

IMPOSITION ON REAL ESTATE PROPERTY UNDER THE CONDITIONS OF ADMINISTRATIVE-TERRITORIAL DECENTRALIZATION AND OF THE INCREASE OF FINANCIAL SELF-GOVERNMENT OF LOCAL COMMUNITIES

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ABSTRACT: *In all the countries with a consolidated and developed democracy from the economic point of view, a major part of public affairs are assigned in the administrative-financial and regulatory responsibility of local authorities. Similar to other states, in Romania this process of decentralization, due to its inter-sector characteristic, is also of a distinctive complexity, imposing clear and efficient regulations, together with the implementation of a performant management at the level of all the involved actors, including that of the recipients. The fulfillment of this process supposes at the same time a financial support in accordance with the assigned responsibilities. The article presents several practical consolidation modalities of the financial resources of the local communities obtained from own incomes. Thus, the realization of a corresponding equilibrium between the tasks transferred from the central level and the real financing possibilities existent at the local level, is considered.*

KEY WORDS: *local autonomy; administrative autonomy; financial autonomy; private property tax; tax fairness; tax base.*

JEL CLASSIFICATION: *H71, G39, K34.*

1. INTRODUCTION

Local self-government is a fundamental principle of public administration in Romania and consists in the right of administrative-territorial units of satisfying their own interests without the involvement of central authorities.

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Basically, local self-government represents the transfer of some competences from the central level to various administrative bodies or authorities, authorities chosen by those local communities.

The European Charter of Strasbourg mentions the fact that: “local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population” (European Charter for Self-Government:1985)

Local self-government has a series of principles at its base which generally refer to:

- the existence of own administration bodies who represent the interests of the citizens from those communities chosen by direct, secret and freely consented suffrage;
- the right to establish and collect local rates and taxes within and with the observance of law;
- the initiation and execution of any activities considered necessary and desired by the community on the responsibility territory, within the context of the observance of legal regulations.

Local self-government works on the principle of market economy and the fulfillment of these principles is possible only if there is a financing ability at the local level. In conformity with the provisions of the master law of decentralization, the authorities of local public administration benefit by financial resources of which they dispose freely, for purposes of exercising the competences conferred by law. (Law 339:2004)

Consequently, local self-government has two essential components – administrative autonomy and financial autonomy, which condition each other, the first one not being possible without the existence of the second one, or in detail, the administrative autonomy would not be possible without the financial autonomy which insures it the material support of functioning. (Văcărel, 2003)

In order that the financial autonomy responds to the pursued goal, the creation of local financial system that is efficient, balanced and correlated with the policies and necessities at the local level, in accordance with the national regulations in the field, is imposed.

Within this context, Law of local public finances in Romania regulates the sources of incomes of local communities which consist of:

- own incomes formed by: rates, taxes, contributions, other payments, other incomes and shares deducted from the income tax;
- amounts deducted from some incomes of the state budget;
- subsidies from the state budget and from other budgets;
- donations and sponsoring (Law on local public finances no.273:2006)

Considering that from the total of the financial resources of local budgets, the greatest weight is held by financial transfers, which sometimes proved to be subjectively distributed, depending on the interests of the political governing class, fiscal policies for determining the increase of weight of own incomes in the structure of local public finances are imposed. The statistical data indicate the fact that at the level

of the year 2010, the weight of financial transfers from the total of the resources of local budgets in Romania represents 70%, in comparison to Bulgaria 75%, Great Britain 76% and Holland 80%.

The evolution of the structure of local budget incomes summarized at the level of the country during the period 1991-2009 is represented in table 1 and fig.1.

During the period 1991-1992 the structures of incomes was constituted from own incomes and subsidies from the state budget. A decrease of the weight of own incomes from 29.35% to 15.88% and an increase of subsidies from 70.65% to 84.17% are observed. During the period 1993-1998 the structures of the incomes of local budgets was approximately the same with different weights between own incomes and the deductions in advantage from the state budget which come from two sources: amounts deducted from wage tax and subsidies from the state budget with different destinations. In the year 1999, by applying the Law no.189/1998, public finances knew a true decentralization. Own incomes increased to 44.59% by transferring the administration of local rates and taxes to local councils. The deductions in advantage from the state budget increased to 46.75% by the appearance of new sources: shares from wage tax, incomes with special destination (special fund of public roads, fund for water supply and paving of earth roads), subsidies from the state budget, amounts deducted from wage tax.

