

TAX LEGAL RELATIONSHIP

Assoc. Prof. Narcis Eduard MITU, PhD

Lect. Alia Gabriela DUȚĂ, PhD

University of Craiova

1. Introduction

The duties, taxes and contributions are a product of the historical development of the state; they have emerged with the state, but there are arguments that support that they gave rise to the state.

Nowadays, the tax levies have the largest share of the total state revenues and are part of the category of those revenues that are obtained by the exercise of the coercion right by the state. Consequently, the tax revenues are established by the state, in virtue of its financial sovereignty, in its capacity of public law matter.

According to the need of practical implementation of the tax revenues, the specific legislation comprises two categories of legal rules:

➤ *rules on the subject of the mandatory duties, taxes and financial contributions;*

➤ *rules on the tax procedure of the establishment and collection of duties and taxes, of resolving the disputes between the taxpayers and the tax authorities, of sanctioning the infringement of the specific regulations and of the enforcement procedure of the tax budgetary claims.*

The first category of tax legal rules generally has a substantive content, in accordance with the need of legal establishment of the duties, taxes and contributions, also mentioning and describing the taxable object and subject, the taxation unit, the method of establishment and calculation, the amount of the tax rates, the terms and any other payment conditions. Of this category, among the most important regulations, we

mention: *The Public Finance Law* (central and local) and *The Tax Law*.

The second category comprises the legal procedural rules on the establishment and collection of duties, taxes and contributions, as well as the challenging of how they have been established and collected. Also, this category of legal rules regulates the sanctions applicable to the taxpayers who do not fall within the legal rules and the procedural ways of enforcement of the tax liabilities unpaid within the legal term by voluntary compliance. The main regulation that regulates the outspoken problem is the *Tax Procedure Code*.

2. Defining the tax legal relationship

The legal relationship is a patrimonial or non-patrimonial social relationship regulated by a rule of law. Any legal relationship is a social relationship, but not any social relationship is a legal relationship. The law maker has the power to select, of the multitude of human relationships, those who gives importance in terms of legal perspective, encoding them through legal regulations.

Therefore, the legal relationships arise as social relationships between people, between people and community, regulated by legal rules that establish subjective rights and set up correlative obligations of the parties of the legal relationship.

The legal relationship has a tripartite structure, consisting of: parties (subjects), object and content.

The parties (subjects) of the legal relationship are the natural persons and legal persons holding correlative rights and obligations.

The content of the legal relationship is represented by the totality of the rights falling within the legal matters and the obligations devolving upon them.

The object of the legal relationship consists of the actions or inactions which the parties of the legal relationship are entitled to.

The three parties of the legal relationship are essential, which means that, for the existence of the legal relationship, they must be cumulatively met.

From the tax perspective of the legal relationship it must be taken into account the complexity of the state-government-taxpayer relationship, which is established during the process of interpretation and enforcement of the tax legal rules.

The legal relationship emphasizes two fundamental types of relationships.¹

A first group of social relationships consecrated in legal terms is the one between the state, as holder of the power to establish duties and taxes and the taxpayers, who pay them.

Essentially, this relationship is unbalanced, dominated by the state's right to elaborate laws in the field of taxation and by the correlative obligation of all taxpayers to comply with these rules.

Even if in theory it seems that the legal relationship so determined confers the state only rights and the taxpayer only obligations, the recent reality records the existence of some notable exceptions to this supposition. To that effect, especially in times of deep economic, financial and even moral crisis, there are encountered varied situations of tax facilities and exemptions that the state confers upon some taxpayers for objective or subjective reasons. The theory "too big too fail" applied too liberally can generate a state of

captivity of the governing bodies and implicitly of the state towards the private interest groups having an overgrown financial power, sometimes exceeding the power of the host states.

A second group of social relationships is represented by the tax administration and the taxpayers, where the two subjects of the legal relationship may have different positions.

This aspect of the tax legal relationship may experience, primarily, the classic structure of the tax legal relationship, materialized in the right of the tax administration to claim, on behalf of the state it represents, the fulfilment of the obligations by the taxpayer.

Secondly, the two subjects are legally equal, negotiating the clauses of some agreements related to refunds, tax offsets, rescheduling or delays and so on, or both decisions are submitted before the law courts regarding the interpretation of tax laws.

