Chapter 24

Romania: The Relationship Between Tax Legislation, Tax Competition, and Sovereignty

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Abstract

Dealing with a topic related to taxation involves engaging complex issues, both in terms of incidental legislation and its role (i.e. its economic and social functions). The state plays a decisive role in economic development, but its intervention in this field must not have a restrictive character, evident in the adoption of rigid – and sometimes even arbitrary – legal provisions. Interventions in the economy, which have a long history, are done naturally according to emerging needs, assuming the implementation of a predictable fiscal policy to adapt the business environment to the challenges of the contemporary period (e.g. economic crises, health crises, armed conflicts). When, for various reasons, economic values are overturned, reform is necessary to bring the economic sphere into harmony with legal norms, which must then be recovered and developed. In light of these ideas, this study briefly analyses the state of fiscal legislation in Romania and clarifies related technical terms and definitions. We follow the trends in Romanian taxation, the fiscal policies which the governors assume, and the measures to ensure budget revenue (these measures are not always popular, but are arranged for the benefit of the general interests of the community). The field of taxation often raises problems, and such analyses can yield ways to implement combinations of taxes that enable public authorities to cover budgetary needs (taking into account the nation's level of development and specific economic features).

Keywords: *tax legislation, taxes, the Fiscal Code, fiscal sovereignty, tax fraud*

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1. Introduction: General considerations regarding taxation in the European Union

Doctrine often suggests that taxes only exist to ensure the coverage and financing of all public expenses. For example, as early as 1888, it was stated that 'the tax is simply a contribution, either direct or hidden, which the public authority claims from the citizens to support the government's expenses'.[1] Indeed, taxes fulfil a financial function, but they are also recognised as having a social function because they change the distribution of national income.

Although there are a number of challenges and measures related to the harmonisation of tax legislation and various procedures for the administration of taxes and fees at the European Union (EU) level, fiscal competences belong to Member States. The competences of the EU in the field mainly aim to harmonise the legal framework regarding indirect taxes and the functionality of the single market (for which the rules of fairness and fair fiscal competition are essential). In addition, sustained efforts have been made to prevent and fight tax evasion.

In the constantly dynamic economic context, Member States have the right to choose their taxation systems according to their own needs and realities; however, they are also required to consider the regulations of the EU and its general fiscal policy directions.

As we have shown, it is necessary to continue to improve the efficiency of administrative cooperation to fight tax fraud and support mutual efforts to recover tax debts. Fighting tax fraud (even tax evasion) remains a priority of EU institutions, intensifying cooperation between states. Recently, the danger and increased size of carousel fraud, which illegally diminishes the public revenues of the EU, has been increasingly discussed, with annual losses of approximately EUR 50 billion. The European Public Prosecutor's Office (EPPO) plays an essential role in protecting the financial interests of the EU and can act more quickly than the national authorities (although the Chief Prosecutor of the EPPO claimed in a public speech that continuous improvement of the means to fight tax fraud with regard to value-added tax (VAT) is still needed[2]).

The operative exchange of fiscal information and development of debt recovery assistance are encouraged. In addition, the exchange of good practices plays a role in modernising and transforming the institutions involved in an efficient administration, ensuring all conditions for the fulfilment of tax obligations by taxpayers. The concept of revenue fraud has been defined by European rules, including illegal conduct, which has, consequently, reduced the revenues of the EU budget.[3]

1 Beaulieu, 1888, p. 112.

2 Tang, 2023.

3 Convention drawn up on the basis of Art. K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, 49–57; See also: Onea, 2021.

On agendas, we often hear the term “fiscal reform”. The Commission has also drawn attention to the need for fiscal reforms. For example, in its 2022 Annual Report on Taxation, it advised that in the context of the COVID-19 pandemic and the Russo-Ukrainian conflict, Europe must think about its strategy for the future of taxation.[4] The Commission’s annual reports on taxation are important and useful because they present useful information, such as statistics on the state of affairs, reforms applied in Member States, and concise assessments of Member States’ tax policies. The priorities of the EU in the fiscal field are also set; specifically, they currently focus on: (i) energy taxation in accordance with the climate objectives of the EU (to fight climate change), (ii) fair taxation of the digital economy in compliance with the principle of good fiscal governance (with the aim of achieving a digital transition), and (iii) taxation of enterprises.[5]

Decision makers must consider the fact that the fiscal policy of the EU is required to be simple, efficient, sustainable, and capable of supporting sustainable economic recovery. Finally, we retained the components of the EU’s fiscal policies. Thus, in the case of indirect taxation, efforts are focused on the coordination and harmonisation of consumption tax rules (VAT and excise) to avoid the distortion of competition in the internal market. In the field of direct taxation, actions aim to apply and comply with harmonised standards for the taxation of legal entities and natural persons, promoting measures related to fighting tax fraud, preventing double taxation, eliminating discrimination, and removing tax barriers. In addition, initiatives in the field of direct taxation support cooperation and transparency.[6]

2. Tax harmonization, sovereignty, and tax competition in the European Union: Changing the hierarchy of tax law sources after Romania’s accession to the European Union

Romania’s accession to the EU implicitly involved changes to the sources of law in the tax system. Alongside the country’s fundamental law (the Constitution), EU law was also positioned, and Romania had to transpose directives on indirect and direct taxation into national legislation (and tax regulations).[7] Romania is also obliged to comply with EU regulations, principles, and rules applicable to taxation. Thus, in the system of tax law sources, in addition to the constitution, law, government ordinances, emergency ordinances, and administrative acts, the aforementioned sources

4 European Commission, 2022.

5 European Commission, 2021, Communication from the Commission to the European Parliament and the Council Empty – Business Taxation for the 21st Century’, Brussels, 18.5.2021, COM(2021) 251 final, p. 14.

6 Cîrmaciu, 2010, p. 165.

7 Bufan et al., 2016, pp. 175–176.

also appear. Further, the importance of judgments by the Court of Justice of the European Union (CJEU) in the field of indirect taxes (which are binding under the Romanian Tax Code) will also be considered.

Given the importance of taxation and the fact that taxes, by the way they are levied, can have beneficial or negative effects on economic and social life, debates on the harmonisation of tax legislation within the European Union have been very intense. As mentioned above, in our analysis, we start from the rule that EU Member States have tax powers. Thus, any measures proposed in tax matters will be subject to adoption by Member States, with their unanimity required for approval. While some consider the unanimity requirement an obstacle to tax harmonisation, the exercise of Member States' powers in the area of taxation is conditional – for example, it may be conditional on the obligation to ensure undistorted competition in the Single Market and compliance with the provisions of the Fiscal Compact.

