

THE PROTECTION AND THE ACCESS TO THE FINANCIAL INFORMATION FROM THE PERSPECTIVE OF THE FINANCIAL CONTROL

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Abstract: In the present paper we have tried to reveal the way in which we can obtain fiscal and accountant information on a juridical person, information about the persons who have special relations with the entity: associates, administrators and shareholders. For a complete fiscal control, we need other types of information regarding the address of the social residence and the declared working branches/sub offices, the financial position and the performance or nonperformance of the entity: total assets, fixed assets, mobile assets, stocks, debts, owned capital, social capital and its structure, business figure, total income, total expenses. We have structured the access to such information on three categories, according to the level of access hold by the person who is interested in getting such information. For example:

- public information about juridical persons and the physical persons who are shareholders, associates or administrators for the juridical person; any interested person can access such information;
- information that can be found in the database of different public institutions, banks, service providers; such information can be accessed only by authorised persons;
- information that can be found in the accountancy of the juridical person lying under investigation; such information can be accessed by the control organs of the Public Finance Ministry or other control organs according to the competence offered to them by laws of organisation and well-functioning.

We consider that it is extremely useful to combine the information got from different external sources (such as the ones mentioned in the first two cases) and the information we receive from an internal source as the one

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mentioned at the third point. By doing this we can obtain a general picture of the economical agent who is subjected to the financial analysis.

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1. INTRODUCTION

The access to information has become something desirable, no matter what field of activity we take into account. If we consider commercial relations, knowing your business partners represents an essential element that can ensure the success or failure of the mutually performed activities. It is also important and in your best interest to know who your competitors are and knowing your competitors implies getting information on the geographic area where they perform their duties, their financial sources, supplies, clients, raw materials and manufacturing technology used. The efficiency of the fiscal control increases when the fiscal organ gets more information about the taxpayer who is investigated. If the fiscal organ gets detailed information about the type of activities that the taxpayer performs and the taxes he is subjected to, then it would be easier for the fiscal organ to identify the risks the taxpayer takes when withdrawing himself from paying his fiscal obligations. Based on the gained information, the fiscal control can perceive a more active side, in the sense that it is not limited to the declarations signed by the taxpayer. If we consider the analysis of rentability, the sources of financing and the taxpayer's field of activity, we can deduce the sums of money subtracted from the payment of fiscal obligations using indirect imposing methods which correlate the declared income with the owned assets and expenses done by the taxpayer.

2. LEVEL OF ACCES TO FINANCIAL – ACCOUNTANT INFORMATION

If we want to verify and investigate information on a juridical person, as far as the legality and authenticity of the performed activities is concerned, we need to gather the existing information at three different levels:

- public information about the juridical person lying under a thorough analysing combined with the existing ones about the physical person, associate shareholder or administrator for the juridical person. Sources for such information can be: media, the official site of the Public Finance Ministry, the site of the National Office of Trade Register, the Official Monitor, data base administrated by different commercial societies (here we include official publications such as the Bulletin for Insolvency Procedures, Public Auctions, the Official Bulletin OSIM);
- information found in the data base administered by central fiscal organs, local ones, banks, police, county working inspectorates; this type of information regards the identification data for the associates of a commercial society, identification data for other affiliated persons, declarations done for the fiscal organs, the fiscal vector regarding the fiscal obligations of the taxpayer; other information referring to the mobile and fixed assets owned by the taxpayer;

identifications data for the employers of a juridical person and their position, as well as the bank accounts administrated by the taxpayer;

- information found in the accountancy of physical and juridical persons such as: annual financial situations, checking scales, the journal register, payment and cost registers other documents used for accountant registrations; the situation of fixed means, documents to certify the situation of cash flows, identification data for the employees.

We shall try to insist more on each level of information:

Level 1

- The starting point is represented by Ebas application that can be easily accessed by any juridical or physical person who pays a monthly subscription for it. This application gathers and efficiently monitors in the Official Publications Menu, public information from the Romanian Official Monitor, the bulletin of insolvency Procedures, the EU Official Journal, Public Auctions from Romania and Europe, OSIM. All the necessary information for our research will be gathered from the Romanian Official Monitor – section IV – “Publications of the economical agents”. In this particular section, there are more keys to search for the necessary information: the first and last name of an associate or administrator; personal code number; unique identification code; the juridical person’s address for the declared office or the address of the physical person who is an associate or a shareholder for the juridical person; registration and the number at the National Office of Trade Register. The above mentioned information can be found in Ebas application for the following period of time: January 2001 – up to now;
- the accessed information leads us to getting details about the physical person’s first and last name and the commercial societies where he/she is an associate or administrator;
- once we have identified the commercial societies where the person under investigation is an associate or shareholder, we can trace down all the requests for registration at the National Office of Trade Register referring to: modification of the share structure, modification of the data for the identification of the administrators, censors or financial auditories, modification of the address for the declared social headquarter, the opening or closing of a certain working sub office, the increase or decrease of the social capital, modifications regarding the declared purpose of activity of that particular commercial society public notes for releasing new shares or rewarding the existing ones and other data that need to be published according to Law nr. 31/1990 republished with subsequent modifications and completions;
- on the account of the unique identification code/or the name of the commercial society we can access further information on the site of the Public Finance Ministry;
- the accessed information leads us to the information published by the commercial societies in their annual financial documents

In this way, we can gather information published in the accountant balance sheet referring to:

- parts of assets made of: fixed assets, current assets, regularization and assimilated accounts .Within the category of current assets the information refers to stocks, cash availability;
- parts of liabilities made of: owned capitals and total debts. Within the category of owned capitals there is a distinct section for the social capital.We can also get information on: turnover, total income, total expenses, gross profit or the net profit declared by the society. The site of the Public Finance Ministry can also provide information regarding the average number of employees that can be found in that commercial society and the type of activity according to CAEN (the Classification of Activities from the National Economy). Any physical person can process this type of information and by combining it with other pieces of information from media and public data base we obtain important key points in the analysis of a physical person. By processing the obtained information we will be able to get some answers for the following questions:
 - what's the percentage hold by the owned capitals and debts in the total of liabilities?
 - the assets increase is based on the increase of owned capitals or just of the debts?
 - the increase of the owned capitals is related to the profit gained by the society or is it based on the increase of the social capital obtained through supplementary deposits of the associates?
 - the increase of the owned capitals is based on monetary or nonmonetary transfers, such as reevaluations of the assets?
 - if the increase of the total asset, from one year to another is based on debts increase, what's the source of these debts? (bank loans, from other juridical persons, physical persons, associates or the society's shareholder);
 - what's the level of economic rentability of the assets (Gross Profit/ Total assets) as compared to the average level from the field where the economic agent performs its activity?
 - what's the level of financial rentability of assets (Net Profit/ Own Capital) as compared to the level of rentability without risk? (in order to realize this comparison we could use the ROBOR interest).

Level 2

We should state from the very beginning that a physical person can't access the information at this level. The only authorized entities which can access this level of information are: central fiscal organs, local fiscal organs, banks, police, local working inspectorates and other organs that collect information on physical and juridical persons. The main data collector of information published by economic agents is represented by the central fiscal organs through The Public Finance Ministry and The National Agency for Fiscal Administration. These institutions are the administrators of data base and each employee can access certain information depending on his/her job prerogatives.

Among the administered applications we mention:

- „Control Preparing” application where we can find information on:
 - identification details about associates, shareholders and administrators;
 - the detailed financial situation published by the economic agent (balance sheet, statement of earnings, annex at balance sheet);

-details about the controls performed by the institutions subordinated to the National Agency for Fiscal Administration (the General Department of Public Finance and the Financial Guard);

➤ „Fiscal File” application-by introducing the unique identification code of an economic agent, we can access the following information:

- categories of fiscal obligations to be declared, called fiscal vector, which are presented in Table no.1 „Categories of obligations to be declared enrolled in the fiscal vector”.

Table no. 1 „Categories of obligations to be declared enrolled in the fiscal vector”

Name of fiscal obligation
VAT value added tax
profit tax
profit tax for micro enterprises
excises
tax on crude oil from internal production
tax on the income derived from salaries and other income assimilated to salaries
contribution for social health insurance
contribution for unemployment insurance
contribution for insurance in case of work accidents and other professional diseases
contribution for social insurance
contribution to the Guarantee Fund for the payment of salary claims
contribution for leaves and allowance
mining dues
mineral dues

Source: the Official Monitor nr.21/10.01.2011, O.M.F.P nr.34/2011, art.4

A better knowledge of the fiscal vector implies the identification of the risk taken by the economic agent to withdraw itself from the payment of the fiscal obligations. For example, if the economic agent lying under investigation is a tax payer of the micro enterprise profit he is interested in introducing on the commercial society’s expenses sums representing assets acquisitions which are to be used for personal reasons; this can be done because this type of expenses doesn’t affect the taxable basis of calculating the tax for a small enterprise profit. Secondly, the above mentioned expenses do have an influence on the tax on the given dividends because the taxable basis for gross dividends is diminished.

