

THE EVOLUTION OF PRELIMINARY TAX- VERIFICATION AND THE RECOURSE OF TAXPAYERS TO THE BANK FINANCING FOR SHARING RISK-TAKING

Hedia Teraoui
(International Finance Group Tunisia)

Abstract

Financial research has produced a large body of literature aiming to treat the interaction between the tax variable and finance.

Taxation is the border between legal science, and the management science including accounting and finance. In view of the literature, many studies have emphasized the importance of taxation not only in investment decisions but also in funding decisions.

The tax variable is present in all the activities and operations of the company and may affect the final result and also its value. The history of Western countries shows that tax was founded in the Middle Ages. Permanent and growing consideration of the tax aspect explains the key role to be played by tax policy, economic and social structure of a country.

The tax climate in Tunisia is characterized by absence of trust between the tax administration and the taxpayer whose guarantees are often lacking. Tax environment that can guide the choice of the taxpayer, is subject to many variables such as tax reforms, the surgery of jurisprudence....

Our work is in this area of research and involves studying the impact of taxation on the use of bank debt financing to share the tax risk with financial institutions.

The tax administration shall by several techniques tax inspection that enables it to achieve its economic objectives and tax fairness. The preliminary tax inspection and the depth, referring to Article 36 of the Code of Rights and Tax Procedures (CRTP), these techniques are realized mainly in two forms of verification: preliminary verification statements, deeds and documents held by the Directors, as well as the thorough verification the tax situation of the taxpayer.

The objective of this paper is to demonstrate to what extent, the taxpayer's fiscal guaranties are being maintained by jurisprudence at preliminary tax verification? And to what extent this measure encourages taxpayers to recourse to banking financing in order to share fiscal risk-taking with financial establishments?

*The choice to investigate the preliminary tax verification is justified by the existence of a little hand work on the subject and on the one hand the existence of some ambiguity in the application of the verification the tax authorities in Tunisia. The result of this verification shows in most cases the abuse of the tax administration and the diversion of the bottom of the audit that affects the rights of the taxpayer and its guarantees. **Our empirical study is, firstly based on an interpretation of specific cases of judgments from courts of first instance, the Court of Appeal and the Administrative Court to show the role of law in the implementation of solutions to the conflicts that exist between the two parts and more precisely to guarantee the rights of the taxpayer at a preliminary tax verification against the abuse of the tax administration;** and secondly on a survey based on a sample of Tunisian company managers.*

Key words: taxation, preliminary verification, debt, bank financing, risk-taking.

Introduction

The application of the tax law and the fight against fraud are major challenges for all countries. Fiscal control is also necessary for the equality of citizens and businesses before the law is respected.

Tax preliminary verification can detect and punish intentional irregularities (enforcement purpose) and encourage all taxpayers to tax compliance (deterrent effect). The tax legislation is complex and to achieve these goals, we need effective methods and organization.

In Tunisia, like several other countries, the tax authorities always watch over the fulfillment of economic objectives and ensure tax fairness by ensuring the rights and interests of the taxpayer which seems contradictory.

Tunisian tax system is a declarative system in which "the payment of taxes and contributions to public office on the basis of equity, is a duty of every person." And tax administration tax audit proceeds defined in the work of Baccouche (2007) as "an absolute requirement to ensure the implementation by all taxpayers, their tax obligations and to ensure compliance with the rules of competition healthy and fair competition between firms in a market economy "is a requirement on the part of the tax administration in the process of correcting failures and punish any violation of tax law.

Searching for the achievement of its economic objectives and tax fairness, tax administration is conducted several technical tax audit. We distinguish between the preliminary tax audit and the depth.

The choice to investigate in preliminary tax verification is justified by the existence of a few studies on the subject and on the existence of some ambiguity in the application of this verification by tax authorities in Tunisia.

Thus, investigations into the matter, show that the abuse of tax administration is apparent in the preliminary audit materializes mainly in achieving diversion bottom of this audit to abuse in his judgments and thereafter the taxpayer loses most of its guarantees.