Broadly, EU tax policies provide a functional and effective framework for the coordination and surveillance of Member State tax policies. The legal basis for tax issues at the EU level is the Treaty on the Functioning of the European Union (TFEU). A few articles are worth noting here: (i) Arts. 110–113, which comprise tax provisions on the harmonisation of legislation on turnover tax, excise duties, and other indirect taxes; (ii) Arts. 107–109, which indicate forms of state aid that do not distort competition and are therefore compatible with the requirements of the internal market; (iii) Arts. 114–118, which constitute approximations of laws (rules applicable to taxes which may have an indirect effect on the internal market); and (iv) Arts. 191–192, which consider tax provisions that may be adopted to prevent and/or remedy environmental problems, particularly in the context of the challenges posed by climate change.

Harmonisation is required and continues to require ambitious action plans to prevent, reduce, and fight against tax evasion and tax fraud; to coordinate taxation; to reduce the amount of compliance costs incurred by taxpayers carrying out cross-border taxable activities, and so on. The guiding principle for tax harmonisation is that European law takes precedence over national law, with the supremacy of European law laid down in a judgment of the CJEU on 15 July 1964.[8] This is an essential prerequisite to applying the principle of loyal cooperation.

At present, tax harmonisation aims to make Member States' tax provisions as uniform as possible, adapted to the modern, digitised economy. Tax policies at the EU level must also support the economic growth and proper functioning of a single market. The difficulties and controversies that have arisen in the process of tax harmonisation are caused by conflicts between the objectives of the EU and those of each Member State (notably, Member States often give priority to covering public expenditure through tax revenue).

8 We recall here the Landmark Judgment of the CJEU in *Flaminio Costa v. E.N.E.L.*, 15 July 1964, C-6/64, ECLI:EU:C:1964:66.

We have shown that harmonisation measures have concentrated mainly on indirect taxes (precisely to ensure the free movement of goods, services, and capital, and to restrict unfair competition between Member States in tax matters) and that, with regard to direct taxes, the approximation of legislation has been achieved through a policy of small steps. The preamble to Directive 2006/112/EC[9] states, it was stated that it was necessary to harmonise turnover taxes by introducing the VAT system. reduce or even eliminate distortions of competition (both internal and EU-wide), the legal rules on VAT are characterised by clarity, simplicity (no arbitrariness), and neutrality.

The appropriation of Member States' tax laws is also difficult because there are different approaches to the share and structure of taxes in the total tax revenue. In general, countries with prosperous developed economies emphasise direct taxation, while less-developed countries use indirect taxation mechanisms together with high social security contributions (let us not forget that during the COVID-19 pandemic, several countries implemented measures to postpone tax payment deadlines or even approved temporary reductions in the payment of certain taxes).[10] According to official statistics, the previous year's tax resources accounted for 41.2% of GDP in the EU.[11] Thus, in 2022, the share of direct taxes (on wealth and income) increased to 13.4% of GDP. Regarding indirect taxes, a decrease in their share of GDP was noted (from 13.8% in 2021 to 13.6% in 2022, the reference year). This decrease may also be due to the facilities promoted by some Member States in the energy sector (i.e. tax reductions on energy products). However, it should be borne in mind that national tax revenues fluctuate from year to year due to a number of factors (e.g. changes in tax legislation, financial crises).

Following studies devoted to the analysis of taxation, we note that it will be seen as an attribute of sovereignty, but the will of the taxpayer – his consent to taxation – must also be considered. However, within the supranational legal order represented by the EU, fiscal sovereignty must be seen in close connection with certain obligations of Member States. The legal framework in this area is based on three strands: direct taxes, indirect taxes, and administrative cooperation (e.g. 'vital' administrative cooperation through the automatic exchange of tax information, established to fight VAT fraud[12]).

In terms of direct taxation, a distinction can be made at the EU level between 1) the legal status of the individual taxpayer, governed by specific national rules (retaining the exclusive competence of the Member States but respecting freedom of movement and nondiscrimination, with any national provision which contravenes these rules

9 Council Directive 2006/112/CEE on the common system of value added tax, OJ L 347, 11.12.2006, 1–118.

10 Cîrmaciu, 2020, pp. 441–445.

11 *Statistici privind veniturile fiscale* [Online]. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tax_revenue_statistics&action=statexp-seat&lang=ro#Prezentare_general.C4.83 (Accessed: 1 September 2023).

12 Dragodan, 2018.

thus prohibited) and 2) the legal status of the taxpayer as a legal person,[13] where the EU (European Commission) prohibits any tax provision or any limitation which could jeopardise the single market. With regard to indirect taxes, as we have already pointed out, the rule is harmonisation, with the objective of guaranteeing a single market.

Based on the provisions of EU law, directives have been drawn up to harmonise legislation in the field of excise duties; for example, the transposition into Romanian national law of Council Directive (EU) 2020/262 on 19 December 2019 laying down general arrangements for excise duty (recast).[14] Specifically, Directive (EU) 2020/262 introduced new provisions concerning the movement and taxation of excised goods after their release for consumption. In order to create the necessary legal framework for the implementation of the EU provisions and to meet the transposition deadline of 31 December 2021, the following measures were introduced by government ordinance: (i) The incorporation into the Tax Code of the provisions on the quantitative limits purchased from another Member State and transported to Romania by individuals for their own use from the Methodological Norms for the application of Law no. 227/2015 on the Tax Code, approved by GD no. 1/2016 with subsequent amendments and additions. (ii) In the case of distance sales from another Member State to Romania, the elimination of the recipient of excise goods from the obligation to pay excise duties, taking into account that the provisions of Directive (EU) 2020/262 give Member States this possibility. (iii) The introduction of the concepts of 'certified consignor' and 'certified consignee' as persons registered with the competent authority who, in the course of their business, dispatch excise goods released for consumption in the territory of one Member State and who move to the territory of another Member State or receive excise goods released for consumption in the territory of another Member State. (iv) The establishment of a new procedure for the movement of excise goods which have been released for consumption in the territory of a Member State and which are moved to the territory of Romania to be delivered for commercial purposes – specifically, this new procedure involves: (iva) the establishment of a computerised system for monitoring the movement of excise goods released for consumption in the territory of one Member State and moving to the territory of another Member State for use there or for commercial purposes; (ivb) the procedure for registering certified consignees and certified consignors. (v) The supplementation of the arrangements for irretrievable loss of excise goods by introducing provisions relating to situations where excise duty is not chargeable (i.e. in the case of total or partial irretrievable loss due to the nature of the goods occurring during their transport in the territory of a Member State other than that in which they were released for consumption, where the amount of the loss falls within the

13 Examples of measures to approximate national legislation in this area include the Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 157, 26.6.2003, 49–54.