In the year 2000 the structure of the incomes of local budgets modified by Law no. 216/999 by which a share from the income tax (which replaces the wage tax) for the budgets of local departmental councils was established for the equalization of local budgets. The amounts without destination increased, fact which determined an increase of financial autonomy of local budgets and especially a decisional autonomy regarding the approval of expenses on destinations.

In the year 2001, the incomes of local budgets increased by incomes with destination: amounts deducted from VAT for staff costs in state pre-university education personal, amounts deducted from the income tax for the assurance of the guaranteed minimum income, amounts deducted from VAT for child protection, disabled person protection.

In the year 2003 the structure of own incomes and shares of income tax was maintained. During the period 1991-2003 new financing sources were transferred, but they were not in accordance with the transferred competences, with the structure and volume of expenses on activities. Between 2004-2005 a similar structure is maintained, and from the year 2006 a significant increase of own incomes is noticed.

For the harmonization of fiscal regulations from the local system and on purpose to respond as trusty as possible to the Charter of Local Self-Government, the Congress of Local and Regional Authorities in Europe elaborated a structural scheme of local rates and taxes, recommended to the member countries, leaving up to them the manner and level of implementation. This structure comprises various taxable sources among which the tax on private property as results from figure 2 (Dobrescu et al., 1999).

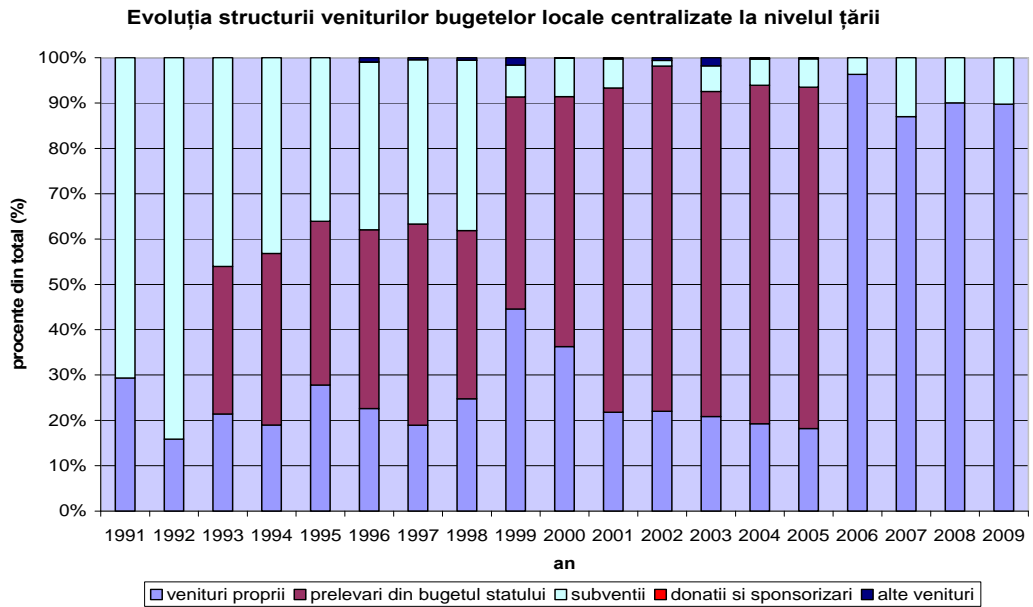
Table 1. Evolution of the structure of total incomes from local budgets summarized at the level of the country, between 1991-2009

	1991		1992		1993		1994		1995	
	Billion ROL	%	Billion ROL	%	Billion ROL	%	Billion ROL	%	Billion ROL	%
TOTAL INCOMES. Of which:	58.6	100	199.6	100	712.5	100	1765.7	100	3326.9	100
Own incomes	17.2	29.35	31.7	15.88	152.5	21.40	335.1	18.98	924.0	27.77
Deductions in advantage from state budget	-	-	-	-	231.8	32.54	668.1	37.84	1203.0	36.16
Subsidies	41.4	70.65	168.0	84.17	328.2	46.06	762.5	43.18	1199.9	36.07
Don and spons	-	-	-	-	-	-	-	-	-	-
Other incomes	-	-	-	-	-	-	-	-	-	-

