts and encouragement for growth of undeclared wages. When the sole purpose is to attract budget financing sources to cover “tax promotions” related to other budget chapters, the consequence is a boomerang effect. This measure shall be penalized in turn by the economic environment, by officially lowering the tax base and by finding alternative and unofficial solutions to avoid the effects of eliminating the Health Insurance Fund ceilings.
Unfortunately for the tax system, eliminating the Health Insurance Fund ceilings will lead to an automatic reduction of the other contributions for wages. Financial statements of entities will continue to erode by presenting undervalued labour costs and by the occurrence of compensatory fictional elements.
An interesting fact is that the fiscal body itself is technically outdated by the existence/inexistence of the Health Insurance Fund and National Insurance Fund ceilings within the same financial year. Who risked preparing the 112 statement for

January in the beginning of February, was greatly surprised by the dreaded occurrence of statement validation errors. Somebody forgot that for the month of January 2017, the ceilings are still in force.

5. Contribution to health insurance fund and the dilemma of exemption/non-exemption of dividend income

A first amendment aiming health insurance contributions is to remove the upper limit of 5 average gross salaries for which the individual contribution was calculated. This measure comes into force on 1st of February 2017. Accordingly, for January 2017 the individual contribution is calculated according to this ceiling. Removal of the ceiling for this contribution as well shall only emphasize the same as for the national social insurance contributions. Regarding health contribution, business environment reactions are even more obvious. Given that it is known that high wage earners rarely resort to public health system, this additional tax shall have an adverse effect. This category of persons always accused inequity of this contribution, since they do not wish to benefit of this health insurance system. Removal of the ceiling will increase this fiscal frustration and the reply: “Why pay for health if I do not want to benefit” is already pervasive. Other categories of persons will not feel the benefits of this measure, especially since there is a growing and overall sliding trend from the public to the private health system. In the end, we all become ill and whether we benefit of the public or private health system services or not, the real costs (including unofficial ones) significantly exceed the individual contribution.

Until December 31st, 2016 investment income as income from dividends obtained by natural entities were subject to social health insurance contributions unless compensated by income of the type stipulated in the Fiscal Code art. 155 (1a-1d, 1g, 1i-1l), except for income from intellectual property rights. In December 2016 it was known that, for income obtained as of January 1st, 2017, monthly calculation basis cannot be higher than 5 times the average gross salary in force in the year for which the contribution is being established (irrespective if the beneficiary obtains other income). No one anticipated what was going to happen starting February 1st, 2017.

If by December 31, 2016 the former fiscal rule generated as reaction the increase of minimum wage employment contacts, starting January 1st, 2017 this strategy seemed antagonized by the new fiscal rule. The business environment was not far behind, strong tendencies to avoid taxing dividends by this contribution were recorded, especially for entities with significant retained earnings. Unfortunately, it was very much overlooked, that the maximum ceiling was entering into force as a compensation of the fact that the dividends were to be taxed by the health insurance contribution, irrespective if the beneficiary obtained other income. Reactions resulted in Decisions of the General Meetings of Associates regarding massive allocations of dividends from retained earnings recorded by 31st of December 2015. These dividends were to be paid subsequently, after January 1st, 2017, according to the needs of associates or shareholders and the available funds of the entities. The manoeuvre is completely inconvenient given that these allocations represent more than significant amounts and seems more appropriate for entities with reduced retained earnings.

Interesting consequences arose for entities which had contracted substantial financing sources with commercial banks. One of the common terms of credit