14 By Government Ordinance no. 4/2022, published in the Official Gazette of Romania No. 92/28.01.2022.

common threshold of partial loss for those excise goods, unless a Member State has reasonable grounds for suspecting fraud or irregularity; where irrecoverable total or partial loss of excise goods is established, the possibility of releasing the security lodged, in whole or in part, as appropriate, on production of appropriate evidence, is introduced). (vi) In the case of irregularities occurring during the movement of excise goods within the territory of a Member State other than that in which the goods were released for consumption, the charging of the excise duty in the Member State in which the irregularity occurred. Where more than one person is liable to pay the same excise duty, those persons shall be liable to pay the excise duty jointly and severally. (vii) The introduction of remission, which implies exemption from the obligation to pay an excise duty which has not been paid (i.e. the total or partial waiver of the excise duty due). (viii) The introduction of contraventions and penalties for failure to comply with the provisions relating to the movement of excise goods which have been released for consumption in the territory of a Member State and which are moved to the territory of Romania for commercial purposes.

Technical correlations have also been taken into account, involving the alignment of the terminology in Directive (EU) 2020/262 with the terminology used in the Fiscal Code; further, in order to ensure a comprehensive transposition of the provisions relating to the movement of excise goods after release for consumption, Section 17 has been structured into subsections.

At the same time, to ensure a gradual transition from the use of the accompanying document presented in paper form to the use of the computerised system, transitional provisions are provided for the movement of excise goods. This is regarding those goods that have been released for consumption in the territory of a Member State, which are moved to Romania, or the movement of excise goods which have been released for consumption in the territory of Romania and moved to the territory of another Member State to be delivered for commercial purposes. Thus, until 31 December 2023, Romania allowed the receipt and dispatch of excise goods using current formalities and accompanying paper documents.

Administrative cooperation plays a key role in taxation. By infringing on the rules of tax law and disregarding the correctness of taxation, significant losses are incurred in public budgets; however, the effects even have repercussions for the proper functioning of the single market. National tax authorities must cooperate to limit and fight against these negative phenomena.

It should also be mentioned that, in procedural matters, there are directives that require Member States to cooperate in the exchange of information and to assist in the recovery of budget claims. Regarding measures of extended administrative cooperation (in tax matters) aimed at discouraging illicit behaviour, infringement, or the evasion of tax regulations, we provide the following examples: (i) Council Directive 2011/16/EU, which focuses on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.[15] This directive was transposed into Romanian

15 OJ L 64, 11.3.2011, 1–12.

national law in 2016, in Title X, Chapter I of Law No. 207/2015 Tax Procedure Code.[16] (ii) Council Regulation no. 904/2010 on administrative cooperation and the fight against fraud in the field of VAT[17] (regulating administrative cooperation between the Member States of the EU in the field of VAT was necessary because this indirect tax represents an important resource for the budget). (iii) Council Directive 2010/24/EU, which concerns mutual assistance for the recovery of claims related to taxes, duties, and other measures.[18] This Directive was transposed into Romanian national law in 2016 in Title X, Chapter II of Law No. 207/2015. (iv) Commission Implementing Regulation (EU) No. 1189/2011, which lays down detailed rules related to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims related to taxes, duties, and other measures.[19]

To empower the fight against tax evasion, a more complex exchange of tax information between EU Member States has been implemented (in this respect, even the European Court of Auditors pointed out in a report[20] that, although the exchange of tax information within the EU has solid foundations, applying the legal framework to concrete situations can be problematic). The amendments to Council Directive 2011/16/EU by Council Directive (EU) 2021/514[21] aimed to remove the legislative loopholes that facilitated income tax avoidance. They also introduced the obligation to exchange information on cryptoassets (information to be delivered by cryptoasset service operators) and regulate the exchange of advanced rules with cross-border applications by wealthy people.[22]

It should be noted, as a novelty, that on 12 June 2023, the President of the National Agency for Tax Administration of Romania (NAFA) issued an order[23] appointing the person responsible for administrative cooperation in the field of taxation, both with the Member States of the European Union and third countries (signatories of treaties/conventions in this regard with our country). Thus, the International Information

16 Law no. 207/2015 Fiscal Procedure Code, published in the Official Gazette of Romania no. 547/23.07.2015.

17 OJ L 268, 12.10.2010, 1–18.

18 OJ L 84, 31.3.2010, 1–12.

19 OJ L 302, 19.11.2011, 16–27.

20 European Court of Auditors, 2021.

21 OJ L 104, 25.3.2021, 1–26.

22 The notion of tax fairness is constantly reiterated, and it is believed that administrative cooperation in tax matters can strengthen this fairness. Looking closely at the history of financial science reveals concerns about using tax in social policies, as ‘Several taxes are of a noble, just human character; so are […] those whose object is to help misery and suffering’. See: Leon, 1915, p. 33. It may seem pejorative ‘to take from the rich to give to the needy’, but the words of Professor Leon still come to mind; without disregarding the major role of scientific research in financial science, Professor Leon concluded, ‘In fact everything that is written has been written, everything that is thought has been thought’. See also: Cîrmaciu, 2010, p. 5.

23 Order No. 915/2023 on the designation of the Central Liaison Office responsible for administrative cooperation and exchange of information in the field of taxation, published in the Official Gazette of Romania 585/28.06.2023.

Exchange Service of the NAFA structure, named the Central Liaison Office, will exercise the power to cooperate and exchange information in this field.

In conclusion, issues of fiscal sovereignty and harmonisation in this area still raise problems that require solutions. Yes, sovereignty gives Member States the right to decide on taxes, contributions, and various levies, but to reduce the differences between the member states' tax systems, concerted action must be taken through harmonisation (which involves not simply approximating and aligning national legislation with that of the EU, but jointly exercising state sovereignty at the EU level).

As far as tax competition is concerned, we note that it is related to the strategy whereby Member States seek to secure tax revenues (by collecting the taxes set) and attract investment (e.g. job-creating foreign investment). In this way, tax competition manifests as competition between different tax jurisdictions, with EU Member States seeking to adopt and apply measures that are attractive to taxable persons (e.g. granting reductions, exemptions and deductions when determining the tax base, ensuring an efficient, transparent tax administration and lower tax rates than in other countries). Taxpayers often seek such facilities by choosing to leave their country of residence, resulting in an increased share of tax receipts in the host countries.

European and international tax harmonisation bodies are aware of the interest in working towards uniform tax solutions. The introduction of such harmonisation measures would lead to a reduction in the 'migratory' tendency of the taxable object. If tax competition is within acceptable limits (even at low tax rates), tax policy could be the engine of business development and increased competitiveness (it is assumed that if a taxpayer pays lower taxes, he/she maintains a larger share of his/her income and thus supports his/her development, which in the long run would lead to an increase in the tax base and tax revenues). Member States must act in the fiscal field to exercise consolidated fiscal sovereignty while respecting important principles, such as transparency, fair tax competition, and effectiveness. This is the only way to ensure that tax policies can respond promptly to the challenges of globalisation and benefit EU citizens while also fulfilling the social policy function of taxation.

There are still opposing views on tax competition, against arguments that are only natural, given that we can see this area as dependent on the economic or political interests of the Member States. Developed countries are mainly arguing against tax competition, whereas countries with less developed economies are arguing against it.