	1996		1997		1998		1999		2000	
	Billion ROL	%	Billion ROL	%	Billion ROL	%	Billion ROL	%	Mill RON	%
TOTAL INCOMES. Of which:	4998.5	100	10468.4	100	13454.3	100	22243.6	100	3344.5	100
Own incomes	1130.4	22.61	1984.1	18.95	3328.2	24.74	9918.1	44.59	1213.5	36.28
Deductions in advantage from state budget	1972.6	39.46	4644.6	44.37	4998	37.15	10398.9	46.75	1843.0	55.10
Subsidies	1848.5	36.98	3790.2	36.20	5054.5	37.57	1564.0	7.03	285.2	8.53
Don and spons	0.1	0.01	0.1	0.01	0.7	0.01	-	-	-	-
Other incomes	46.9	0.94	49.4	0.47	72.9	0.53	362.6	1.63	2.8	0.08

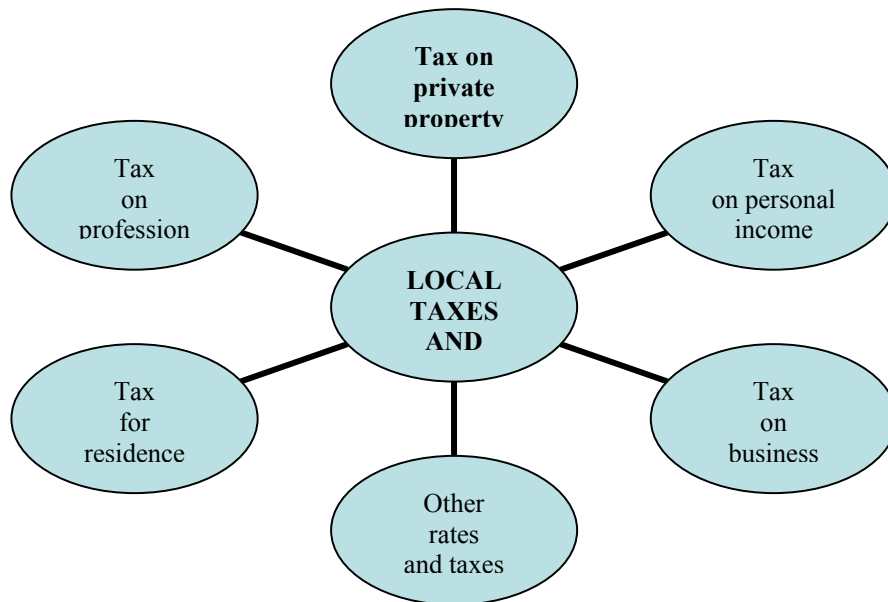
	2001		2002		2003		2004		2005	
	Mill RON	%	Mill RON	%	Mill RON	%	Mill RON	%	Mill RON	%
TOTAL INCOMES. Of which:	7119.6	100	9322.8	100	13078.1	100	15955.8	100	19480.9	100
Own incomes	1551.9	21.80	2053.4	22.02	2729.2	20.87	3076.0	19.28	3547.0	18.21
Deductions in advantage from state budget	5092.4	71.53	7096.0	76.11	9374.3	71.68	11909.8	74.64	14667.1	75.29
Subsidies	453.2	6.36	117.4	1.26	734.9	5.62	920.2	5.77	1218.1	6.25
Don and spons	-	-	-	-	-	-	19.3	0.12	23.5	0.12
Other incomes	22.1	0.31	56.0	0.61	239.7	1.83	30.5	0.19	25.2	0.13

	2006		2007		2008		2009	
	Mill RON	%	Mill RON	%	Mill RON	%	Mill RON	%
TOTAL INCOMES. Of which:	27708.6	100	36805.2	100	43629.1	100	42817.9	100
Own incomes	26691.2	96.33	32027.5	87.01	39280.6	90.03	38435.6	89.76
Deductions in advantage from state budget	-	-	-	-	-	-	-	-
Subsidies	1016.4	3.66	4777.5	12.98	4345.1	9.96	4379.2	10.23
Don and spons	-	-	-	-	-	-	-	-
Other incomes	1	0.01	0.2	0.01	3.4	0.01	3.1	0.01



Source: Ministry of Finance

Figure 1.



