

ORDINANCE no. 70 of 28 August 1997
on the fiscal control
(GO70/1997)

ISSUED BY: THE GOVERNMENT OF ROMANIA

PUBLISHED IN: THE ROMANIAN OFFICIAL JOURNAL No. 227 of 30 August 1997

By virtue of Article 107 (1) and (3) from the Romanian Constitution and of Article 1 a) of Law no. 134/1997 on Government' competence to issue ordinances,

The Government of Romania has issued the following ordinance:

CHAPTER 1
General provisions

Article 1

The fiscal control comprises the totality of activities aiming at the checking of the truthfulness of the statements, as well as the checking of the correctness and exactness of fulfilling by the taxpayers of their fiscal obligations in keeping with the provisions of the law.

Article 2

According to the provisions of this ordinance, the taxpayers, natural and legal persons, Romanian and foreign as well as the associations without legal personality having, according to legal provisions, fiscal obligations are subject to the fiscal control.

Article 3

The fiscal obligations include:

- a) the obligation to declare the goods, the taxable incomes, or as the case might be, the taxes due;
- b) the obligation to calculate, record in the accounting and payment records at the legal terms of the taxes;
- c) the obligation to calculate, record in the accounting and payment records at the legal terms of the taxes obtained by their stoppages at the source;
- d) any other obligations devolving upon the taxpayers in the implementation and execution of the fiscal laws.

Article 4

In the sense of this ordinance, taxes mean the amounts due to, in keeping with the legal provisions, the state and the local budgets as well as any other amounts which are fiscal incomes whose administration devolves upon the Ministry of Finance.

Article 5

The Ministry of Finance and its territorial units exert the fiscal control, by the fiscal apparatus and the bodies empowered by law, hereinafter named fiscal bodies.

The employees of the fiscal bodies perform a function that involves the exertion of state authority.

The organisation, territorial competence and competence of the fiscal apparatus are approved by the Minister of Finance.

CHAPTER 2

The rights and obligations of the fiscal bodies

Article 6

In exerting the competence devolving upon them, the fiscal bodies are entitled:

- a) to examine any documents, records, accounting books belonging to the taxpayers which might be relevant for the correct establishment of the taxes and for the manner in which they have observed their fiscal obligations;
- b) to request from the taxpayers all the information and explanations referring to the statements and documents that are subject to control. Should the request be for a reply in writing, the taxpayers are obliged to supply the information concerned within 3 days from receipt of the request;
- c) to request that the taxpayers or their legal representatives should come to the fiscal body's offices. The request is made in writing and compulsory and it includes the date, time and place of the meeting and its purpose. The request is sent to the taxpayer at least 10 days before the day set for meeting;
- d) to find facts concerning the nature of the activities which produce taxable incomes or for identifying the taxable objects or sources;
- e) to carry out excerpts or make copies of any document or financial records;
- f) to keep – for a period of 30 days – for safeguarding against theft or destruction, in exchange for a receipt made out and signed by the fiscal body any document or any material element that could be useful as evidence or proof referring to the determination of the taxes due by the taxpayer. In exceptional circumstances, with the approval of the manager of the fiscal body, the period of keeping of the document may be extended to up to 90 days;
- g) to get into any business premises of the taxpayer or into any other premises where there are taxable goods or activities producing incomes are carried out – the presence of the taxpayer or of his legal representative. The access is allowed in the normal working period only with the written authorisation;
- h) to set into the rooms which are the domicile or the residence of a natural person with the written consent of the latter. Should that person refuse to grant access, the fiscal body should request permission from the competent court of justice, the provisions of the Civil Code Procedure regarding the presidential ordinances being applicable.

Article 7

Should the accounting records or any other records be kept by means of the systems of the automatic data processing, the control can be exerted on the whole information, data and electronic processing which directly or indirectly contribute towards obtaining the accounting or fiscal data and the drawing up of the statements as well as

on the documents which refer to the analysis, performing and performance of the activities.

Article 8

In view of determining the way in which the fiscal obligations devolving upon the taxpayers are met and of the exact establishing of the taxes due, the fiscal bodies are entitled to request information from:

- natural or legal persons who keep or manage amounts of money belonging to the taxpayers or have business relations with the latter;
- bodies of central or local public administration, public institutes or institutes of public interest;
- public or private institutions which record in any form the concluded contracts, the goods circulation or goods records, the way property is exploited and other similar situations.

The above mentioned persons, bodies, institutes shall, within the term specified in the request, to supply information and make available to the fiscal bodies the documents, records or data concerned.

