Jurnalul de Studii Juridice

Year XIII, No. 3-4, December, 2018, pp. 19-36

PRESENTATION AND DISCUSSION INCIDENTS REGARDING THE COMPETENCE OF FISCAL AUTHORITIES IN CODE OF FISCAL PROCEDURE IN ROMANIAN LAW

Nadia-Cerasela ANIȚEI

DOI: <https://doi.org/10.18662/jls/30>

Covered in:

CEEOL, CrossRef, CrossCheck, Index
Copernicus, Ideas RePeC, EconPapers,
Socionet

PRESENTATION AND DISCUSSION INCIDENTS REGARDING THE COMPETENCE OF FISCAL AUTHORITIES IN CODE OF FISCAL PROCEDURE IN ROMANIAN LAW¹ (N., C., ANITEI (2016):187- 190)

Nadia-Cerasela ANITEI²

Abstract

The enactment of the Code of Fiscal Procedure in 2003 represents a major step toward the unification of the Romanian fiscal legislation. Unfortunately, the Romanian Fiscal Law continues to be scattered, by the enactment of a plethora of legislative acts and regulations which intend to complete or modify the Code of Fiscal Procedure.

This paper studies chapter I of the Third Title of the Code of Fiscal Procedure entitled "General Procedural Provisions". This chapter provides for the general jurisdiction of the fiscal bodies.

The authors define concepts such as: jurisdiction of the fiscal bodies, general jurisdiction territorial jurisdiction, jurisdiction on the secondary seats, territorial jurisdiction of the fiscal branches of the local public administration (as well as special

¹ The article was accepted for presentation and publication at "The 26th NISPAcee Annual Conference" May 24-26, 2018, Iasi, Romania but for personal reasons I did not succeed. Also, this article is a review of the article *THE CONCEPT OF COMPETENCE OF FISCAL AUTHORITIES IN IN FISCAL PROCEDURAL LAW* /Regulile de competență generală, materială, teritorială și specială a organelor fi scale conform dispozițiilor Noului Cod de procedură fiscală Curierul fiscal nr. 5/2016, ISSN 1841-7779, Editura C.H. Beck, București, 2016, pp. 187-190, http://www.beckshop.ro/fisiere/7219_fp_3951_CF%205-2016.pdf as a result of legislative changes in this area.

² **PhD Univ. Prof.** Faculty of Law, Social and Political Sciences, Dunărea de Jos University, Galați, Romania e-mail: nadia.anitei@ugal.ro; ncerasela@yahoo.com

jurisdiction by inference from the same notions used by the Civil Procedure Law (that is the common law for the interpretation and completion of the Code of Fiscal Procedure).

The authors indicate which are the fiscal bodies with jurisdiction on the fiscal claims management as well as the fiscal bodies entitled to regulate the application of the legal fiscal provisions and to exercise the fiscal control.

The paper highlights the legal gaps to be found in the provisions of Chapter I, Title III of the Code of Fiscal Procedure and tries to fill these gaps by de lege ferenda proposals.

Keywords:

Jurisdiction of the fiscal bodies; general jurisdiction, territorial jurisdiction, jurisdiction on the secondary seats, territorial jurisdiction of the fiscal branches of the local public administration, special jurisdiction.

1. THE CONCEPT OF COMPETENCE OF FISCAL AUTHORITIES

Fiscal authorities competence has been analyzed in the research literature in terms of certain expressions common in practice, namely that of *financial apparatus* (Drosu Șaguna, 2003 :89-90), (Anitei, 2016:187-190) or *fiscal apparatus*.

Further, since the provisions of the Fiscal Procedure Code do not define the notion of competence we will show, what is meant by competence in civil procedural law and then try to define the notion of **competence of the fiscal authorities**. (Condor, 1994: 432-436; Anitei, 2016:187-190).

The term competence can be found in different fields and is not specific only to law.

Legally, the issue of competence has been studied by all branches of law, on its value depending the knowledge of the authorities called to address the problem regarding the observance of rights and of the interests of natural persons and legal persons.