- deductions and fiscal declarations of the economical agent in a given period of time, which are be correlated with the fiscal obligations registered in the fiscal vector;

➤ „VIES” application- collects information about intracommunity assets deliveries or services, declared by the economical agents in the EU having as beneficiaries physical or juridical person from Romania who have the obligation to register themselves as VAT payers for the intracommunity operations performed. We have to mention that in the case of intracommunity assets and services deliveries if we want to check the truthfulness of the operations declared by a Romanian economic towards another EU state member, we need to exchange information between Romania and the European destination state by filling in a certain document called SCAC 2004 which is valid for all the European states.

- „Board” application, contains:
 - different indicators such as: turnover, gross profit, net profit which are to be compared with the average in that particular activity sector according to C.A.E.N;
 - collecting the information contained in the declaration 394 which has to be filled in by all the economic agents according to the stipulations of the National Agency for Fiscal Administration President Order nr.3596/2011 assets or services deliveries registered by a VAT payer are correlated with assets or services acquisitions reported by their beneficiary in the same fiscal period. By using this application, we can easily identify discrepancies between the declaration (394) registered by both economical agents implied in the reported transactions.
- „Banks” application offers information about: the date when opening or closing a bank account, the bank who administers the account; identification details for juridical or physical person who owns the account. We mention that this application does not supply information about rolling accounts or their stock at a given moment of time. In order to get such info we have to ask for it at the bank directly. According to art. 54 al 4 of the Fiscal Procedure Code, approved by OG nr.92/2003 with all ulterior modifications and completions : „Credit institutions have the obligation when requested by the fiscal organs of the National Agency of Fiscal Administration, to communicate details about all the transactions or stocks of accounts open at their bank; they must also provide information about the identification details of the persons who have the right for signature and if the debtor has hired money boxes or values cassettes.
- „Fiscal information about a taxpayer” application offers information about the income obtained by a physical person in Romania or abroad. This centralized income has two components:
 - income for which the tax is final; this income is declared by the physical person as being obtained in Romania. We include here the income from salaries, pensions, prizes, gambling and estate transfer. When talking about an income obtained in Romania we may also consider the income whose taxation is not final and in this case the taxpayer must declare the sum of money according to the declaration 200- „the Declaration regarding the income realized in Romania”; The sums of money which may be included in this category derive from independent activities, agricultural ones, investments, resigning the right of assets used and others.
 - income obtained abroad according to the declaration 201 -„the Declaration regarding the income realized abroad”, the taxpayer has to mention the country where he obtained this income and the income category for each country-income souce.

Level 3

The third level of access to information is typical for the control organs belonging to the Public Finance Ministry or other control organs empowered by law. In such situations, the control organs pay a visit to the commercial society in order to:

- identify the source for financing;
- identify cash flows for each type of activity: financing, investment and exploitation;
- identify cash loans or cash equivalents offered by the associate or physical person, shareholder to the commercial society where it owns shares in the social capital;
- identify the cash removed from the juridical person’s pay office or from his/her bank account by the physical person who is an associate, shareholder or the

administrator of the analyzed society; the cash removed can appear under the title of treasury advance, various debtors or own funds' refund.

We consider that we have strong arguments in completing the fiscal control successfully when we correlate the information from the three levels with the information got from analysing the income declarations of the physical person, associate or shareholder of a commercial society and the assets owned by the physical or juridical person. The results we get can be used not only in the case of controlling a juridical person, but also in that of physical persons, shareholders, associates or administrators for the juridical persons under investigation.

3. CONCLUSIONS

In this paper we have tried to identify the information that can be obtained about a physical person and the juridical persons where the physical person is an associate or shareholder. The information has been presented in 3 levels of access, according to the position of the person who is interested in getting the information. We consider that from the first level where any physical person has access, we can obtain useful information for the civil society that has the opportunity to discover possible unidentified sources of income for physical persons. For example commercial societies with massive losses for a long period of time have associates/shareholders who own valuable fixed and mobile assets or can't justify the expenses for their everyday life.

If we consider level 2& 3 of information, which can only be accessed by fiscal organs, we think that it would be very useful to quickly get access to:

- information from banks regarding rolling accounts and the stocks hold by any physical or juridical person;

- the database administered by the local fiscal authority regarding the fixed assets and means of transport- for these, the physical persons have the obligation to declare them at the Department of local taxes and duties. The above mentioned issues can be easily realized through signing protocols between the mentioned institutions; in order to create a more efficient system each institution that undergoes fiscal control can appoint a person who can access the necessary information from database. The whole operation should have the status of a fiscal secret.

