

GENERAL CONSIDERATIONS REGARDING THE PROPER NONAPPLICATION OF LEGISLATIVE ASPECTS CONCERNING LOCAL TAXATION

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Abstract

The starting point of the paper is the concept of local¹, functional, strong and real autonomy, through which is guaranteed a good administration and which thereby, implies the achievement of a financial autonomy at the level of administrative-territorial unit (by financial autonomy meaning all the resources necessary for the financing of local activities).

For the achievement of this real local autonomy, an important objective is to provide sufficient financial resources and proportionate to the competences and responsibilities of the local and county councils.

Practically, the rights that support, according to the law, the autonomy of local public finances are²: the right to sufficient financial resources; the competence of local authorities to determine the levels of local taxes and fees; the adaptability of financial resources according to the real evolution of expenditure programmed within local budgets; access of local collectivities to national and international capital markets; the protection of weaker local communities from a financial point of view, through fair allocations.

Key words: financial autonomy, local administration, own income, fees, taxes

INTRODUCTION

In our approach we must consider an important aspect, namely that local autonomy is the foundation of the financial autonomy of local communities.

¹According to the provisions of art.4 of Law no. 215/2001 "the local autonomy is only administrative and financial, being exercised on the basis and within the limits stipulated by the law. Local autonomy concerns the organization, functioning, competencies and attributions, as well as the management of the resources that, according to the law, belong to the commune, city, municipality or county, as the case may be. " See also Local Public Administration Law no. 215/2001, republished in the Official Gazette no. 123 of 20.02.2007.

²See also R. Postolache, Financial Law, Bucharest, C. H. Beck Publishing, 2009, pp. 111-112

The inter-war administrative doctrine shows that local autonomy, an independent legal institution, involves administrative decentralization.

The autonomy that characterizes decentralization is not a uniform one but a global concept that covers a diversified reality³.

We must also remember that the Revolution of 1989 led to the destruction of the old structures in the Romanian society and also meant the beginning of a difficult and painful process of reconstruction⁴. The alternative to the old system could only be represented by a democratic society, based on the rule of law, decentralization⁵ and local autonomy.

Local communities are human collectivities, territorially delimited from a political and administrative point of view and having public authorities different from those of the state⁶.

Their financial autonomy is absolutely necessary, because administrative autonomy would not be possible without the financial autonomy that provides its material support for the operation.

Moreover, the attributions and competencies conferred by law to local authorities become a pure fiction if financial means are not made available to these communities.

MATERIAL AND METHODS

The methods used in this study were diverse: the historical method, the comparative method, the sociological method, the logical method and the analytical one, their aim was the systematic analysis of the information selected from the sources studied in order to develop personal points of view and conclusions about the stated objectives.

RESULTS AND DISCUSSIONS

³I. Lazar, Public Finance Law. Vol. I. Budgetary Law, Bucharest, Publishing House UniversulJuridic, 2013, p. 182 et seq.

⁴E. Balan, Financial Law, 2nd Edition, Bucharest, All Beck Publishing, 2003, p. 79

⁵"The foundation and consecration of the principle of decentralization of the administrative power from the level of the central government at the level of the local community, the existence in the territorial administrative units of selected local councils having executive bodies responsible to the community, the establishment of some forms of direct participation of citizens in taking the most important decisions, the clear regulation of the competences and responsibilities of the local communities, their consultation in taking measures concerning them, the protection of their territorial boundaries, the adequacy of the structures and administrative means in their missions, the provision of financial resources necessary to the local communities, the right to association and legal protection are the essential elements of a genuine local autonomy," Ibidem, p. 80

⁶I. Văcărel, collective authors, Public Finances, 7th Edition, Bucharest, Didactic and Pedagogical Publishing House, 2007, p.646

We bring to your attention a succinct overview of the main legislative changes on local fees and taxes, as well as the possible implications and risks that may arise in case of not applying properly the legislative aspects:

1. *The introduction of some buildings in the category of tax-exempt ones, such as:*

- the buildings of an institution or units operating under the coordination of the Ministry of Education and Scientific Research or the Ministry of Youth and Sports, as well as the buildings of national sports federations, with the exception of rooms used for economic activities;
- buildings used as home owned or co-owned by severely or pronounced handicapped persons and persons in the first degree of disability;
- buildings for apostille and supralegalisation services, storage and administration of archives, and buildings attached to the operation of the National Center for the Administration of Notarial National Registers;

2. *Eliminating the provision according to which the physical persons owning two or more buildings owe an increased tax on the buildings;*

3. *Classification of buildings in residential, non-residential and mixed-purpose;* According to the new Fiscal Code, the mixed building is one that has a dual purpose: residential (housing), and non-residential (economic activity);

If the areas for the two purposes can be delimited, the tax is calculated for each in part if the headquarters are not declared to be without activity. If the headquarters is declared to be without activity, then the tax is calculated as for residential buildings.

4. *For **residential buildings** owned by both physical and legal persons,* the building tax is calculated by applying a rate between 0.08% and 0.2%, the percentages applicable to the taxable value of the building;

5. *As regards **non-residential buildings** owned by both physical and legal persons,* the building tax is calculated by applying a rate of between 0.2% and 1.3% on the value of the building;

6. *The taxable amount of non-residential buildings owned by individuals is determined on the basis of an **evaluation report if it has not been built or acquired in the last 5 years**.* We emphasize the need to assess the buildings to have a taxable base as close as possible to reality. The taxable amount established on the basis of evaluation reports is a type of determined value estimated for the purpose of taxing non-residential buildings and residential buildings where the cost approach is mandatory and is set by an authorized ANEVAR assessor based on the GEV 500 Valuation Guide - Determination of the taxable amount of buildings, approved by Decision no.3 / 2015.