In 2011, in my works, I showed that”The Fiscal Procedure Code refers to **general, territorial and special competence**, but in reality, as we will see, the territorial competence refers to certain rules of material competence, and territorial competence is actually a special territorial competence” dar în prezent prin ultimele modificări aduse la Fiscal

Procedure Code (2016) refers to **general, material, territorial and special competence**. Thus, the Fiscal Procedure Code refers to Title III "General Procedural Provisions", which stipulates: Chapter I "Competence of the Central Fiscal Authority" (Article 29 - Article 34) including: "General competence of the central fiscal body" (art.33), "competency in the case of secondary headquarters" (Article 33), "tax and income tax related income from agricultural activities" (Article 34), "competence in the case of a non-resident taxpayer" (35), and "change of competence" (36); Chapter II "Competence of the local tax body" (art. 37-art. 39) including: "the general competence of the local tax body" (art 37); "The territorial jurisdiction of the local tax body" (Article 38) and Chapter III on other "provisions on jurisdiction" (Article 40 - Article 45) regulating: "special jurisdiction" (Article 40); "Conflict of competence" (Article 41); "Conflict of competence in the case of central fiscal bodies" (Article 42); "Competence conflict in the case of local tax authorities" (Article 43); "Conflict of interest" (Article 44) and "abstention and recusal" (Article 45).

In civil procedural law a first classification of rules of competence is the one which differentiates between **general rules of competence** and **competence jurisdiction rules**, as we refer to authorities from different systems or to authorities in the same system.

The research literature (Ciobanu, 1996: 371-372) states that the **jurisdiction competence** distinguishes between the **material competence** and the **territorial competence**, as we relate to different courts (or to common courts and special courts) or to courts of the same degree. Within the **material competence**, one can distinguish between *functional material competence* determined by judicial duties incumbent on each category of courts and *procedural material competence* determined in relation to the subject, value or nature of the dispute before the Court. Speaking of the **territorial competence** we can distinguish: *territorial competence of common law*, *alternative (optional) territorial competence* and *exclusive (exceptional) territorial competence*; in case of the request which is brought before the court of common law, in territorial terms, the applicant has a choice between several courts equally competent or the request must be brought only before a particular court. (Ciobanu, 1996: 401).

Another classification is that of absolute competence and relative competence, as the rules governing them are mandatory or dispositional. Thus, rules of general competence, material competence rules and rules of exclusive (exceptional) territorial competence have a mandatory character, while territorial competence rules have a dispositional character.

2. TYPES OF COMPETENCE IN FISCAL PROCEDURAL LAW

2.1. Competence of the central fiscal *authorities*

2.1.1. General competence of the central fiscal *authorities*

Art. 29 C. pr. Taxation with the marginal name "General competence of the central fiscal body" states: "The administration of the fiscal receivables due to the state budget, the state social insurance budget, the budget of the National Health Insurance Fund and the unemployment insurance budget is made by the central fiscal body, except as otherwise provided by law. (1) The central fiscal body carries out management activities and other receivables due to the general consolidated budget than those stipulated in paragraph (1), according to the competencies established by law. (paragraph 2) In the case of income tax and social contributions, a special decision-making power may be attributed by Government decision. (3) The central fiscal body carries out the assistance and guidance activities of the taxpayer / payer based on the methodological coordination of the Ministry of Public Finance. The methodological coordination procedure shall be established by order of the Minister of Public Finance. (4) The Central Fiscal Authority, through A.N.A.F., is also competent for the collection of budgetary receivables established in executory titles, due to the state budget, regardless of their nature, which have been sent to him for recovery, according to the law. "(paragraph 5)

As we observe from the provisions of the Fiscal Procedure Code art. 29 is called "General Competence" but we find that:

- Paragraph 1 refers to the competence of the central fiscal body to administer "tax receivables from the state budget, the state social security budget, the budget of the National Health Insurance Fund and the Unemployment Insurance Budget," but using the phrase " when otherwise provided by law "it is noted that to the same extent it also refers to the special competence although art. 40 C on tax is entitled "Special Competence". We find that regrettably the legislator mixes the notions of "general competence" and "special competence";

- in paragraph 2 refers to "administration and other receivables due to the general consolidated budget than those stipulated in para. (1), according to the powers established by law ". We note that the enumeration

of debt management continues. We believe that this alignment is irrelevant here;

- Paragraph 3 refers to special competence ("In the case of income tax and social contributions, a special management power may be assigned by Government decision"), although art. 40 C on tax is entitled "Special Competence". We find that regrettably the legislator mixes the notions of "general competence" and "special competence";

- The fourth sentence I is dedicated to the activities of assistance and guidance of the taxpayer / payer on the basis of the methodological coordination of the Ministry of Public Finance by the central fiscal body and the thesis II establishes that the methodological coordination procedure is made by an order of the Minister of Public Finance:

- Paragraph 5 continues the enumeration of the collection by the Central Fiscal Authority, through ANAF, of the budgetary receivables established in executory titles, due to the state budget, regardless of their nature, which were sent to them for recovery, according to the law "We consider that neither this aligned is not relevant here.