There are also deficiencies when it comes to creating the database containing accountant and fiscal information that can be accessed from an efficient fiscal control. Here are some of them:

- at present, on the site of many institutions whose employees should report their wealth, there are not to be found wealth declarations (for example The Court in Severin whose site was checked on the 1st of September 2012);
- there are public authorities where accessing the wealth declarations proves to be a very difficult task because there are no search fields for last name, first name, position, etc. If we take the Financial Guard's site, on a single page one can find 6-7 wealth declarations and there are hundred of such pages;
- in some declarations the income is not mentioned and not even the bank accounts in lei or other foreign currency. The details are introduced in the "confidential" category. Moreover those interested are asked to check the fiscal record for further details;
- although in some declarations the signature, address or personal code nr. are omitted, there are other pieces of information which should be published, but

they are not. Here we refer to the place where a certain piece of land or building is situated;

- if there are over 10.000 E differences between the declared income and the owned wealth then it is the fiscal authority's duty to take measures. The authorities which have legal access to do this are:
 - the National Agency of Integrity that writes the report for wealth evaluation;
 - the Commission for Wealth Checking is under the jurisdiction of each Appeal Court and it is informed through an evaluation report send by the National Agency of Integrity;
 - the local Appeal Court-the fiscal and administrative disputed claims office is informed by the above mentioned Commission as the person under investigation lives in an area lying under the Court's Authority;
 - the Highest Court of Cassation and Justice- the fiscal and administrative disputed claims office is the last way to attack the Appeal Court's decision;
- for those persons who do not have the obligations to declare their wealth (although the legislative annex stipulated in OUG nr.117/2010 was adopted by the end of 2010 and it mentioned the taxation of income with unidentified source), there has not been made any investigation, especially for those persons whose difference between the declared income and the owned one should be more than 10% but no less than 50.000 lei. The normative document has its flows:
 - when starting the control, the fiscal inspector does not have the initial declaration of the physical person about the owned assets and sums of money;
 - the inspector analyzes just the person's personal fiscal situation without considering the person's status of associate or shareholder for juridical persons; the cash-flows between the physical person and the juridical persons are not identified by the fiscal organ as only certain operations are taken into account: cash loan from the physical person toward the juridical one, loan refund from the juridical person to the physical one, cash removal from the juridical person's pay office or bank account by an associate or shareholder under the name of treasury advance;
- there are different checking methods to be used in the case of a physical person who has the obligations to declare its wealth as compared to the ones used for the person who doesn't have this obligation. In the case of physical person who has the obligations to declare its wealth if the difference between the declared wealth and the owned one is bigger than 10.000 Euro then the wealth is confiscated. For the physical persons who don't have the obligation to declare their wealth if the difference between the personal fiscal situation and the declared income is higher than 10% and 50.000 lei, then a 16% tax is introduced;
- the period of time when the control is realized is different: for the physical persons who have the obligation to declare their wealth the period of control ranges from the moment when they hold a position and three years after; for the physical persons who don't have the obligation to declare their wealth the period of control is five years before the fiscal year of reference or ten years before that particular reference fiscal year if there have been identified any criminal activities;
- we can witness cases of competence conflict for the organs which perform the control; if the declaration of a physical person who needs to declare its income

exceeds 10.000 E between the owned wealth and the declared income or the limit of 50.000 lei and 10% between the personal fiscal situation and the declared income.

We consider that the legal norms which apply to the above mentioned categories of physical persons are not relevant and they cause discrepancies as for as the quality of the investigated person is concerned.

In order to efficiently access the fiscal account information and to properly fructify it from the perspective of fiscal control we suggest the following:

- each person over 18 should annually write a wealth declaration no matter what position it holds at a particular moment;
- a limit should be stipulated to mark what is considered to be a significant difference between the owned wealth and the declared income; the value of this limit should be the same no matter what position the person holds;
- there should be just one fiscal organ to check any physical person's wealth and this organ should be the Fisk or a similar institution;
- if there are to found differences between the owned wealth and the declared income, then the same norm should be applied irrespective to the position hold by the person (either confiscation or taxation);
- indirect methods should be used on a wider scale in order to correlate the declared income with the owned assets and the expenses done;
- for the person under investigation there should be a simultaneous analysis of the personal activity and the business activity performed by the person.

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