Facing this abuse of the tax administration on preliminary verification, case law attempts to provide solutions to the conflict between the two parties and more precisely to guarantee the rights of the taxpayer during Preliminary tax verification. .

Our paper is then divided into three sections. The first deals with the development of the preliminary tax audit. The second section discusses the impact of the law in acts of preliminary fiscal verification to maximize taxpayer guaranties against the abuse of the tax administration.

The third section prove

Section 1The evolution of the preliminary tax verification for dealing fraudulent behavior and tax evasion

Inspired by doctrinal and jurisprudential revolution in this respect and a spirit of modernization, the Tunisian legislator tried to determine the concept and identify the scope of the screening defined as "*a mode of internal fiscal control.*"*It is essentially made from and within the offices of the tax administration.*"

In the context of a tax sphere, there is a multiplicity of certain behaviors that contradict with the tax law such as behaviors fraud and tax evasion, on the other hand.

For Beltrame (1978), fraud is "an offense to the law in order to avoid taxation or reduce the amount."

An infringement involves meeting a legal element (non-compliance with of current legislation) a material element (the tax evaded) and a moral element (intentional or unintentional misconduct). Moreover, the infringement has sanctioned several categories differently (the contravention, the offense and the crime).

Fiscal fraud is considered a criminal behavior that violates the law. The fraudster is punishable by a fine or by imprisonment or sometimes both.

The consequences of tax fraud permeate not only the state budget 'as given that the amount defrauded is a shortfall, but also on tax justice by creating an imbalance in the distribution of tax). Tax evasion also hit economic activity; taxation weighs only on the formal economy at the expense of informal activity. This distorts competition between honest taxpayers and tax evaders.

Tax fraud differs actually tax optimization . It is based on legal practices such as tax , deductions, exemptions credits.

Thus, the escape is to use legal mechanisms , sometimes taking advantage of the ambiguity of the law, for the sole purpose of avoiding tax (Geoffrey and Maffini (2009)) . However, the tax authorities can verify the existence of fraud, which is difficult when tax evasion , the task becomes difficult ; she has the opportunity to prove that there was abuse of law in a minority of cases.

However, there is another mechanism to evade tax ; it is also called the tax exile tax expatriation is to go abroad to pay less tax in the country of belonging which is a loss to the state budget , but moving the taxpayer to another country to minimize the tax payment is legal , it is the case of tax havens .

These behaviors emphasize the need to grant privileges to the tax office looks crucial in order to enforce the tax law and curb fraudulent behavior of the taxpayer.

These behaviors emphasize the need to grant privileges to the tax office looks crucial in order to enforce the tax law and curb fraudulent behavior of the taxpayer.

The tax administration shall by fiscal control to ensure a dissuasive purpose because it is intended to cover any tax tissue. Its second purpose is of budgetary order given its role in the collection of the tax evaded. His third goal is repressive, whose purpose is to punish the most serious forms of fraud.

Fiscal controls are varied and specific to their country. Thus, in France, we distinguish between controls "in place" controls "on parts" made the office only on the record of the taxpayer. In Tunisia, there are two methods of fiscal control: screening and thorough control.

However, the taxpayer is still in a dream to be rigorously protected like comparative law against any arbitrary decisions of the administration and its agents.

The preliminary verification is in the taxpayers' charter, is a simplified verification. The taxpayer's guarantees were not mentioned, against its proceedings in accordance with the provisions of Article 37 of the CRFP through the use of statements, deeds and documents filed by the taxpayer and it is done on the basis of the information currently contained and all documents and information available to the administration.

The preliminary verification is based on internal foundations, as it occurs in the administrative offices on the basis of the above-mentioned data, and it may involve one or more years within the prescription.

The tax administration should be limited to items extras in the rooms audited and the materials and information available to it.

Sources of information on taxpayers are multiple. The most important source is the taxpayer himself, who is required to provide periodic administration tax returns with supporting.