We consider that this article refers to material competence and not to general competence.

In our opinion, art. 29 of the Code of Fiscal Procedure refers to material competence and not to general competence and we propose by law to change the name of this article.

We observe the interpretation of the provisions of art. 29 Fiscal Procedure Code and corroboration with the provisions of other normative acts that belong to the category of fiscal bodies with general competence (in our opinion) regarding the administration of the tax receivables, the exercise of control and the issuance of the norms for the application of the legal provisions in the fiscal field are included: Ministry of Finance Public through the National Agency for Fiscal Administration under the subordination of: General Directorate of Fiscal Anti-Fraud, General Directorate of Customs, General Directorates of Public Finances, General Direction of Public Finances Bucharest, General Directorate of Tax Administration and Fiscal Inspection. We also consider that, from the category of fiscal bodies that have material competence regarding the administration of tax receivables and the local fiscal body of the respective administrative / territorial units / subdivisions

2.2. Material and Territorial competence

Through the concept of **material competence** in civil procedural law we understand the hierarchical delimitation between courts of different degree, or between the common law courts and special courts. (Ciobanu, 1996:401)

So, the **material competence of fiscal authorities** refers to the vertical hierarchical delimitation between fiscal control bodies, which have competence in the administration of tax claims, control and issue of rules implementing the law on tax matters.

Research literature supports the absence from the Fiscal Procedure Code of the provisions regarding the material competence of fiscal authorities. The solution may be explained through the consistency of normative acts regulating the organization and functioning of the Ministry of Public Finance and of the National Agency for Fiscal Administration. It is no less true that, as showed, the texts of the Fiscal Procedure Code contain disparate provisions that can set certain rules of material competence. (Minea & Costas, 2008:408-410< Anitei, 201: 202-330)

In civil procedural law, within the **territorial competence** we distinguish between: the territorial competence of common law, the alternative (optional) territorial competence and the exclusive (exceptional) territorial competence depending on where the request is made so that: if presented to the court of civil law, in terms of territory, the applicant has a choice between several equally competent courts or the request must to be presented only to a certain court.

By analogy, regarding the territorial competence in fiscal procedural law we distinguish territorial competence of common law, the alternative (optional) territorial competence and the exclusive (exceptional) territorial competence depending on the place where taxes, contributions and other amounts owed to: the state budget, the state social security budget, the budget of the National Health Insurance Fund and the unemployment insurance budget as well as the general consolidated budget.

Territorial competence means that the administration of taxes, contributions and other amounts due to consolidated public budget belongs to that fiscal, county or local body or of Bucharest established by order of the Minister of Public Finance on the motion of the president of the National Agency for Fiscal Administration in whose jurisdiction is the *fiscal*

domicile (Minea & Costas, 2006: 246-247; (E, Balan, 2004 :23-115) of the taxpayer or the payer of income, in case of taxes collected by withholding, under the law.

In our opinion, art.29 of the Fiscal Procedure Code refers to material competence rather than to general competence, therefore we propose for *lex ferenda* the amendment of this paragraph.

We note that through the interpretation of the provisions of art. 29 of the Fiscal Procedure Code in corroboration with the provisions of other normative acts³ (material in our opinion) regarding the tax claims administration, control and issue of rules implementing the law on tax matters includes: the Ministry of Public Finance through the National Agency for Fiscal Administration which administers: General Directorate of Tax Fraud, General Directorate of Customs, Regional Directorates of Public Finances, Regional Directorate General of Public Finances Bucharest, General Directorate of Tax Administration and Fiscal Inspection. We also consider that, from the category of fiscal bodies that have material