This distinction is only theoretical because currently it is difficult to identify a single administration-taxpayer relationship which provides the latter rights under the law.

Expressly, the Tax Procedure Code only deals with the subjects and content. Expressly, the Tax Procedure Code only deals with the subjects and content. The object of the legal relationship, as action or inaction to which the active subject is entitled or to which the passive subject is obliged, corresponds to the rights and obligations of the parties, and the derived object is the taxable matter or the taxation object, issues that can be mostly found in the Tax Code.

1. Subjects of the tax legal relationship

According to the Tax Procedure Code, the subjects (parties) of the tax legal relationship are: the state and the administrative-territorial

¹ Bufan, R. (coordinator) - *Tax Treaty*, General Part, vol.I, Lumina Lex Publishing House, 2005.

departments, the taxpayer, as well as other persons who obtain rights and obligations within this relationship.

These are the natural persons and the legal persons who participate in the legal relationships, having the capacity of holders of the rights and obligations. Usually, there are two categories of subjects in terms of legal relationships:²

- *the active subject* (the creditor) is the one having the capacity (right) to require the other party to do, not to do or to refrain from something;

- *the passive subject* (the debtor), is the one who is subject to certain obligations correlative to the rights of the active subject.

For the creditor, the obligation from the legal relationship represents a debt-claim (a debt-claim right), and for the debtor is a liability (a debt, a duty to fulfil).

- ***The active subject - the state***

In the legal relationships of tax law, one of the subjects is the state (the active subject, collectively), represented in Romania by certain bodies subordinated to the Ministry of Public Finances, namely the National Agency of Tax Administration (ANAF) and its territorial departments. Also, this category includes the specialized departments of the local public administrative authorities, within the powers delegated by them, namely the establishment, control and collection of local duties and taxes, as well as the related fines and penalties.

In the tax legal relationship, the state may have, in addition to the capacity of collector and manager of the tax revenues, the capacity of payer or taxpayer, through its institutions managing both the private state domain (for instance, the trading companies) and its public domain (for instance, the national administrations).

- ***The passive subject - the taxpayer***

The taxpayer (the passive subject) is the natural person (the individual

subject), legal person or any unincorporated entity (family associations, joint ventures, and so on), who has payment obligations to the consolidated general budget.

The capacity of ***taxable subject*** devolves upon the persons who get revenues, trade or provide certain goods or services or have taxable goods.

The natural person is the individual subject by law, meaning the man, as the holder of civil rights and obligations.

According to the citizenship criterion, the natural persons can be classified as: natural persons of Romanian nationality; natural persons of foreign nationality (there are also included here the natural persons without nationality - stateless); natural persons with dual nationality.

The legal person is the collective subject by law, namely the people who, meeting the conditions required by law, are the holders of civil rights and obligations.

In the category of legal persons we distinguish: non-public or private legal persons; co-operative or public legal persons; corporate ventures; state legal persons. Also, by nationality, we distinguish: Romanian legal persons (mainly based in Romania); legal persons of other nationality (foreign).

The legal persons participating in the tax legal relationships are mainly all the legal persons who operate in Romania or develop taxable activities under the Romanian laws. Most frequently, in the tax legal relationship, the economic agents appear, namely the profit legal persons, regardless the form of organization (trading companies, public administration, cooperatives), the origin of the capital (public or private), nationality, and so on.

The foreign natural or legal persons who obtain revenues, own taxable assets in the country or sell or

² Stoica, N.V. – *Economic Law – Lecture notes*, "Petre Andrei" University, Faculty of Economics, Iași, pp. 21-22.

provide certain goods, namely services, are required to pay the same duties and taxes as the Romanian persons (unless otherwise provided in the double taxation conventions), applying the principle of equality.

Also, in virtue of the principle of equality, one can understand why there should be considered as taxpayers the ones who permanently benefit from the gains or the advantages incurred by certain assets or other values without owning them, to the extent that they refuse to show who is the owner of those assets, revenues or values.³

The payer of a budgetary obligation is that person who, on his behalf or on behalf of the debtor, is required to pay or withhold and pay, depending on the case, duties, taxes, contributions, fines and other budgetary revenues.

In most cases, *the taxable subject* is one and the same person with *the bearer* and/or *the payer* of budgetary obligations. But there are exceptions.