Source: Radu Dobrescu, Georgeta Ghete, Anton Parlăgi, *Income sources of local budgets*, Economic Publishing House Bucharest, 1999 page 89

Figure 2. Structure of local rates and taxes

2. TAX ON PRIVATE PROPERTY IN THE VISION OF NATIONAL REGULATIONS

For the harmonization of national fiscal regulations with the community ones, Fiscal Code establishes three categories of goods that are the object of property right and which become an income to local budgets, namely: buildings; grounds; transport means. (Law 571:2003)

According to national fiscal regulations, the financial resources derived from local rates and taxes on these goods become an integral income to the local budgets of communes, towns, municipalities and districts of the Municipality of Bucharest or of other counties as the case may be.

The tax on private property (fortune) has its origin in the existence of the proprietary right manifested fully or under the form of the three dismemberment rights (possession, use and disposal), having as a subject both private persons and legal persons, on whose charge the state instituted the obligation of declaring the goods which are the object of the imposition and of disbursing to the local budgets the taxes which derive from them.

Although frequently the payment of this tax is made by holders from the incomes made by them from the possession of fortune, however, the chargeable tax is not sat on the income, but on the existence of a title of property, so that the tax on property is of true type, directly and complementarily to the tax of the incomes realized from the fortune. At first sight it might be inclined toward the idea that the tax on property, as it is described above, would mean a double imposition as long as it is paid from the incomes realized by the holder or from savings realized by reducing the expenses, creating the false impression that the fiscal task is bigger on those who save to the advantage of those who consume or waste. (Tulai C. : 2005)

The reason of being of the tax on private property is supported however on three essential considerations, namely:

- the holder of the goods subdued to taxation profit by the service provided by the state (community) for the insurance of their safety;
- the intervention of the principle of social solidarity of taxation, especially those who have bigger fortunes must prove solidarity to those who have not succeeded in saving or who have consumed more however contributing through bigger indirect taxes;
- the taxation of private property is capable of creating a balance between the capital tax and the income tax.

Practice has proved that the existence of private property generates three taxation types of it depending on the category of the goods which are the object of the imposition and also on the obligation chargeable to them in the following way:

- tax on proper fortune;
- tax on the transfer of property right on the fortune;
- tax on the increase of fortune.

Considering the fact that the property on taxable goods (buildings, grounds, transport means) is the generator of the three types of taxes, it leads to the idea that these must follow the same legal regime without any exception.

It was established that taxes on buildings, grounds and transport means become an integral income to the budgets of local communities depending on the place where these are found. For these reasons, the Fiscal Code also establishes that the financial sources realized from these taxes become an integral income to local budgets of communes, towns, municipalities, districts of the Municipality of Bucharest or counties as the case may be. Therefore, the tax on proper fortune, by its transfer, should become an integral income to the local budgets, according to the principle of the place where the good is placed.

The incomes obtained from the transfer of the property right constituted 50% financial resources to the local budgets. Along with the enforcement of the modifications of Law 273/2006 on Local Public Finances it is established that the tax on the incomes obtained from the transfer of property right are transferred and detained integrally to the state budget. (Law 273:2006)

In my opinion Law 61/2010, contravenes to some financial fiscal principles and norms under the conditions in which our country lies in an ample process of administrative decentralization and of increase of the financial autonomy of local communities, thus:

a) It was erroneously appreciated in the Fiscal Code which regulates the income tax the fact that the amounts resulted after the transfer of property constitute incomes. According to the Economic – financial dictionary edition 2010, Bucharest the incomes represent increases of economic benefits under the form of inputs or increases of the assets or decreases of state debts. (Economic financial dictionary, 2010) Starting from the premise that the exchange through documents between the living realizes an equitable proportion between the value of the good and the price obtained, we cannot talk about benefits especially as the obtained price is lower than the real value incorporated in that good;

b) For the transfer of property right having as an object real estates, the stamp taxes perceived for the procedure of notarial hereditary debate or judicial apportionment, become an income to the local budgets where that public institution functions; (Law 146:1997)

c) The proceeding regarding the divestment of the budgets of local communities from the benefit of the tax on the transfer of property contravenes to the objectives regarding administrative and financial decentralization of local communities, and also to the recommendations of the Congress of Local and Regional Authorities of Europe who have as a target the financial consolidation of local budgets.