³For example: O.U.G. no. 74 of 2013 on some measures for improving and reorganizing the activity of the National Agency for Fiscal Administration, as well as for amending and completing some normative acts was approved, modified and completed by Law no. 144/2014 published in the Official Gazette of Romania, Part I, no. 777 of October 24, 2014; Government Decision no. 522/2016 for amending and completing the Government Decision no. 520/2013 regarding the organization and functioning of the National Agency for Fiscal Administration, Order no. 628 / 09.03.2018 of the President of the National Agency for Fiscal Administration regarding the modification of the Regulations for organization and functioning of the General Directorates of Public Finances of Iasi, Galati, Ploiesti, Craiova, Timisoara, Cluj-Napoca, Brasov and Bucharest, approved by the President's Orders Of the National Agency for Fiscal Administration no. 2294/2017, respectively no. 1878/2017 - published on 16.03.2018, Order no.208 / 2018 of the President of the National Agency for Fiscal Administration regarding the modification of Order no. 1115/2013 of the President of the National Agency for Fiscal Administration for the approval of the organizational structure of his own apparatus The National Agency for Fiscal Administration; - published on 31.01.2018.

competence regarding the administration of tax receivables and the local fiscal body of the respective administrative-territorial unit / subdivisions.

Art. 30 C on tax with the marginal name "The territorial and territorial jurisdiction of the central fiscal body" provides: "For the administration of the tax receivables and other receivables due to the budgets stipulated in art. 29 para. (1) and (2), competence shall lie with the territorial fiscal body of the NFAF, established by an order of the President of A.N.A.F., within whose territorial jurisdiction the fiscal domicile of the taxpayer / payer is located. (paragraph 1) In the case of a non-resident taxpayer / payer who carries on business in Romania through one or more permanent establishments, competence lies with the central fiscal body in whose territorial jurisdiction the permanent establishment designated according to the Tax Code is located. (in paragraph 2) for the purpose of administration by the central fiscal body of tax liabilities owed by large and medium-sized taxpayers, including their secondary offices, by order of the president of A.N.A.F. the competence to administer to other tax authorities other than those provided for in paragraph (1), as well as the selection criteria and the lists of taxpayers acquiring the capacity of a large taxpayer or, as the case may be, a medium taxpayer. (3) The administration of tax liabilities due by medium taxpayers, including their secondary offices, shall be performed by the fiscal body at the county or Bucharest level, as the case may be. (in paragraph 3) (1) The competent central fiscal body shall notify the taxpayer whenever there are changes regarding the status of large taxpayer or, as the case may be, the average contributor. (in paragraph 4) For the purpose of administration by the central fiscal body of the fiscal obligations owed by a fiscal group constituted according to the provisions of the Fiscal Code, by order of the president of A.N.A.F. the competence to administer to other tax authorities other than those provided for in paragraph (1). The designated central fiscal body is competent to manage the tax obligations owed by all members of the group". (in paragraph 5)

From the provisions of art. 30 C on tax we deduce:

- Paragraph 1 establishes that the ANAF Territorial Tax Authority, by order of the ANAF President, in whose territorial jurisdiction the taxpayer / payer's tax domicile is competent, is not competent to distinguish both materially and territorially to administer tax receivables and other receivables due to the state budget, the state social security budget, the budget of the National Health Insurance Fund and the unemployment insurance budget as well as the general consolidated budget;

- Paragraph 2 shows that the central fiscal body in whose territorial jurisdiction the registered office is located according to the Tax Code is competent for the non-resident taxpayer / payer who carries on the Romanian territory one or more permanent establishments;

- Paragraph 3 establishes that the central fiscal body, but by order of the President of A.N.A.F, the territorial fiscal body of the National Bank of Romania, as well as other fiscal bodies, have the competence to administer the tax liabilities due by the large and medium-sized taxpayers, including the secondary offices. These bodies will also establish the selection criteria and the lists of taxpayers who acquire the status of large taxpayer or, as the case may be, a medium taxpayer;

- From the provisions of para. para 3 1, we observe that the fiscal body at the county or Bucharest level, as the case may be, administers the tax liabilities due by the medium-sized taxpayers, including their secondary offices;

- For the purpose of administration by the central fiscal body of fiscal obligations owed by a fiscal group constituted according to the provisions of the Fiscal Code, by order of the president of A.N.A.F. the competence to administer to other tax authorities other than those provided for in paragraph (1). The designated central fiscal body is competent to manage the tax obliga We note that, in the situation of art. 30 par. 1 of the Fiscal Procedure Code the fiscal bodies have a territorial and territorial jurisdiction of common law, the administration of taxes, duties, contributions and other amounts due to the consolidated public budget.