Finally, we should also mention a very important approach at the EU level; namely, that of establishing a list of non-cooperative jurisdictions for tax purposes (this is the third jurisdiction analysed in relation to certain criteria of tax transparency, tax fairness, and criteria related to anti-BEPS measures, the OECD minimum standards in this area). The EU list of non-cooperative jurisdictions for tax purposes includes countries that do not comply with good tax governance, transparency, and tax fairness or that have not fulfilled their obligations to reform their tax systems to comply with the above requirements. The EU Council initiated a dialogue with these third countries and recommended revising the legal framework to remedy negative

aspects and identify shortcomings. The Code of Conduct Group (business taxation) is responsible for updating the list.[24]

3. Tax law and tax policy in Romania

3.1. General considerations

In the present day dynamic and sometimes excessive context in which structural changes are shaping a new architecture of economies or even reshaping society as a whole, tax systems must be constantly adapted. The challenges faced by different tax categories must be analysed. Projections are required to levy taxes that have a high yield and induce the least economic distortion.[25] Tax legislation must respect the principles of fairness, efficiency, and fiscal sustainability.

In Romania, the government's agenda includes a number of objectives in the fiscal sphere, such as measures for fiscal consolidation and the promotion of a fiscal policy that respects the principle of the predictability of taxation (i.e. the stability of taxes, contributions, and duties for a minimum period of one year[26]). This doctrine draws attention to the need for fiscal reform. Without necessarily formulating critical opinions, leading authors in the field have pointed out that the government's projections and measures sometimes lack direction and are merely a set of provisions that neither stimulate investment nor help economic growth.[27]

Fiscal policy, a component of a state's economic policy, refers to the totality of regulations on the establishment and collection of taxes, duties, and contributions, thereby shaping the state's choices in terms of taxes and duties.[28] Tax policy aims to influence economic development, for example, through tax concessions. Some authors also see fiscal policy as the process of raising budget revenue and shaping expenditure to sustain an economy without inflationary problems and maintain high employment. Fiscal policy has both direct and indirect means of action or stabilisation. Moreover, tax systems must aim in their evolution to satisfy the need for funds through the number and size of taxes, promote simplified tax collection

24 Currently the list includes the following countries: American Samoa, Bahamas, Guam, Russia, Trinidad and Tobago, Vanuatu, Anguilla, Belize, Palau, Samoa, Turks and Caicos Islands, Antigua and Barbuda, Fiji, Seychelles, Panama, US Virgin Islands. See: *EU list of non-cooperative jurisdictions for tax purposes* [Online]. Available at: https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/ (Accessed: 17 October 2023).

25 Cîrmaciu, 2010, p. 93.

26 Art. 3 point e of Law no. 227/2015 Fiscal Code, published in the Official Gazette of Romania no. 688/10.09.2015.

27 Biriș, 2012, p. 38.

28 Cîrmaciu, 2010, p. 95.

procedures, introduce taxes that are as bearable as possible for taxpayers, and increase the number of taxpayers by eliminating inequalities.[29]

In this study, we discussed aspects of the rationale for taxes. Given the criteria of the purpose pursued, we distinguish between financial taxes (aimed at raising public revenue) and taxes of order (which seek to limit or stimulate certain activities, where appropriate, in view of the interests of the state). Therefore, Romania's tax policy must consider the influence of taxes on economic and social life. These effects can be constructive (development of the economic sphere, increase in living standards, etc.) or *destructive* (when the legislator pursues only one goal: taxation). In the case of financial taxes, Romanian legislators seek a formula that generates the highest possible revenue for the budget, sometimes neglecting the fundamental principles of taxation.

3.2. The principles of taxation in Romania

The taxes and duties that are legally regulated by the Fiscal Code[30] are based on the following principles: (i) *neutrality* of tax measures in relation to the different categories of investors and capital, such as the form of ownership, to ensure equal conditions for investors, Romanian and foreign capital; (ii) *certainty* of taxation; this is accomplished by drawing up clear legal rules, which do not lead to arbitrary interpretations, and precisely establishing payment deadlines, methods, and amounts for each payer to enable them to understand their tax burden and determine the influence of their financial management decisions on their tax burden; (iii) *fairness* of taxation or tax *equity* at the individual level, accomplished by taxing income differently according to size; (iv) *efficiency* of taxation, which appears as a rendering of a budgetary policy objective, namely: maintaining the stability of tax revenues; (v) *predictability* of taxation, accomplished by ensuring that the provisions of the Fiscal Code are stable for a certain period of time (at least one year) so that they do not lead to unfavourable retroactive effects for natural and legal persons in relation to the taxation in force at the time they make major investment decisions. It is considered[31] that this principle, due to its closeness to the budgetary sphere, should be included in other framework laws (Law on Fiscal Budgetary Responsibility[32] or in the Law on Public Finances[33]).

29 Cîrmaciu, 2010, p. 94.

30 According to international and national experience in the field of taxation, it is necessary to establish an effective set of regulations in this area. Thus, many European countries have moved to codify tax rules by adopting their own Fiscal Code, which provides a coherent legal framework for the conduct of legal relations under tax law. The codification process was based on the premise that the establishment of this code would ensure the transparency of legal tax relations, providing the participants in these relations with precise knowledge of their situation and also showing them what to do.

31 Duca, 2021, p. 14.

32 Law No. 227/2015 Fiscal Code.

33 Law No. 69/2010 on fiscal-budgetary responsibility republished in the Official Gazette of Romania No. 330/14.05.2015.

In Romania, the principle of the *legality of taxation* is enshrined in the Constitution, according to which budget tax revenues are established only by law.[34] The principle of *fair taxation* is also a constitutional principle, as citizens are obliged to contribute to public expenditure (through taxes and levies, with this obligation reflecting the *principle of contributivity*); however, the legal system of taxation must ensure the fair distribution of tax burdens.[35] It is also important to bear in mind another principle enshrined in the Constitution; namely, equal rights: citizens are equal before the law and public authorities and, thus, implicitly, before tax authorities.[36] These principles outline the features of the concept of sovereignty from a fiscal perspective (e.g. the establishment of taxes by law, the obligation of citizens to contribute to public expenditure through taxes, and the legal regulation of the way in which public financial resources are constituted, administered, used, and controlled[37]). In addition, as a Member State of the EU, Romania directy applies the general principles of EU law in tax matters, such as the principles of proportionality, the priority of European law over national law, legislative certainty, and legitimate expectations.

3.3. The state of affairs and trends in Romanian taxation

The Romanian government has initiated tax reform, which is also enshrined in the National Recovery and Resilience Plan. The first step was the adoption of Law No. 296/2023,[38] which aimed to prevent and fight unjustified public spending, fight waste, strengthen the fight against tax evasion, and ensure tax fairness.[39] It has also been stated that Romania is experiencing a silent tax revolution, achieved by eliminating tax incentives and increasing the tax burden (but by means other than tax increases).