All the documents, data and information obtained by the fiscal bodies in the manner stipulated in this Article shall be included in the fiscal file of the taxpayer and can be taken into account when re-calculating the taxes due by him.

Article 9

In well-justified instances, the fiscal bodies may request the people, according to their territorial competence, to make statements or produce documents that are deemed to be necessary in order to establish if the person concerned has or has not the capacity of a taxpayer.

Article 10

The fiscal bodies are obliged to exert the fiscal control so as to impair as little as possible the carrying of the current activities of the taxpayers.

On the whole period of the carrying out of the fiscal control the fiscal bodies are obliged to act in a professional manner, proving fairness and objectivity in the relations with the controlled taxpayers and with the other people they get into touch during their performance of their official duty.

Article 11

Based on the findings of the control actions, the Ministry of Finance is entitled:

- a) to establish tax differences to be paid by the taxpayers, as well as to calculate penalties for delay in payment at legal due days the due taxes;
- b) to establish contraventions and impose the fines provided for by fiscal laws;
- c) to order the steps to be taken for the correct carrying out by the taxpayers of the fiscal obligations devolving upon them.

CHAPTER 3

The taxpayers' rights and obligations

Article 12

All along the carrying out of the fiscal control the taxpayers are entitled:

- a) to be informed on the carrying out of the control and on the possible unclear circumstances;
- b) to be the first requested, if available, to supply information, explanations;
- c) to benefit from specialist assistance;
- d) to be protected in as for the fiscal secret concerned.

Article 13

The taxpayers shall make available to the fiscal control bodies all the technical-operative and accounting documents, records and any other type of document underlying the correct calculation in a legal ratio of the taxes due.

Failure to hand in, in bad faith, of the documents at the fiscal control performed at the taxpayers' establishment, residence or premises, or at the place of the fiscal body, shall have as a consequence their not taking into account subsequently, in the event of setting objections, complaints made against the acts of control.

Article 14

The taxpayers who, according to legal provisions, organise and manage with their own accounting, are obliged to keep the financial records, at the registered office when recorded and authorised by the fiscal body, up to the term of writing off of the right the fiscal bodies to establish differences in taxes.

The accounting records and the underlying documents are kept and filed adequately, so as to allow the normal carrying out of the fiscal control.

Article 15

The taxpayers, in keeping with the legal provisions, can contest the measures ordered in consequence of the fiscal control.

Article 16

The taxpayers, or their legal representatives, are obliged to cooperate in the carrying out in optimum conditions of the fiscal control, by the observance of the rights of the fiscal bodies and by the exertion of these rights.

CHAPTER 4 Procedure rules

Article 17

The fiscal control is carried out at the taxpayers' establishment, domicile or residence or at the establishment of the fiscal body.

The fiscal control can also take place in any other place established in agreement with the taxpayer, the latter having the obligation, under such circumstances, to ensure the conditions and documents required for the normal carrying out of the control activity.

Article 18

The fiscal bodies establish the period of time allowed for carrying out the fiscal control provided in Article 17, in keeping with the objectives of the control, and this time limit cannot exceed 3 months.

Article 19

The fiscal control at the premises of the taxpayer or in any other place established by mutual agreement is carried out one time for each tax and taxable period.

By way of exception from the provisions of paragraph 1, the leader of the competent fiscal body may decide the re-checking of a certain period if from the date of the conclusion of the fiscal control to the time of writing off provided in this ordinance, further data emerge that were not known by the fiscal body at the date of performing the control and which influence or modify the results of such a control.

Article 20

The findings of the fiscal control are compulsorily laid down in writing in the control minute, the findings note, the minutes for establishing of contraventions in unilateral notes.

CHAPTER 5

Terms of writing off the right of establishing tax-differences

Article 21

The right of the fiscal bodies to establish differences in taxes and penalties for delay in due payment, as well as to establish contraventions and impose fines and penalties for facts which fall, according to law, within the competence of fiscal bodies for a taxable period, is written off as follows:

- a) 5 years from the date when the time for handing in the statement for the period concerned expired;
- b) 5 years from the date of the last legal term for payment of the tax, when the law does not provide for the obligation of filing the statement;
- c) 5 years from the date of informing of the taxpayer by the fiscal bodies about the tax established by the fiscal bodies in the circumstances set by law.

Article 22

The prescription terms stipulated in Article 21 are interrupted:

- a) in the instances and circumstances established by law for the interruption of the prescription of the right to take action;
- b) on the date of filing by the taxpayer of the fiscal statement, after expiry of the legal term for its filing;
- c) on the date of the performance by the taxpayer of a voluntary act of admitting the tax-due, including its integral or partial payment;
- d) on the date due for informing by the taxpayer of a tax-difference established by tax-bodies following a control action.