From the provisions of para. 2 of art. 30 of the Fiscal Procedure Code, it is observed that in the case of non-resident taxpayers carrying out activities on the territory of Romania through one or more permanent establishments, the territorial jurisdiction belongs to the fiscal body in whose territorial range the permanent headquarters are situated. So, from the provisions of paragraph 2 of art. 29 of the Fiscal Procedure Code shows that the tax body in whose territorial jurisdiction is located each permanent establishment has exclusive territorial jurisdiction over the other fiscal bodies in whose territory the non-resident taxpayer carries out his activity.

From the provisions of par. 3 of art. 30 of the Fiscal Procedure Code shows that in the case of the tax receivables due by the large taxpayers and the medium ones, including for their secondary offices, but also for the selection criteria and the lists of the taxpayers who acquire the capacity of large taxpayer or, as the case may be, the average taxpayer, an alternative material and territorial jurisdiction of tax authorities. These fiscal bodies may

be those provided in art. 29 paragraph 1 of the Fiscal Procedure Code or by order of the President of the National Agency for Fiscal Administration competence may be waived by other tax authorities.

From the provisions of para. paragraph 3 of art. 30 of the Fiscal Procedure Code, it is noticed that for the administration of tax liabilities due by medium taxpayers, including their secondary offices, it is an exclusive territorial competence of the fiscal body at the county or Bucharest level, as the case may be. to the other fiscal bodies on whose territory the average taxpayer is active.

From the provisions of par. 5, sentence I of art. 30 of the Fiscal Procedure Code shows that the central fiscal body is competent, but competence may be delegated by an order of the President of A.N.A.F. and to other fiscal bodies than those provided in paragraph (1) to administer tax liabilities owed by the fiscal group constituted according to the provisions of the Fiscal Code. We believe that this is an alternative general, material and territorial competence.

From the provisions of par. 5, sentence II of art. 30 of the Fiscal Procedure Code the competence of the central fiscal body designated to administer the tax obligations owed by all the members of the group. So, the moment when the fiscal body is appointed according to art. 30 par. 5, sentence I of the Fiscal Procedure Code, it administers the tax obligations for all members of the group. So, competence is exclusive and can not be waived. tions owed by all members of the group.

Article 33 of the Fiscal Procedure Code stipulates that "in the case of secondary tax offices, according to the law, the competence for the administration of the income tax on the income due to them is borne by the competent fiscal body for the administration of the liabilities owed by the taxpayer / payer who has established them . (1) The competence for tax registration of secondary establishments as payers of salaries and income assimilated to salaries, according to the law, is the responsibility of the central fiscal body in whose territorial jurisdiction they are situated. (2) "

From the provisions of art. 33 paragraph 1 of the Fiscal Procedure Code we note that this is a matter of exclusive physical and territorial competence of the fiscal body which has established the taxpayer / payer who owes the income tax on salaries if the taxpayer / payer has secondary offices. However, paragraph 2 of the same art. specifies that the central fiscal body in whose territorial jurisdiction the secondary offices are situated have the competence to register these secondary offices as wage and salary-related income tax payers, according to the law. Thus, it is from the provisions of

Art. 33 C on Tax an exclusive material and territorial competence of the central fiscal body in whose secondary territory the secondary offices are located.

Article 34, with the marginal title: "Competence regarding tax and contributions related to income from agricultural activities" provides: "By way of exception from the provisions of art. 30 and 38, the tax and the social contributions related to the incomes from agricultural activities, due by the natural persons, according to the law, can be paid in cash and to the local fiscal body in the locality where the taxpayer has its tax domicile, where there is no territorial unit of the ANAF, if between the local public administration authority and ANAF a protocol has been concluded for this purpose. The date of payment is the date provided in art. 163 par. (11) lit. a), including for amounts wrongly paid by the taxpayer on other types of obligations or erroneously extinguished by the tax body in carrying out the procedure provided for in paragraph (4). (1) Amounts received according to par. (1) shall be deposited by the local tax authority in a separate available balance account, within a maximum of 5 working days from the receipt, together with the statement of the sums received, which shall include at least the following information: the number and the date of the document paid cash, CUI / CNP taxpayer, taxpayer name, type of obligation paid, paid amount. (2) Amounts deposited in the account referred to in paragraph (2) shall be paid by the State Treasury units to the corresponding income accounts of the state budget and the budget of the National Health Insurance Fund, within two working days after filing, according to the procedure stipulated in paragraph (4). (3) The procedure for collecting and transferring to the state budget and to the budget of the National Health Insurance Fund the sums received according to par. (1), as well as the way of cooperation and the exchange of information between the central fiscal bodies and the local tax bodies, shall be approved by joint order of the Minister of Public Finance and of the Minister of Regional Development and Public Administration. "(Paragraph 4)