agreements aims at restricting dividend allocation as well as the prior agreement of the bank regarding this allocation. In this context, commercial banks are buried in risk analysis in order to approve such allocations. The main reason for opposition raised by the banking system is related to entity divestment and impairment of cash flow forecast. All banking system suggested informally the solution of “money return” by conclusion of financing contracts between owners and the company, which represented a genuine banking blackmail.
Other issues frequently lost from sight are related to Company Law and invariably to the Fiscal Code. According to art. 67 (2) of the Company Law no. 31/1990, dividends are paid within the period prescribed by the general meeting of shareholders or, where applicable, as established by special laws, but not later than 6 months from the date of approval of annual financial statements for the concluded financial year. Otherwise, subsequent to this period, the company shall owe penalty interest calculated in accordance with art. 3 of Government Ordinance no. 13/2011 on the legal remunerative interest and penalty interest for financial liabilities, as well as for regulating certain banking financial fiscal measures, approved by Law no. 43/2012, provided that a higher interest was not established according to the memorandum or by means of the decision of the general meeting of shareholders which approved the financial statement afferent to the concluded financial year. It is very difficult to establish a term for owners which have as sole source of income such dividends, and the maximum period of 6 months is insufficient. As for the penalty interest, in most cases, it is out of the question. Furthermore, according to Order of the Public Finances Ministry no. 1802/2014 for approval of accounting regulations on the annual individual and consolidated financial statements, point 310 (4), under accrual accounting, the entities must reflect all income and expenditure in the accounting books, respectively claims and liabilities ensuing as a result of certain legal or contractual provisions. Paragraph 6 inserted by Order no. 166/2017 from 31.01.2017 requires that late penalties and interest, as well as other liabilities of a similar nature, be acknowledged either in the profit and loss account, or in the retained earnings, depending on the period to which they refer and in compliance with accounting regulations.
Funding entities by means of own associates or shareholders, discreetly imposed by commercial banks, carry significant incidents on a fiscal scale, especially since experience demonstrates the preparation of these contracts without interest. Court cases published by National Agency for Fiscal Administration assert that granting interest-free loans cannot be qualified as an onerous judicial document. The consequences affect all owners in terms of interest expenses, limited deductibility and finally, earnings and dividends.
After the implementation of these strategies, the surprise appears: starting February 1st, 2017 health insurance contributions are no longer due if the beneficiary obtains other income (clearly stipulated in the Fiscal Code), yet the maximum ceiling of 5 gross average salaries is repealed. If the monthly calculation basis is below the value of the minimum gross basic salary per country, the health insurance contribution is no longer due. For income whose monthly basis calculation is greater than or equal to the value of the minimum gross basic salary per country, then the contribution payable monthly is calculated on this basis of calculation (if the beneficiary does not obtain other types of income referred to in art. 155 (1a-1d, 1g, 1i-1l). This change cancelled previous efforts of businesses. Fortunately,

Government Emergency Ordinance no. 3/2017 emerged on time to “reverse” the actions already undertaken, where it was possible.
Political unrest at the end of 2016 also generated tax consequences. The simplest solution would have been to wait until the latest January 25th, 2017, the deadline for submission and payment of tax on dividends allocated and paid by 31st of December 2016. Government Emergency Ordinance no. 3/2017 occurred on January 6th, 2017, and many of the changes provided in this order were already circulating in the government program and in the media. This option would have been more difficult to implement if one of the actors were the commercial bank, which usually requires extremely long time periods to complete risk assessments.

6. Depressive VAT and the ghost of VAT registration conditioning

Reducing VAT rate from 20% to 19% early this year still raises many difficulties in practice among professional accountants, even if history repeats itself. The same issues existed in early 2016 as well. Perpetuation of these problems suggests that major deficiencies of perception and understanding the concept and logic of value added taxation, still exist. The business environment accuses ambiguity of fiscal regulations, lack of comprehensibility of the text in many cases, the absence of guidelines and required clarifications. In the context of redundancy of this change, it would have been expected that the number of posts on occupational groups be much lower, the reality demonstrating exactly the opposite.
The basic principles are set out in art. 291 and art. 282 Fiscal Code. Art. 282 stipulates that the tax exigibility occurs on the date when the chargeable event takes place. By exception, the chargeability of the tax occurs on the date of invoice issuance, before the date on which the chargeable event occurs, as well as on the date on which the advance is collected, for advance payments made before the date when the chargeable event takes place. According to art. 291 (4), the applicable rate is the one in force when the chargeable event occurs, except as provided in art. 282 (2), for which the rate in force when the tax becomes chargeable, shall apply. Paragraph (5) stipulates that, for transactions subject to VAT system upon collection, the applicable rate is that in force when the chargeable event occurs, unless an invoice is issued or an advance is collected before the delivery/provision date, for which the rate in force on the date the invoice was issued or the date on which the advance was collected, is applied. According to paragraph (6) in case of a rate change, adjusting shall be used to apply the rate in force on the date of delivery of goods or provision of services for cases referred to in art. 282 (2), as well as in the case under paragraph (5). Methodological rules for the implementation of Law no. 227/2015 provide in section 39 a set of appropriate examples and which refer to actual situations where these provisions must apply.
One of the top traumas of professional accountants was the procedure for VAT registration by means of the famous form 088 on affidavit to assess the intention and ability to carry out economic activities involving VAT related operations. From the series “fiscal good deeds” Order no. 210 / 2017 was approved, on amending the Order of the President of the National Agency for Fiscal Administration no. 3.698/2015 approving the forms for taxpayers fiscal registration and the types of tax liabilities representing the fiscal vector and for repealing the Order of the president of the National Agency for Fiscal Administration no. 3.841/2015 approving the model and content of form (088) Affidavit for assessing the intention and ability