The bearer (recipient) is the person who actually covers the budgetary obligation. Usually, the person who pays the created obligation is the one who also covers it. But there are cases when the bearer is a person other than the subject. This is possible because, by different ways and means, to a less or great extent, some duties paid by natural or legal persons can be transferred upon other persons. Thus, it is reached the phenomenon of *tax repercussion*.⁴

4. Content of the tax legal relationship

Against the background of the right of the state, legally established, to set up duties and taxes, a number of enforcement relationships of the tax law appeared, where the parties have mutual rights and obligations.

A simplistic definition of the content of the tax procedural law

relationship is: "the entirety of the rights and obligations which arise, change and cease in conjunction with the administration of the duties and taxes owed to the consolidated general budget".⁵

Analytically speaking, the law maker differentiates between:

a) the content of the tax procedural law relationship which "comprises the rights and obligations of the parties under the law, to fulfil the means provided for the establishment, exercise and cessation of the rights and obligations of the parties of the tax substantive relationship"⁶ and

b) the content of the tax substantive relationship which comprises the tax claims⁷ and the tax obligations⁸ of the creditors and debtors⁹.

In the tax contentious procedure (the „administrative court” procedure), the mutual rights and obligations are clear only if the cases are brought before the law courts.

Usually, the administrative procedure does not resolve the tax disputes and only until the appeal is entered the parties can receive material compensations by recovering the due amounts.

Doctrine¹⁰ specifies that: "Since in most cases the tax bodies which resolve the complaints do not consider the arguments of the taxpayers, even when they are relevant and are legally supported – which can be statistically noticed in the number of court orders undermining these solutions – it is required a broad perception of the principles of good administration of the activity at this

³ Under the art. 66 of the Tax Procedure Code.

⁴ Mitu, N.E. – *Public Finances*, Universitaria Publishing House, Craiova, 2008, p. 124.

⁵ Dascălu, D.; Alexandru, C. - *Theoretical and practical explanations of the Tax Procedure Code*, Rosetti Publishing House, Bucharest, 2005, p.60.

⁶ Art. 16 of the Tax Procedure Code.

⁷ Under the art. 21 of the Tax Procedure Code.

⁸ Under the art. 22 of the Tax Procedure Code.

⁹ Under the art. 25 of the Tax Procedure Code.

¹⁰ Bufan, R. (coordinator) - *Op. cit*, Lumina Lex Publishing House, 2005.

level, which would also lead to appropriate sanctions in case of infringements.

The tax legal relationship is extremely unbalanced, in the current regulatory activity, in cases of enforcement of some control actions which are not final and which can be found in the appeal administrative-court procedure.

Thus, investing the tax control actions with enforceable "power" can generate, if their enforcement is made without considering the viewpoint of the taxpayer, huge damages and even the cessation of the activity of the taxpayers economic agents.

In order to avoid any excesses, the law maker must clearly establish the material liability of the enforcement body and the state for the damages abusively caused to the taxpayers by such practices".

5. Object of the tax legal relationship

In general theory, the object of the legal relationship means the actions which the holder of the subjective right takes or

requires in the process of development of the legal relationship.

The object of the legal relationship is not mistaken with its content, which is represented by the rights and obligations of the parties, meaning by the legal possibility of some actions or inactions, under those rights and obligations. The object is considering the actions or inactions.

Therefore, the object of the legal relationship concerns the actions or inactions of the subjects in fulfilling the rights and obligations arising from the content of the legal relationship.

In this context we distinguish the actions establishing the budgetary revenues, actions of collecting the budgetary revenues, actions of using the financial resources, of achieving the tax and financial control actions, as well as some inactions especially related to the non-usage of some documents that would change the tax base.

REFERENCES

Bufan, R. (coordonator)	<i>Tax Treaty</i> , General Part, vol.I, Lumina Lex Publishing House, 2005.
Dascălu, D.; Alexandru, C.	<i>Theoretical and practical explanations of the Tax Procedure Code</i> , Rosetti Publishing House, Bucharest, 2005.
Mitu, N.E.	<i>Public Finances</i> , Universitaria Publishing House, Craiova, 2008
Stoica, N.V.	<i>Economic Law – Lecture notes</i> , "Petre Andrei" University, Faculty of Economics, Iași