From the provisions of Article 34, paragraph 1, sentence I, we note that by exception and by using the verb "maybe" it is an alternative material and territorial jurisdiction of the tax body, whether central or local, in the material of the payment of the tax and the social contributions related to the income from agricultural activities, due by the natural persons in the locality in which they have their tax domicile according to the following rules: if there is no territorial unit of ANAF, and if between the local public

administration authority and ANAF a protocol has been concluded for this purpose.

In the literature it is stated that in the case of the obligations related to the secondary offices (such as salary tax in the case of the secondary office) tax administration is the competence of the fiscal body in whose territorial jurisdiction the secondary office is located. So the payment of the salary tax is made to the State Treasury in whose territorial jurisdiction the secondary office is located and the payment identification number must be obligatory mentioned, the tax identification code and the name of the legal person, as well as the fiscal identification code of the secondary office. Thus, in this situation, the Treasury of the State in whose territory the taxpayer's head office is located has exclusive territorial competence in tax administration of the tax on the secondary taxpayer's head office, provided that the payment document is obligatory both the tax identification code and the name of the legal entity, as well as the fiscal identification code of the secondary establishment.

2.3. Competence of local tax authority

2.3.1. The general competence of the local tax authority

Art. 37 Taxation with the marginal title "General Competence of the Local Tax Authority" provides: "The administration of the fiscal debts due to the local budget, including the tax on income that is paid to the local budget, according to the Tax Code, , unless otherwise provided by law. "

From the provisions of art. 37 At the fiscal level, it is noted that the local tax authority has the general compliance to manage the tax receivables due to the local budget, including the tax on income that is paid to the local budget, according to the Fiscal Code. However, the Code of Fiscal Procedure in the later part of Article 37, using the expression "... unless the law provides otherwise," concludes that there may be special situations where it can be assumed that in this situation the special and not the general competence intervenes.

2.3.2. Territorial competence of local tax authority

Art. 38 The Tax Code with the marginal title "Territorial Competence of the Local Tax Authority" stipulates: "The administration of

the fiscal receivables due to the local budget of an administrative-territorial unit / subdivisions is made by the local fiscal body of the respective administrative-territorial subdivision unless otherwise provided by law. (1) for the purposes of the local tax authority's administration of the tax liabilities owed by large and medium-sized taxpayers, it is by decision of the deliberative authority to determine the criteria according to which the large taxpayers or medium sized taxpayers, as well as the lists with those taxpayers. (2) The local tax authority shall notify the taxpayer whenever there are changes regarding the status of a large taxpayer or, as the case may be, a middle-income taxpayer. "(paragraph 3)

From the provisions of art. 38 paragraph 1, part I of the Tax Code, we deduce that the local fiscal body of an administrative territorial unit / subdivision has exclusive territorial competence in the administration of tax receivables due to the local budget of a respective administrative / territorial unit / subdivision by the taxpayer / physics.

However, the Code of Fiscal Procedure in the later part of Article 38, using the expression "... unless otherwise provided by law", we infer that there may be special situations when we can conclude that in this situation special territorial competence

4. Special competence of the central fiscal body and the local fiscal body

Art. 40 C tax with the marginal title "Special Competence" states: "If the taxpayer / payer does not have a known fiscal domicile or does not have a fiscal domicile in Romania, the territorial jurisdiction lies with the fiscal body within the scope of which the act or the fact submitted is established legal provisions. (1) The provisions of paragraph (1) shall also be applied for the urgent implementation of the legal measures required in cases of disappearance of the identification of the actual tax base, as well as in case of forced execution. (2) in the case of a taxpayer / taxpayer domiciled in Romania who applies the special regime for electronic, telecommunication, broadcasting or television services regulated by the Fiscal Code, the competence to administer the value added tax for services subject to this regime rests with the fiscal body centrally established by order of the ANAF President "(Paragraph 3)