3. FISCAL EQUITY BETWEEN TAX PAYERS OF THE TAX ON BUILDINGS

Fiscal equity assumes the existence of a climate of social justice and rightfulness in the distribution of fiscal pressure among the tax payers with regard to taxes. Fiscal equity assumes equality in front of the tax, meaning the imposition which has the same object should be applied undifferentiated to all tax payers, fiscal pressure being influenced only by the size of the taxable matter.

It cannot be talked about fiscal equity in the field of the tax on buildings. In our country it is treated differentiated, depending on the tax payers, private individuals or legal persons.

Thus, the taxable base in the case of private individuals is constituted by the value of the building established on the basis of some criteria provided by law and calculated per square meter of built surface, to which the correction coefficients are applied depending on the range of the locality where the building is placed, the area of the locality, the vertical disposition, the resistance structure, the existence of some equipment for increasing the comfort and the age of the construction. The value of the tax is of 0.2% in urban area and 0.1% in rural area.

In the case of judicial persons, the base of the tax on buildings is constituted by its value from the financial records which can be: the acquisition value influenced by the market price, the production cost, the contribution value or the value after re-evaluation as the case may be. The tax for this category of tax payers is determined by the application of a coefficient comprised between 0.25% and 1.50% of the inventory value. If within three years the building has not been re-evaluated the imposition quota is comprised between 5% and 10% of the inventory value. In the case of a building whose value has been fully recovered by amortization, the taxable value is reduced with 15%.

If in relation to these differences, the re-evaluation costs every three years are considered, it results that the fiscal task is clearly disproportioned in regard to the tax payers who are private individuals.

According to the theories unanimously accepted, a reduction of the fiscal pressure for the encouragement of investments and also of the consumption, is imposed. An equal treatment of both categories of tax payers is able to accelerate the process of getting out of the crisis.

Also, the classification of the goods which are the object of imposition in movable goods and real estates creates discriminations between their holders.

Thus, according to the provisions of art. 254 of Fiscal Code the tax on buildings is due since the date of 01 of the month following the one in which the building was constructed. The finalization of the construction operation is provided by Law 261/2009 regarding the authorization of the execution of constructions according to which the acquisition date coincides with the time limit of realization provided in the authorization. At the expiration of the realization time of the construction provided in the authorization, the specialty bodies elaborate a record regarding its physical stage, a document which serves at the registration of the building in fiscal accounts on purpose to establish and collect the tax. (Law 261, 2009)

Consequently, real estate developers who realize investments in the field of accommodation constructions on purpose to value them, owe the tax on them since the abovementioned moment, and buyers as new holders to whom the property right on the building was transferred, owe the tax since the date of 01 of the following month in which the acquisition was realized. This coincides with the date of the giving to deduction of the fiscal obligation from the developer's burden.

Constructors and dealers of transport means are treated preferentially, who are exempted from the payment of the tax on these goods registered in the accounting records as merchandise (finished product or acquired for commercialization).

An equal treatment of the two categories of tax payers would be capable of leading to the increase of the profit of real estate developers and implicitly of the incomes realized from their taxation.

Presently in our country as a member with full rights in E.U., serious deficiencies persist with regard to fiscal policy, fiscal pressure, fiscal system, rates and taxes generated by an incoherent, instable fiscal legislation with many gaps and ambiguities which opens large perspectives to tax evasion, financial frauds and corruption. For a country, in general, and especially for a state of the European Union it is very important that the legislation in the fiscal field with clear, precise specifications which do not allow different interpretations prevails.

This paper wishes to constitute a beginning in the reform of local administration and fiscal policy.

4. CONCLUSIONS

The creation of the administration system of local public finances and the organization of fiscal activity on the principles of decentralization and financial autonomy constitutes the problem which lies in the center of the attention of local administrations in our country.

From the point of view of financial autonomy of local councils, local rates and taxes become more and more important as income sources, because they diminish a lot the dependence of central authorities on the state budget.

Fiscal policy has always played an important role in the realization of economic and social programs. The ensemble of the regulations with regard to tax payers, rates and taxes and payment modalities represent the fiscal system.

Presently, for Romania fiscal policy problems, of fiscal pressure, of the structure of fiscal policy, of the establishment and collection modalities of the incomes etc. have a significant importance considering the existence: of a fiscal system still half-baked and of an incoherent, instable fiscal legislation, with many gaps and ambiguities; of a reduced degree of collection of the incomes; of a financial indiscipline and of a vast field of tax evasion, fiscal fraud and corruption.

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