to carry out economic activities involving VAT related operations. From the series "fiscal wonders are elusory", the Order no. 605/2017 is approved on 1st of February 2017, laying down the criteria for conditioning the registration for VAT purposes, for approval of the Procedure for VAT registration according to art. 316 (12e) of Law no. 227/2015 regarding the Fiscal Code of taxable persons, companies with place of business in Romania, established under the Companies Act no. 31/1990, subject to registration with the Trade Register and for the approval of the Procedure for cancellation ex officio, of the VAT registration according to art. 316 (11h) of the Law no. 227/2015 regarding the Fiscal Code of taxable persons, companies with place of business in Romania, established under the Companies Act no. 31/1990, subject to registration with the trade registry that do not justify the intent and ability to carry out economic activities involving VAT related operations. Even going through the denomination of these orders requires intellectual effort.

The so long promised support for the business environment and elimination of the so accused lack of decisional transparency, were resolved by "slaying" the former order. A message of the Service for Communication, Public Relations and Mass-Media of fiscal administration was "injected" as emergency Xanax by means of which are assured that the fiscal administration relies on the principle of good faith when reviewing requests for VAT registration. The issue is that this principle is not yet fiscally regulated. A very interesting statement is stipulated in Order no. 605/2017, according to which, as a result of the evaluation, taxable persons are classified into three risk groups: high, medium and low. In other words, the business sector again shall have the fiscal benefit of the doubt. Moreover, the fiscal administration states that the actual procedure of cancelling VAT registration is performed following a face to face conversation with the taxable person identified with tax risk. These persons are invited to the fiscal administration office to assess the intention and ability to perform economic activities. Before deciding to reject the application for VAT registration or cancellation thereof, the tax authority provides the analyzed taxable person with the opportunity to express their views on the decision to be adopted, under the Code of Fiscal Procedure. As expected, there is a maximum reluctance of the business environment related to the consoling nature of these messages.

7. Conclusions

The aspects referred to herein are just some of the tax changes that have entered or will enter into force this year. Using the inherent subjectivity dosage, some of those issues generating the most virulent reactions among professional accountants and in the business environment, were selected. Adverse and obvious consequences are generated by behavioural changes of the actors on the accounting stage. The true purpose of the professional accountant is virtually infested by the induced fiscal "mutations". The biggest concern limits itself to the statements to be submitted, successful validation thereof structure-wise, eluding certain tax rules. The professional accountant is turned into a slave of the fiscal and political system.

An extremely serious matter is ascertained by analyzing the mass of posts on accounting "social groups". Accounting regulations passed in a marginal plane, suffering a genuine exile. Everything is buried in a fiscal issue infecting exponentially. Professional behaviour is forced to adapt to an extremely hostile

environment. We are forced to return to the land of accounting rules solely in the context of financial statement audit. Financial audit missions manage to bring the professional accountant where it belongs, decontaminating it of fiscal pollution for a certain period of time and reminding it what is its true purpose: to ensure that the financial statements present a fair view, in all material respects, of the financial standing, financial performance and cash flows, in accordance with applicable accounting regulations and accounting policies described in the notes to the financial statements.

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