Regarding art. 40 C on tax the name of "Special Competence" is improper because we will notice that in Art. 29-art 39 On tax matters we encounter provisions on special competence. In this regard, we consider that the provisions of the Fiscal Procedure Code contain some rules of special territorial jurisdiction as follows:

a. *In case of permanent offices*, competence is determined based on the criterion of preponderance of turnover of the respective permanent office. (art.30);

b. *Competence for secondary locations*, regardless whether they belong to Romanian or foreign natural or legal person belongs to the tax authority in whose jurisdiction they are located (art 33);

c. *Competence in the absence of a taxpayer's fiscal domicile* is determined based on the criteria of the act or fact finding subject to the provisions of tax law, the territorial competence will belong to the fiscal body in whose jurisdiction the act or fact is found. Thus, according to art. 40 paragraph 1 of the Fiscal Procedure Code if the taxpayer has no fiscal domicile, the territorial competence is granted to the fiscal body in whose jurisdiction the act or fact subject to tax laws is found;

d. *Special competence in emergency cases* shall be established in urgent cases. Thus, according to art.40 paragraph 2 of the Fiscal Procedure Code where necessary legal emergency measures must be taken in cases of absence of legal elements of identification of real tax basis and of writs of execution, the territorial competence belongs to the fiscal body in whose jurisdiction the act or fact subject to tax laws is found;

e. special territorial jurisdiction in the case of a taxpayer who does not have a residence on the Romanian territory because it is the exception and not the rule in the matter. From the provisions of art. 35 At the fiscal point of view, the central fiscal body has exclusive material and territorial competence established by order of the president of A.N.A.F. in order to manage the fiscal obligations of the non-resident taxpayer who does not have a permanent establishment in Romania;

f. if the tax domicile changes, the competence of the fiscal body (art.36);

g. competence of the central fiscal body established by an order of the President of A.N.A.F. for the administration of the value added tax related to the services subject to the special regime for electronic, telecommunication, broadcasting or television services regulated by the Fiscal Code; (Article 40 (3) C, Fiscal Code);

h. The competence in the case of local taxes and fees is borne by the specialized services within the local public administration units, on which the goods subject to taxation are located.

Regarding art.40 the name of "special competence" is improper because the entire article refers to the exclusive territorial competence of fiscal authorities.

We have to say that this notion "special competence" is not brought under regulation in ordinary law.

3. PROROGATION OF COMPETENCE (Anitei, 2012: 3-177)

1. The notion of extension of competence in common law

In civil procedural law the prorogation occurs in case a court with competence to resolve the request which has been submitted by the applicant becomes competent under the law, a court decision handed down by a higher court or the agreement of parties to resolve requests that are usually not within its competence. In relation to the basis of action the competence prorogation can be: legal, judicial and conventional (voluntary). (Ciobanu, 1996: 436-438).

Legal competence prorogation occurs when the court extends its competence under an express provision of law. (Les, 2010: 286)

The category of incidental requests is quite extensive and includes in its content not only the counter action of the respondent, but also the other requests that can be made in a trial already existing between other people. This is primarily the case of all forms of participation of third parties in the civil trial: voluntary action, the proceedings of others, the call for warranty and the presentation of the right holder.

Legal competence prorogation (Les, 2010: 290-291) operates in case of those situations where by the effect of a court decision a court is vested with the performance of certain procedural acts or even with a civil settlement that would come into the jurisdiction of other courts.

Voluntary or conventional competence prorogation occurs in those circumstances where the parties manifest, expressly or implied, the will to choose a court other than that provided by law for dispute resolution. It is only possible in case of the relative competence standards. (Les 2010: 291).

In tax procedural law we can speak of a legal, "judicial", voluntary or conventional jurisdiction under Art. 36 C on tax with the marginal name "Change of jurisdiction" states: "If the tax domicile changes, according to the law, territorial jurisdiction changes to the new central tax office as of the date of change of the tax domicile. (1) The provisions of paragraph (1) also applies to large and medium-sized taxpayers, as defined by law, if that quality

is changed. (paragraph 2) when an administrative procedure is underway, except for the forced execution procedure, the central fiscal body that started the procedure is competent to complete it. (alin3) By way of exception to the provisions of paragraph (1), if the tax domicile according to art. 32 par. (5), the territorial competence shall be transferred to the new central fiscal body from the date of the deadline referred to in this paragraph "(paragraph 4)

From the provisions of art. 36 paragraph 1 in conjunction with paragraph 2 of the same article C on taxation, we note that it is the legal subrogation of territorial jurisdiction from the original central fiscal body to the new central c fiscal office in the situation in which it changes its tax domicile, regardless of whether it is a taxpayer / payer legal / physical person or large or medium-sized taxpayers.