The World Bank completed a report on China's tax system in the first months of 2023, making recommendations for the necessary reforms.[40] Statistics show that tax revenues in Romania represent 26.3% of GDP, the second-lowest rate in the EU.

34 Art. 139 para. 1 of the Romanian Constitution.

35 Art. 56 para. 2 of the Romanian Constitution.

36 Art. 16 paras. 1–2 of the Romanian Constitution. It is pointed out in the doctrine that violations of the principle of equality occur in EU law when 'preferential treatment is granted to activities carried out within the limits of the national territory'. See: Lazăr and Florea, 2023, p. 2.

37 Puț, 2015

38 Law No. 296/2023 on some fiscal-budgetary measures to ensure Romania's long-term financial sustainability, published in the Official Gazette of Romania No. 977/27.10.2023.

39 These ideas are also supported by the Romanian Prime Minister who declared that tough measures must be taken where there is fraud, where there is evasion, where there is waste in state spending. I believe that the only way for this country to develop is through an honest and real partnership between government and businesses. Romania cannot afford that only those with low salaries pay taxes correctly and those with high incomes keep optimising them! From today everyone will pay according to how much they earn. *Legea nr. 296/2023 privind unele măsuri fiscal-bugetare pentru asigurarea sustenabilității financiare a României pe termen lung*, 2023.

40 Ministerul Finanțelor, World Bank, 2023.

The current state of affairs is considered to have been generated by extensive preferential tax regimes and exemptions from income taxation for certain categories of the labour force and micro-enterprises, reduced VAT rates, and the taxation of personal income at 10%. These measures have narrowed the tax base, causing distortions and negatively affecting the fairness of the tax system.

The new measures introduced in the Romanian taxation system by Law No. 296/2023[41] notably concern (i) minimum turnover taxation; (ii) modified income tax rates for micro-enterprises (1% for micro-enterprises with revenues below EUR 60,000 and 3% for micro-enterprises with revenues above EUR 60,000 or carrying out software and IT activities, HORECA (catering industry, n.t.) activities, some legal, medical or dental assistance activities; (iii) limiting tax relief for IT, construction, and agriculture; (iv) a 70% tax rate on income earned by individuals, ascertained by tax authorities in accordance with the law and whose source has not been identified (this rate will be applied to the adjusted tax base); (v) modified VAT tax rates (e.g. the VAT rate applicable to supplies of social housing to individuals increases from 5% to 9% and the VAT rate applicable to supplies of photovoltaic panels and the rest of the category of goods for the generation of green energy, supply of these goods with installation, and components increases from 5% to 9%; meanwhile, the exemptions introduced during June 2023 for specifically defined medical supplies made directly to hospitals are removed and only those made through NGOs remain); and (vi) the application of a special tax on high-value immovable and movable property (the luxury tax) of 0.3% to be paid by individuals who own residential buildings worth more than EUR 500,000 and individuals and legal entities who own cars registered/matriculated in Romania worth more than EUR 75,000. The question has already been raised as to whether or not the legal provisions on the luxury tax are in line with the provisions of the Basic Law or with those of EU law. Thus far, the Constitutional Court of Romania has ruled on the constitutionality of this law in its entirety (the Court has been asked by 59 Members of Parliament to review its constitutionality beforehand or *a priori*). Regarding compliance with European legislative standards, problems could arise from the discrimination made by Romanian legislators between natural and legal taxpayers, since only the first category pays luxury tax on residential buildings over EUR 500,000.

Another measure aims to eliminate the possibility of paying half of the accounting, tax, and similar fines. These are no longer payable at half the minimum within 15 days.

Regarding RO e-Factura (RO e-Invoice system, n.t.), the transmission of invoices via RO e-Factura is compulsory as of 1 January 2024 for established taxable persons (regardless of whether they are registered for VAT purposes) and non-established taxable persons registered for VAT purposes in Romania. The e-invoice is considered the only original document for exercising the right of deduction. In practice, VAT

41 Published in the Official Gazette of Romania no. 977/27.10.2023.

will no longer be deductible if the requirements for transmission via the e-invoicing system are not met.

A new customs system, RO e-Sigiliu (RO e-Seal, n.t.), was introduced and implemented to monitor the consignment of goods. Electronic devices (i.e. smart seals) are used to record data and transmit status and position information to IT applications to track the movement of goods by road. The application of smart seals and the monitoring of the transport of goods by road in national territory are carried out by the NAFA and Romanian Customs Authority on the basis of a risk analysis.

Finally, even if this is only a legislative projection, we should mention that the Ministry of Public Finance has published a draft law to ensure a global minimum level of taxation for multinational enterprise groups and large national groups.[42]

The draft addresses Romania's obligation to transpose the provisions of Council Directive (EU) 2022/2523 to ensure a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU.[43]

Thus, in line with the provisions of the Directive, Romania proposes to establish two common measures to ensure a minimum effective tax rate of 15% for multinational and domestic groups of companies with an annual income of at least EUR 750 million recorded in at least two of the four financial years preceding the reference year: *the income inclusion rule and the under-taxed profits rule.*

At the same time, the draft law also regulates the establishment of a *national supplementary tax* to be levied on subsidiaries of multinational and national groups of companies subject to the law, which are taxed at a reduced rate in Romania.

3.4. Brief considerations regarding the fight against tax avoidance and tax fraud in Romania

Tax evasion is a social phenomenon with financial implications, and consists of the evasion of tax liabilities, in whole or in part, using legislative loopholes and ingenious manoeuvres.[44] Broadly, tax evasion is complex and interferes with other economic, social, and moral phenomena. In the state-taxpayer conflict over tax evasion, if we look at the individual level, we are inclined to agree, especially when taxation is excessive and becomes an obstacle to economic growth and individual prosperity. If we consider the state's general interests, we should only be on the state's side to the extent that the fight against tax evasion is conducted under reasonable tax conditions.

The current legal regime for preventing and combating tax evasion is represented by Law no. 241/2005.[45] It should be mentioned that the Romanian legislator

42 See: *Expunere de motive* [Online]. Available at: https://mfinante.gov.ro/static/10/Mfp/transparenta/EMproiectLegeimpozitaremultinationale_04102023.pdf (Accessed: 23 October 2023).