However, the use of any information or piece of information as part of the preliminary examination must be made in compliance with Article 37 of the CRFP under which the administration must be limited to the information it has; thus the communication right cannot be exercised at the initiative of the tax administration in the context of screening, this position is confirmed by the Tunisian tax jurisprudence. Any search for information by the tax administration to establish a recovery, must be regarded as an abuse of process.

The right to information has been removed in the preliminary verification by the explicit exclusion of the verification proving marginalization of the right to dialogue that has its foundations in Article 37 of the CRTP, which provides that *"the preliminary verification is not subject to the notification of a notice"*.

Reforms undertaken by the Tunisian legislator at the preliminary verification occur from the precision of several steps and through the organization and clarifying the factual and legal elements based on the contribution of Finance Act of 2010.

This law has had as inputs: Establishment of a preliminary formalism results reporting preliminary audit, legislative consecration of recourse to the right of communication provided for in Articles 16 and 18 of the CRFP and legislative consecration of recourse to law visit under Article 8 of the CRTP in the context of preliminary verification for individuals subject to package of tax.

The new contributions of the Finance law of 2010, in Article 48, in comparison with the provisions of the preliminary tax audit in the CDPF, came to demonstrate a legislative intent raising its connection with measures and techniques visit communication and information of a recurring and deeper way than the initial situation.

The concern of the legislation is to ensure the equilibrium of fiscal tissue regarding the relationship between the administration and the taxpayer. This goal is difficult to achieve. Tunisian legislator must be equipped with all the modern means of tax audits in order to approximate the maximum balance. However, the administration may face the default declarations, which requires it to proceed in this context not only of investigations operations, visits, requests for information, but also to take into account statements and that the elements of lifestyle of the taxpayer. In other words, the administration cannot make the notification of the result of preliminary verification before they justified that it has first requested written information, clarifications or justifications for the verification process.

The Finance law of 2013 provides that the tax authorities cannot make a new preliminary verification Of the same tax and for the same period after a preliminary verification or a depth verification.

Section 3: Lack of trust between the taxpayer and the tax administration favors the use of debt

Despite the tax reform of 2002 on the entry into force of the Human Rights Code and tax procedures (CDPF), which organizes the relationship of the taxpayer with the tax authorities and whose main contribution is at the litigation stage (the taxpayer can use two phases of court of first instance and appeal), discussions with the majority of the officers revealed that there is no trust between the tax administration and the taxpayer.

Indeed, before the tax reform, the tax cases are heard before the Special Committee on Taxation Office (CSTO), which consisted of a judge, but also members who are part of the tax administration which can make judgments subjective. The reform aims to preserve the rights of the taxpayer for that complaint relates to an independent organization of the tax administration (court of first instance and courts of appeal) for.

Unfortunately, according to the majority of respondents, although the company is well organized for accounting, tax administration, always following a screening and / or depth, detects tax anomalies that affect the tax base ; this shows that in all cases, the taxpayer is faced the need to pay. Otherwise, it must resort to litigation phase that can last for years, taking huge loads (lawyer's fees, payment of 20% of the principal office of taxation ...).

Given the complexity of the tax system and the lack of trust, the majority of respondents opting for debt as a source of funding for their operations in order to share the tax risk with financial institutions. This result has its foundations in the work of Domar and Musgrave (1944), and recently those Alzahrani and Lasfer (2012).

Section 4: The role of jurisprudence in preserving the guarantees of taxpayers and to strengthen the relationship between the taxpayer and the administration

Against this backdrop of lack of trust, the role of law is predominant. Judges shall, in advance to the discretion of the texts and laws against the requirements and values of its legal order. Thus, the identification of the concept of preliminary verification results of judicial interpretation of Article 37 of the CDPF.

Judges shall, in advance to the discretion of the texts and laws against the requirements and values of its legal order. Thus, the identification of the concept of preliminary verification results of judicial interpretation of the article 37 of the CRTP.

The development of the procedures of the preliminary verification is considerable. Indeed, jurisprudence prompted the legislator to rectify the rules and the procedures of preliminary verification in a way that allows the effectiveness of fiscal supervision while preserving the rights of taxpayers. This finds its basis in the related to the screening and especially the reform of 2010 and the 2013 tax reforms.