If the value of a non-residential building owned by an individual cannot be calculated, the tax is determined by applying the 2% rate to the taxable amount determined as in the case of residential buildings. We underline the risk that in the absence of the **revaluation report** we will pay taxes that in some cases may exceed 20 times the current level.

7. *For mixed-purpose buildings owned by individuals*, the tax is calculated by adding together the tax calculated for the area used for residential purposes with the tax determined for the area used for non-residential purposes;

8. *In the case of individuals who have at the address of the building with mixed-purpose registered a tax domicile without any economic activity*, the tax is calculated as in the case of residential buildings;

9. *If the areas used for residential purposes and those used for non-residential purposes can't be distinguished separately*, and at the address of the building a physical person has registered a company, it will follow the non-residential tax regime only in case of deduction of utility expenses ;

We mention the fact that until 31 March, physical persons who have registered a headquarter, self-employed and have the headquarter at the domicile address, and those who don't deduct expenses for utilities registered in the course of economic activity must to submit a statement to the competent local authority, according to which the tax will be determined.

10. *As regards non-residential buildings owned by both natural and legal persons, used for agricultural activities*, the building tax is calculated by applying a 0,4% rate to the taxable value of the building;

11. *In the case of buildings belonging to legal entities and which have not updated the taxable value of buildings over the last 3 years, preceding the reference year*, the rate of tax on buildings is 5%; We emphasize the need to re-evaluate the buildings.

12. *It has been excluded the provision according to which the buildings in which were made reconstruction, consolidation, upgrading, modification or extension works by inhabitant*, from a fiscal point of view, it has the obligation to communicate to the lessor the value of the works for submitting a new fiscal declaration, within 30 days of the date of termination;

13. **It is reduced by 50%** the tax on buildings and land owned by physical and legal persons that are used for the provision of seasonal tourist services for duration of maximum of 6 months during a calendar year.

14. Are owed for the entire fiscal year taxes on buildings, land taxes and vehicle taxes are due, afferent to persons who own the assets on 31 December of the previous fiscal year, without these taxes being calculated on a fractional basis of the year.

15. **Is deleted** the provision under which no tax is owed on the land belonging to a building, for the land area covered by a building;
16. **Are exempt** from payment vehicle tax on means of transport for electrically-driven vehicles and means of transport used exclusively for emergency interventions;
17. **Is reduced** by at least 50% the tax on hybrid transport means, according to the decision of the local councils;
18. May be granted exemptions or reductions for agricultural transport vehicles actually used in the agricultural sector, based on the decision of the local councils;
19. Local taxes **may be increased** by up to 50% over the maximum fixed levels in the Fiscal Code by local public authorities. We mention that the previous legislation provided for an increase of up to 20%;
20. For unprocessed farmland for two consecutive years, local councils **may increase** field tax by up to 500% starting with the third year;
21. Building and land taxes **can be increased** by up to 500% for uncared-for buildings and lands within incorporated area, the classification criteria being adopted by local council decision.
22. **Elimination** of hotel tax.

CONCLUSIONS

Practically, the rights that support, according to the law, the autonomy of local public finances are⁷: the right to sufficient financial resources; the competence of local authorities to determine the levels of local taxes and fees; the adaptability of financial resources according to the real evolution of expenditure programmed within local budgets; access of local collectivities to national and international capital markets; the protection of weaker local collectivities from a financial point of view, through fair allocations.

We would like to point out that the legal basis for the local authorities to adjust the amount of local taxes to their own budgetary needs is represented by art. 489 of the Fiscal Code⁸.

In this respect, the deliberative authority of the local public administration may, at the proposal of the executive authority (mayor), fix additional quotas for the local taxes and fees provided for in the Fiscal Code according to the following criteria: economic, social, geographical, as well

⁷See also R. Postolache, Financial Law, Bucharest, C. H. Beck Publishing, 2009, pp. 111-112

⁸Law no. 227/2015 Fiscal Code published in the Official Gazette no. 688 of 10.09.2015. See also the New Fiscal Code and the New Code of Fiscal Procedure. Consolidated Legislation and Index, Bucharest, UniversulJuridic Publishing House, 2016.

as local budgetary needs (with the exception of the fees provided for in Article 494 par (10)letr. (b) and (c) –judicial stamp duty). For example, for Oradea Municipality, through HCL no. 883/2016 as criteria for determining the additional quotas provided in art. 489 of the Fiscal Code, the following are also considered:

1. the need to maintain, in general, a level of local taxation comparable to previous years in order to ensure the predictability of local taxes and fees, a public policy assumed by the municipality in recent years;
2. the need to ensure the sustainability of the development strategy of Oradea for the period 2015 - 2020 approved by the HCL no. 135/2015
3. the need to provide quality public services for the inhabitants of the municipality;
4. determination of the taxable value update so as to eliminate discrepancies and be aligned with the conditions of the local real estate market;
5. other criteria based on economic, social considerations, determined by the needs of the local budget⁹

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⁹Also in the same note, local councilors from another Bihor community have decided as criteria for establishing additional quotas: a. the need to generally maintain a level of local taxation comparable to previous years in order to ensure the predictability of local taxes and duties, public policy assumed by the municipality in recent years; b. the necessity of providing quality public services for the inhabitants of the municipality; c. other criteria based on economic, social considerations, determined by the needs of the local budget. See HCL Marghita no. 94/2016. In Brașov, for example, the following criteria were set for the determination of the additional quotas: economic criteria with an impact on the revenues of the local budget of Brasov Municipality. See HCL Brașov no. 589/2016.

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