43 OJ L 328, 22.12.2022, 1–58.

44 Gliga, 2007, p. 30.

45 Published in the Official Gazette of Romania no. 672/27.07.2005.

transposed Directive (EU) 2017/1371[46] with great delay[47] after the European Commission had previously initiated an action against our country for the incomplete transposition of the Directive. The new legal text proposes to complete the transposition of the Directive by criminalising new offences affecting 'the resources of the European Union budget', that is, any action or inaction committed within the framework of fraudulent schemes of a cross-border nature which reduce the resources of the EU budget by at least the equivalent of EUR 10 million (equivalent in) by methods such as: the use or submission of false, incorrect or incomplete VAT statements or documents; the non-disclosure of VAT information where such information is required to be disclosed by law; and the submission of correct VAT statements to fraudulently conceal non-payment of or undue entitlement to VAT refunds. The penalty is imprisonment for 7–17 years and disqualification from exercising certain rights. A penalty can be imposed on both natural and legal persons; in the latter case, it is a criminal fine. In addition to recovery from the damage caused by the offence, the provisions of the Criminal Code, which require the confiscation of assets acquired through the offence, and the provisions of Law No. 241/2005, which require insurance measures (including the suspension of the company's activities), are also relevant from a penalty perspective. Regarding the activity of the competent authorities in terms of tax control and anti-fraud control, statistical data show that for 2022, the inspectors of the General Directorate of Anti-Fraud quantified tax implications in the field of VAT, and other taxes, in a total amount of RON 1,038.6 million. In addition, 194 referrals to competent prosecution bodies were made because damage to the state budget was identified (for these reasons, precautionary measures were ordered). Obviously, this study cannot exhaustively address the subject of tax evasion given the complexity of the phenomenon, which is why we only briefly present the latest legislative developments in Romania.

The fight against tax evasion is affected by a multitude of causes and factors that lead to or encourage tax evasion (e.g. complexity and shortcomings of tax legislation, tax burden, lack of harmonisation between the state institutions involved in tax administration, inefficiency of tax control institutions, and economic factors). It is clear that international cooperation through good tax governance and the exchange of information between the tax administrations of different countries will play an important role in making this fight more effective.

46 Directive (EU) 2017/1371 of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal, OJ L 198, 28.7.2017, 29–41.

47 In this regard, Law No 125/2023 was adopted on supplementing Law No 241/2005 on preventing and combating tax evasion, published in the Official Gazette of Romania No. 440/22.05.2023.

3.5.Conflicts between Romanian tax law and EU law

A report by the Ministry of Foreign Affairs[48] on Romania's representation before the CJEU and other EU institutions provides data on the infringement proceedings initiated by the European Commission against Romania. At the time of the report, there were 54 infringement proceedings, two of which were in the field of taxation and customs unions concerning the failure to notify national transposition measures

48 Ministerul Afacerilor Externe, 2023. Also, among other actions pending before the Court, we recall some of the recent references for a preliminary ruling in which Romania has submitted observations: CJEU, 23 November 2023, C-532/22, *Westside Unicat*, ECLI:EU:C:2023:919, a reference for a preliminary ruling from the Cluj Court of Appeal. The questions referred for a preliminary ruling concern the interpretation of Art. 53 of Council Directive 2006/112/EC. The Court reserved its ruling in this case. Case C-696/22 – C (interpretation of Arts. 63, 64 and 66 of Directive 2006/112/EC on the common system of value added tax, the right of deduction of value added tax and the general EU law principle of respect for the rights of the defense). The questions referred for a preliminary ruling are as follows: (i) Do Arts. 63, 64 and 66 of Council Directive 2006/112/EC on the common system of value added tax preclude an administrative practice of a tax authority – such as the one in the present case, which imposed additional payment obligations on the taxable person, a professional limited liability company (SPRL) through which administrators of insolvency proceedings may exercise their profession – consisting in defining the chargeable event and the chargeability as being at the time at which the services were provided in the context of insolvency proceedings, where the insolvency administrator's fee was determined by the insolvency court or the assembly of creditors, with the result that the taxable person is obliged to issue invoices no later than the fifteenth day of the month following the month in which the chargeable event occurred? (ii) Do Arts. 63, 64 and 66 of Council Directive 2006/112/EC on the common system of value added tax preclude an administrative practice of a tax authority, such as the one in the present case, consisting in imposing additional payment obligations on the taxable person – a professional limited liability company (SPRL) through which administrators of insolvency proceedings may exercise their profession – in so far as that taxable person issued invoices and collected VAT only on the date on which payments were received for services provided in the context of insolvency proceedings, even though the general assembly of creditors established that the payment of the insolvency administrator's fee is subject to the availability of liquid assets in the debtors' accounts? (iii) In the case of a co-branding agreement between a law firm and the taxable person, is it sufficient, for the purpose of granting the right to deduct, that the taxable person, when proving the existence of a direct and immediate link between the purchases made by the upstream taxable person and the downstream transactions, demonstrate, after the agreement, an increase in the turnover/value of the taxable transactions, without further supporting documentation? If so, what are the criteria to be consider in order to determine the actual scope of the right to deduct? (iv) Is the general EU-law principle of respect for the rights of the defence to be interpreted as meaning that, where, in the course of a national administrative procedure for ruling on a complaint against a notice of assessment that has established the payment of additional VAT, new factual and legal arguments are accepted as compared with those contained in the tax audit report on the basis of which the notice of assessment was issued, and the taxable person has been granted interim judicial protection measures, pending the decision of the court dealing with the substance of the case, by suspending the debt, the court hearing the action may take the view that there has been no breach of that principle without examining whether the outcome of that procedure might have been different, had it not been for such an irregularity?' It should be noted that in this case, too, the Court has stayed its judgment. It should be borne in mind that this preliminary ruling procedure is very important in ensuring uniform interpretation of EU law.

(Cases 2022/0169 and 2022/0171),[49] which were at the pre-litigation stage (late notification). It should be noted that the competent Romanian authorities have fully transposed the directives concerned.

If we look back at the relationship between Romanian tax law and the EU's tax regulations, we must remember the problem raised by the special tax on cars and motor vehicles introduced in Law No. 343/2006.[50] Special taxes are paid when vehicles are first registered in Romania (vehicles previously registered in other Member States). It was necessary to introduce this compulsory levy on the budget because, in the field of tax policy, it was necessary to improve the legal framework by considering the evolution of macroeconomic indicators and future budget projections. The aim was to ensure a constant source of revenue for the budget (given that, as a Member State of the European Union, Romania was no longer able to exercise the right to levy customs duties, excise duties, and VAT on intra-community acquisitions of vehicles). The Romanian legislature believed this would 'reset' the car taxation system. However, this tax contravened the provisions of Art. 90 of the TEC (now Art. 110 of the TFEU), and as a result, unanimous case law[51] ordered the reimbursement of the amounts collected by the competent tax authorities (the specialised structures of the NAFA) to the payers.

Moreover, on 29 June 2022, Government Emergency Ordinance No. 93[52] was adopted, ordering the refunding of, among other things, the special tax for cars and motor vehicles, the refunding measure motivated by the infringement procedure initiated against Romania by the European Commission for the imposition of taxes in violation of EU law. It was also intended to prevent the Commission from referring the matter to the CJEU for the non-conformity of Romanian legislation with the principles of EU law regarding the refund of taxes collected, as we have already mentioned, in breach of EU law.