Face of power of the tax administration during a fiscal preliminary verification, the tunisian taxpayer still devoid of several guarantees. This situation has not changed too much even with the entry into CRTP. The role of jurisprudence looks crucial to resolve conflicts and adjust the relationship between the two parties.

To do this, it makes its judgments to deal with preliminary verification techniques used by the tax administration. A practical study, based on the interpretation of concrete judgments was conducted on the main points of conflict that essentially amount to: the assessment of taxable income on the basis of the lifestyle and personal expenditures, overt and notaries and by increasing wealth.

In this context, the Administrative tribunal, in its judgment No. 38980 of 24/01/2009 recalled that the legislator has enabled the tax administration under preliminary verification to correct taxpayer's statements incorporating income minus the tax base.

The jurisprudence prompted the legislature to rectify the rules and the procedures of the preliminary tax verification in a way that allows the effectiveness of fiscal supervision while preserving the rights of taxpayers and this is rooted in the entry into force of the CDPF is the framework legal to screening, as well as tax reforms relating to the preliminary verification and especially the reform of 2010 and the 2013.

Conclusion

The legislator is constantly seeking to create and secure a balanced tax regime between the administration and the taxpayer. This is a problem that requires more technical modernization of tax audit in order to approach the maximum balance.

The use of bank financing remains the most preferred by Tunisian companies to share the tax risk with banks source. However, this risk sharing is not the only reason for resorting to debt. Other reasons can add: Tunisian companies are family-owned small who prefer bank financing to the issue of shares to avoid losing control of their units and on the other hand, prefer debt bank to issue bonds for fear of disclosing private information on the market that could serve as competition.

References

Abouda A, Codes des droits et procédures fiscaux, « Contrôle, contentieux et sanctions », p101.

Alzahrani M., and , Lasfer M., 2012, "Investor protection, taxation, and dividends », *Journal of Corporate Finance*, 18, (4), pp. 745-762

Beltrame P, 2008, « La fiscalité en France », 4ème édition, Hachette Supérieur, 159 pages, ISBN-10: 2011460042

Pierre Beltrame, 1987, « L'impôt », MA-Editions, 191pages.

Baccouche N, 2004, « *De la nécessité du contrôle fiscal* », Revue tunisienne de fiscalité, n°1, p. 25.

Belaïd S, 1974, « *essai sur le pouvoir créateur et normatif du juge* », thèse publiée par la Librairie générale de droit et de jurisprudence.

Un article a aussi paru dans : Revue Internationale de droit comparé, 1995, Volume 27, N°4, pp.955-958. |

Chedly L, 2001, « *L'arbitrage commercial international et l'ordre public transnational*, thèse de doctorat, Faculté des Sciences juridiques et politiques de Tunis, 200-2001.

Domar E.D., and Musgrave R.A., 1944, "Proportional income taxation and risk-taking", *Quarterly Journal of Economics* 58, 388-422.

Ltifi M.H, 2009, « le contrôle fiscal et les garanties administratives du contribuable vérifié », p261.

Noel G, 1986, « Le contrôle sur pièces » Art, p.40,

Noël G, 1984« La réclamation préalable devant le service des impôts », LGDJ, Bibliothèque de science financière, tome 21.

Geoffrey L., and Maffini G, 2009, “Tax Havens and the financial, Research Fellows, Oxford University, Centre for Business Taxation. Télé-accessible sur:

http://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Docs/Publications/Policy_Papers/TaxHavensandtheFinancialCrisis.pdf

Webography

file:///C:/Users/hp/Documents/extrait_le_controle_juridictionnel_de_la_regularite.pdf

http://solidairesfinancespubliques.fr/gen/cp/dp/dp2013/120122_Rapport_fraude_evasionfiscale.pdf

Codes and laws

Finance Law of 2010 (Article 48).

Finance Law of 2013

Code of Rights and fiscal procedures (CRTP).

Tribunal Administratif, Affaire n° 38980 du 24 janvier 2009