As an exception to the provisions of paragraph 1 of Article 36 of the Fiscal Code, the new territorial jurisdiction is the exclusive territorial competence - in the event of a change of residence or registered office by the taxpayer / payer - from the date of the passing of the 15-day period when the registration was filed and registration in the tax records changes regarding the registered office / domicile of the taxpayer / payer legal / physical person.

From the provisions of art. 36 paragraph 3 of the Fiscal Code, the central fiscal body which started the tax administration procedure has exclusive territorial competence because it also has the competence to finalize the procedure but with the exception of the forced execution procedure.

Conclusions

Given that the notion of competence of tax authorities is not defined in the Fiscal Procedure Code we will try to define this notion. Thus, through the competence of the tax authorities, we will understand the ability recognized by law to a tax body to administer taxes, duties, contributions and other amounts owed to the general consolidated budget, to assist and guide taxpayers in the unitary application of tax legislation, to exercise control tax and to issue rules for the application of the legal provisions in tax matters.

By the notion of general competence of the tax authorities we should understand the ability of organs in different systems to manage the tax receivables or the vertical delimitation between control bodies from

different systems, namely: fiscal bodies, administrative and administrative contentious courts, administrative- territorial authorities (local public administration authorities and their specialized departments which are competent to administer taxes, taxes and other amounts owed to local budgets of territorial administrative units), but also special bodies with competence in the administration of tax receivables

The territorial jurisdiction implies that the administration of taxes, duties, contributions and other amounts owed to the consolidated public budget shall be reimbursed to the fiscal, regional, local or Bucharest body established by order of the Minister of Public Finance, at the proposal of the President of the National Agency for Fiscal Administration whose territorial range is the tax domicile of the taxpayer or the payer of income, in the case of the withholding tax levied under the law.

Special jurisdiction implies that the administration of taxes, duties, contributions and other amounts due to the consolidated public budget rests with the central or local fiscal body established by the Minister of Public Finance, at the proposal of the President of the National Agency for Fiscal Administration, from which it can not derogate only in clearly defined situations.

Bibliography

- Anitei, N. C. (2016). *The Concept Of Competence Of Fiscal Authorities In In Fiscal Procedural Law* /Regulile de competenta generala, materiala, teritoriala si speciala a organelor fi scale conform dispozitiilor Noului Cod de procedura fiscala. Curierul fiscal nr. 5/2016, Bucuresti: Editura C.H. Beck: 187-190, Retrieved from: http://www.beckshop.ro/fisiere/7219_fp_3951_CF%205-2016.pdf
- Anitei, N. C. (2011). Legal regulation of the bodies responsible for financial and fiscal control, /Reglementarea juridica a organelor cu atributii de control financiar-fiscal, Iasi, , Romania: Editura Lumen, 2011.
- Anitei, N. C. (2012). Legal regulation of the bodies responsible for financial and fiscal control, Germania: Editura Lambert.
- Anitei, N. C. (2011). *Procedura fiscala (Fiscal Procedural)*. Bucuresti: Universul Juridic Publishing House.
- Balan, E. (2004). *Drept financiar (Financial Law)*, 3rd ed. Bucharest, Romania: All Beck Publishing House.

- Ciobanu, M.V. (1996). *Tratat teoretic și practic de procedura civila. Teoria generala* (Theoretical and Practical Treaty of Civil Procedure. General Theory), vol. I, Bucuresti, Romania: Național Publishing House.
- Condor, I. (1994). *Drept financiar* (Financial Law). Bucuresti, Romania: Regia Autonomă “Monitorul Oficial” Publishing House.
- Les, I. (2010). *Tratat de drept processual civil*, (Treaty of Civil Procedure) Editia 5, Bucharest, Romania: C.H. Beck, Publishing House.
- Minea, S.M., & Costas, F. C. (2008). *Dreptul finanțelor publice. Drept fiscal* (Public Finance Law. Fiscal Law), vol. II, Bucuresti, Romania: Wolters Kluwer Publishing House.
- Saguna Drosu, D. (2003). *Drept financiar si fiscal* (Financial and Fiscal Law), Bucuresti, Romania: All Beck Publishing House.
- Saguna, Drosu, D., Sova, S, & Coman, D. (2008). *Drept fiscal* (Fiscal Law), 2nd edition, Bucharest: C.H. Beck Publishing House.