Another case reflecting the impact of the CJEU rulings on tax law and practice in our country is the ruling pronounced in case C-558/19.[53] The referring court was Cluj Court. The application was made in a case pending before the national court regarding a dispute between the Cluj branch of Impresa Pizzarotti & C SPA Italia, on the one hand, and the National Tax Administration Agency (General Directorate for the Administration of Large Taxpayers), on the other, on the annulment of a tax

49 See details: under Title 2 of this study.

50 Law No. 343/2006 amending and supplementing Law No 571/2003 on the Fiscal Code, published in the Official Gazette of Romania No. 662/01.08.2006.

51 Costaș and Puț, 2023, p. 50.

52 GEO No. 93/2022 on the refund of the amounts of the special tax for passenger cars and motor vehicles, the pollution tax for motor vehicles, the tax on pollutant emissions from motor vehicles and the environmental tax for motor vehicles, published in the Official Gazette of Romania no. 646/29.06.2022. It should be noted that the same fate (of refund) has been suffered by the taxes on vehicle pollution, the taxes on pollutant emissions from motor vehicles and the environmental tax on motor vehicles.

53 CJEU, 8 October 2020, C-558/19, *Impresa Pizzarotti*, ECLI:EU:C:2020:806.

administrative act issued by authority and of the tax assessment decision drawn up on the basis of that act.

Between July 2016 and September 2017, the above-mentioned competent tax body carried out checks at Impresa Pizzarotti in its capacity as a taxpayer for corporate income tax purposes. It was found that, in 2012, this branch had concluded, as a lender, two loan agreements with its parent company: one for a loan of EUR 11,400,000 and one for a loan of EUR 2,300,000 for a fixed period of one year. It was stated that the loan period could be extended by an additional deed. The loan agreements did not contain any clauses relating to the charging of interest by the parent company, and although on 1 January 2013 the outstanding amount was EUR 11,250,000, in April 2014, both loans were fully repaid. According to Art. 11 para. 2 of the Romanian Tax Code (which was in force at the time), transactions between Romanian and non-resident affiliates were subject to transfer pricing rules, and according to Art. 29 para. 3, the notion of 'Romanian persons' covered the permanent establishment of a non-resident person. Therefore, the tax authority considered that the complainant company in the main proceedings had to be considered an affiliated person of Pizzarotti Italia and that the interest rate on those loans should have been set at the market price, according to the transfer pricing rules, as if they had been made under the conditions of normal competition.

As a result, on the basis of the inspection report, the tax authority issued a tax assessment decision and assessed Impresa Pizzarotti for an additional tax of RON 297,141.92 (at that time, approx. EUR 72,400) and an increase in the tax base of RON 1,857,137 (at that time, approx. EUR 425,595). Pizzarotti's appeal of this decision was dismissed as unfounded.

The company brought an action before the referring court for the annulment of those two decisions and submitted, in essence, that the national provisions relied on by the tax authority infringed on Arts. 49 and 63 of the TFEU. These provisions provide that the transfers of funds between a branch established in one Member State and its parent company established in another may be subject to transfer pricing rules, which are not applicable if the branch and its parent company are established in the same Member State. The national court remained in the proceedings and referred the following question to the CJEU.

> Articles 49 and 63 of the Treaty on the Functioning of the EU preclude national rules such as Articles 11 paragraph (2) and 29 paragraph (3) of the Tax Code, which provide for the possibility of reclassifying a bank transfer of funds from a branch resident in one Member State to a parent company resident in another Member State as an income-generating transaction, with the consequence that the transfer pricing rules must be applied, where, if the same transaction had taken place between a branch and a parent company, both resident in the same Member State, it could not be reclassified in the same way and the transfer pricing rules would not apply?[54]

54 See: C-558/19, para. 14.

The Court, examining the facts of the case, found that the national legislation at issue in the main proceedings must be examined only in light of the provisions on freedom of establishment in the TFEU. If it were accepted that the Member State in which the resident branch is established is free to apply different treatments to that branch simply because its parent company is established in another Member State, Art. 49 of the TFEU would be meaningless. In this case, the Romanian Tax Code treats branches as separate persons only when they are permanent establishments of a non-resident legal person. Thus, the income of a branch is not adjusted under transfer pricing rules unless the parent company is established in another Member State. If, on the contrary, the branch and the parent company are established in Romania, no adjustment of income is made. It follows that a branch of a non-resident company, such as Impresa Pizzarotti, benefits from less favourable treatment than a branch of a resident company carrying out similar transactions with its parent company. In these circumstances, the EU court found that differences in the tax treatment of branches (based on where their parent companies were established) involved in transactions characterised by conditions which would be unusual between third parties may restrict the freedom of establishment provided in Art. 49 of the TFEU. Thus, the parent company could be induced to refrain from acquiring, setting up, or maintaining a subsidiary in a Member State other than that in which it is a resident because of the tax burden associated with a cross-border situation, with conditions which would be unusual between third parties.

The transfer pricing rules in the Tax Code are designed to prevent the tax base in the state of residence of the permanent establishment of a non-resident company from being reduced because of the transactions carried out by that permanent establishment with its parent company which would not align with market conditions. The national rules provide for taxation of the permanent establishment on the basis of the amount of deemed remuneration for the advantage granted without consideration to the parent company. This is done to account for the amount that the permanent establishment would have had to declare as its profit if the transaction had been concluded on market terms. Thus, Romania can exercise its tax jurisdiction over activities carried out in its territory. The CJEU has therefore held that such legislation – which seeks to prevent profits generated in the Member State concerned from being transferred, without being taxed, outside its tax jurisdiction by means of transactions out of step with market conditions – maintains the sharing of tax jurisdiction between Member States. Under these circumstances, the Court verified that such legislation does not go beyond what is necessary to achieve the objective pursued. In this regard, national legislation based on an analysis of objective and verifiable factors to determine whether a transaction has the characteristics of an artificial arrangement for tax purposes must be regarded as proportional to the objectives of ensuring a balanced allocation of tax jurisdiction between Member States and preventing tax avoidance.