Article 23

The prescription terms stipulated by Article 21 are suspended:

- a) in the instances and in the conditions provided by law for the suspension of the prescription term for the right to take action;
- b) for the time in which the taxpayer, in bad-faith avoids the performance of the fiscal control;
- c) for the period in which, following the injunctions of the fiscal bodies, the taxpayer removes the deficiencies or causes which prevent the carrying out of the fiscal control.

Article 24

The taxes and tax differences declared or admitted in any way by the taxpayer after the term of prescription, are legally established and due.

Article 25

The term of prescription for the establishing of tax and tax differences is of 10 years, in case of fiscal evasion.

CHAPTER 6 Sanctions

Article 26

The following facts, if they are not performed in circumstances which according to law are criminal offences:

- a) failure of the taxpayer or his legal representative to supply information, explanations required by the fiscal bodies;
- b) failure of the taxpayers or their legal representatives to turn up at the premises of the fiscal authority on the day and at the time requested in writing by the tax authority;
- c) the refusing by the taxpayer to allow the fiscal authority to get into its business premises or into any other place where there are taxable or where income producing activities are performed, in view of exerting the fiscal control;
- d) failure by the people, bodies and institutions mentioned at Article 8 to supply, within the time limit set by the fiscal authority, the requested information, documents, records and data;

- e) failure to keep the accounting records and the underlying documents at the declared social premises or their preservation in a state that makes them unfit for the performance of the fiscal control.

The contraventions stipulated in this Article are punished as follows:

1. those in a) and b) with a fine from 100,000 to 1,000,000 for the guilty natural persons;
2. those in c) with a fine from 100,000 lei to 1,000,000 lei;
3. those in d) and e) with a fine from 1,000,000 to 10,000,000 lei.

The establishing of contraventions and the imposing of sanctions devolves upon the fiscal authority.

The provisions of this Article are supplemented with the provisions of Law No. 32/1998 on the establishing and punishing of contraventions, except for Articles 25 and 26.

CHAPTER 7

Final and transitory provisions

Article 27

The fiscal controls out-going on at the data when this ordinance comes into force will continue in keeping with the provisions, the actions performed before remaining valid.

The terms running on the date this ordinance came into force are calculated according to the legal provisions in force at the date they started running.

Article 28

This ordinance is supplemented with the provisions referring to the exertion of the fiscal control, comprised in the laws in force, to the extent these do not conflict with this ordinance.

Article 29

For the implementation of the present ordinance the Ministry of Finance shall issue implementation instructions approved by an order of the Minister, which should be published in the Romanian Official Journal.

Article 30

This ordinance shall come into force within 60 days of its publication in the Romanian Official Journal.

Article 31

On the date of coming into force of this ordinance the following are repealed:

- Article 26 (1) of the Government Ordinance No. 70/1994 on the tax income republished in the Romanian Official Journal, Part I, No. 40 of 12 March 1997 with its subsequent amendments;
- Article 29 of the Government Ordinance No. 3/1992 on the value added tax, republished in the Romanian Official Journal, Part I, No. 288 of 18 December 1995, with its subsequent amendments;
- Article 20 of Law No. 42/1993 on the excise duties for imported and home made products, as well as the tax on home-made crude oil and natural gas, republished in the Romanian Official Journal, Part I, No. 286 of 11 December 1995;
- Article 11 (2) of the Government Ordinance No. 26/1995 on the tax on dividends published in the Romanian Official Journal, Part I, No. 201 of 30 August 1995 approved and amended by Law No. 101/1995 published in the Romanian Official Journal, Part I, No. 270 of 21 November 1991;
- Article 32 of Decree No. 153/1954 on the taxes on the population's incomes, published in the Official Bulletin No. 22 of 11 May 1954, with its subsequent amendments;
- point 7 of the Annex to the Government Ordinance No. 11/1992 on the way of performing the activity of taxi calls and its taxation, published in the Romanian Official Journal, Part I, No. 209 of 14 August 1992, approved and amended by Law No. 114/1992 published in the Romanian Official Journal, Part I, No. 311 of 30 November 1992, with its subsequent amendments;
- any provisions contrary to the present ordinance referring to the prescribing of the right of the fiscal authorities to establish differences of tax and penalties for delays, as well as to establish contraventions and the imposing of fines for facts whose establishment and punishment fall, according to law, within their competence.

PRIME MINISTER
VICTOR CIORBEA

Countersigned by:
The State Minister,
Minister of Finance,
Mircea Ciumara