Thus, subject to verification by the referring court, the Romanian legislation at issue in the main proceedings does not go beyond what is necessary to achieve the

legitimate underlying objective. In light of these considerations, the CJEU held that Art. 49 of the TFEU must be interpreted as not precluding, in principle, legislation of a Member State under which a transfer of funds made by a resident branch to its parent company established in another Member State may be reclassified as an 'income-generating operation', so that the application of the transfer pricing rules becomes mandatory, whereas if the same transaction had been carried out between a branch and a parent company both established in the same Member State, it would not have qualified as such and those rules would not have applied. In this case, the Court's judgment was in line with observations made by the Romanian Government. In addition, in support of the fact that the case law of the CJEU is very important[55] for the interpretation and respect of EU law, we mention the judgment in Case C-677/19.[56]

Reference has been made to the CJEU regarding a preliminary ruling by the Vâlcea Tribunal on the interpretation of the principles of loyal cooperation, equivalence and effectiveness versus the provisions of Art. 1 para. 2 of the Government Emergency Ordinance No. 52/2017.[57] The request was made in the context of a dispute between SC Valoris SRL, on the one hand, and the Regional Directorate General of Public Finances of Craiova (County Administration of Public Finances of Vâlcea) and the Administration of the Environment Fund, on the other, concerning the refund of an amount the company paid as an environmental tax for motor vehicles, which was declared incompatible with EU law after its payment. Specifically, in August 2014, Valoris, a Romanian legal entity, paid a tax of RON 2,451 as an 'environmental stamp duty for motor vehicles' to register a second-hand car from the Netherlands in accordance with Art. 4 point (a) of GEO No. 9/2013. In August 2017, GEO No. 52/2017 entered into force, whereby several pollution taxes applicable to motor vehicles in Romania, including the above-mentioned tax, were declared, contrary to EU law. This gave taxpayers the right to request the reimbursement of payments related to taxes considered contrary to EU law, in addition to the payment of legal interest due for the period between the collection and reimbursement dates.

However, by way of derogation from the provisions of Art. 219 of the Code of Tax Procedure, which establishes a limitation period of five years from 1 January of the year following the year in which the right to a refund arose, such claims had to be submitted to the competent tax authority under penalty of forfeiture by 31 August 2018. In December 2018, Valoris applied for the refund of the amount paid by way of

55 See also: Art. 11 para. 11 of Law No. 227/2015 on the Tax Code according to which 'in the field of value added tax and excise duties, the tax authorities and other national authorities must take into account the case law of the Court of Justice of the European Union'.

56 CJEU, 14 October 2020, C-677/19, *Valoris*, ECLI:EU:C:2020:825.

57 Art. 1 para. 2 of GEO No. 52/2017: 'The taxpayer's right to claim a refund shall arise on the date of entry into force of this emergency ordinance, regardless of when the tax was levied, and by way of derogation from the provisions of Art. 219 of Law no. 207/2015, as subsequently amended and supplemented, refund applications shall be submitted, under penalty of forfeiture, by 31 August 2018.'

environmental stamp duty for motor vehicles to the Vâlcea County Administration of Public Finances, but its application was rejected as late.

The company brought an action before the court in Vâlcea, requesting that the Romanian authorities reimburse the tax in dispute, together with interest on late payment at the statutory rate. In that context, the preliminary question was whether 'the principles of loyal cooperation, equivalence and effectiveness must be interpreted as precluding national legislation such as that contained in Art. 1 para. (2) of GEO No. 52/2017, which sets a limitation period of approximately one year for the submission of claims for the reimbursement of charges levied in breach of EU law, where national law does not provide for a similar period for the exercise of the right to reimbursement of sums collected in breach of national rules?'[58]

The Court stated that in the absence of EU legislation on the refund of national charges levied but not due, each Member State is responsible for laying down the procedural rules applicable to legal proceedings intended to ensure the protection of rights arising under EU law. These rules must comply with the principles of equivalence and effectiveness, particularly in establishing the limitations or prescription periods applicable to such actions. Compliance with these requirements must be examined in light of the place occupied by the rules in question in the procedure as a whole, the conduct of the procedure, and the specific features of these rules before various national courts. A time-limit of one year for bringing claims or actions based on an infringement of EU Law is not in itself unreasonable, provided that the starting point of that time limit does not make it practically impossible or excessively difficult for the person concerned to exercise the rights conferred by EU law.

In the present case, the referring court compared the procedural arrangements: on the one hand, the limitation period of approximately one year laid down in Art. 1 para. (2) of GEO No. 52/2017 for claims for repayment of sums paid but not due to Romanian pollution charges incompatible with EU law and, on the other, the limitation period of five years laid down in Art. 219 of the Code of Tax Procedure for the recovery of tax claims. Moreover, the time-limit laid down in Art. 1 para. (2) of GEO No. 52/2017 is expressly referred to as 'by derogation from the provisions of Article 219 of the Code of Tax Procedure'. The CJEU observed that claims under the former provision and claims under the latter have similar subject matter and cause of action, that is, a claim for a tax refund. However, only the referring court was able to verify this. Subject to this reservation, the EU court found that the claims for the repayment of the charges referred to in GEO No. 52/2017, based on an infringement of EU law, are subject to a procedural time limit of approximately one year, which is considerably shorter and, therefore, less advantageous than the five-year time limit applicable to claims for the repayment of tax debts based on an infringement of national law. The adoption of GEO No. 52/2017, which imposes 31 August 2018 as the deadline for claiming the refund of Romanian pollution taxes, has had the

58 *Judgment of the Court* [Online]. Available at: https://ilegis.ro/eurojurisprudenta/ro/index/act/34730/lang/ro (Accessed: 23 October 2023).

favourable effect of extending the refund period applicable to some taxpayers who have paid these taxes. However, the adoption also had the disadvantageous effect of reducing the refund period applicable to other taxpayers who lost the full benefit of the five-year period provided in Art. 219 of the Tax Procedure Code. While the latter provision remained fully applicable to tax claims paid, this was not due to national law. However, the principle of equivalence does not allow a disadvantage suffered by one group of taxpayers to be offset by an advantage granted to another group in a similar situation. Taking all these considerations into account, the CJEU ruled:

> The principle of effectiveness in conjunction with the principle of sincere cooperation must be interpreted as not precluding the legislation of a Member State from laying down, under the sanction of forfeiture, a time limit for the lodging of applications for the repayment of charges held to be incompatible with EU law which is approximately one year, which begins to run from the entry into force of that legislation seeking to remedy the infringement of that law. The principle of equivalence, in conjunction with the principle of sincere cooperation, must be interpreted as precluding the legislation of a Member State from laying down, on pain of forfeiture, a time limit of approximately one year for the lodging of applications for repayment of charges held to be incompatible with EU law, where no such time limit has been laid down by that Member State with respect to similar applications for repayment based on an infringement of national law.

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4. Conclusions

Before moving on to the conclusions, it is important to point out that while the present study was not intended to be a 'didactic' work, certain notions were still explained in detail to clarify their meanings. This study broadly evidenced trends towards increased tax competition, the reconfiguration of tax systems, and the need for Romania to find its place among countries of interest for investors. While low taxation is a benefit, we should not neglect the fact that most investors are also looking in detail at the predictability of elements such as tax legislation, political stability, infrastructure, and the labour market. In this context, Romania must adopt a tax system based on principles of fairness, fiscal sustainability, efficiency, and transparency – this is the only way for it to become more competitive. These reforms must also include extensions to environmental taxation. As far as fiscal sovereignty is concerned, with the deepening of the provisions of EU Treaties (and the rules adopted to implement them), it appears that Member States have consciously chosen to limit their fiscal sovereignty in the sense that they have unanimously adopted EU rules limiting the content of national fiscal and budgetary policies.

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