

## TOWARDS A LAW OF SUSTAINABLE FISCAL RESOURCES

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**Abstract:** *Our approach aims to raise the benchmarks intended, we believe, to print efficiency rules for public financial law which, by definition, governs the issue of budgetary resources. Knowing the mechanism of legal and tax and the use of this type of resource, given the current context, we introduce some approaches to the position of financial law located in the best connection with economics, and we consider key issues of this - crisis/ growth, sustainable development, strategies/ policies, state intervention tools etc. aiming to easier to put out various budgetary implications caused by certain processes/ phenomena in the real economy. Also, we bring some elements of analysis, comments and views coming to justify the importance of rights (set of rules and principles of major influence) the financial and fiscal consolidation based in the extent possible, the development lasting nature. It is expected thus that such a law (fiscal consolidation based on sustainability) can drive more speedily to create a stable tax system capable of generating sufficient budgetary resources in terms of efficiency and efficacy, ensuring cost reductions with unit budget and compliance taxpayers being, while flexible, simple, transparent and adaptable to national/ international changes.*

**Keywords:** financial/economic law; legislation contributors; sustainability; budget revenues; public expenditure; efficiency

**JEL Classification:** H50; H53

### Introduction

Modern society increasingly realizes that amid the existence of limited economic resources as possible becomes difficult to ensure - quantitatively and qualitatively - obvious needs and necessities are increasing. Whether it is about primary resources (human and material), derived (created by people on the basis of the primary) or intermediate (financial means and the necessary capital transfer/transformation of the primary resources in a circuit) (Dobrota *et al.*, 1998; Didier, 1994; Frois, 1994; Lipsey and Chrystal, 1999), the limited nature of their hampers today in all countries, resolving meet human requirements and economic interests. The prospect seems more complicated, increasing the tension between the needs of growing assembly and resources are limited and rare, considering the signals fired by prestigious international for aimed at crisis of global resources, population growth and worsening environmental situation (Dutu, 2008, 2007; 2004 Kiss and Beurrier, 2010; Thieffry, 2011). A first look favorably noticed so far is that the difficulty and widening, to obtain appropriate quality and quantity of resources, determined that the interest of users for a higher utilization of those resources (Bran and Ioan, 2009; Dobrescu and Albu, 2005; Bretschger, 1999; Hogendorn, 1996; Camasoiu *et al.*, 1994; Mayer, 1995; Todoro, 1997; Tinica *et al.*, 2010; Bostan, 2014). This, besides the other determinations made, namely that economic resources are disproportionately scattered

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across countries, leading ultimately to a certain type of economic policy for acquiring them more or less advantageous, from those who participate in economic life. Recently, some authors (Padurean *et al.*, 2014; Dinga *et al.*, 2011) have retained their works that although the literature deals with both issues of taxation and issues of sustainable economic development, the connection between them is not as present. Some writers noted that no causal relations between structural and functional system of taxation and economic sustainability are not treated sufficiently clear and elucidated in the literature. This gave impetus to reveal the conceptual plan some benchmarks tax regime which is compatible with sustainable economic development. Attributing a more elaborated definition of the term "tax instruments" meaning "those levers of public finance, by which the state acts to fulfil its functions, to achieve the objectives of macroeconomic policy to stimulate and/ or stabilize economic activity" states that they are based on a legal framework governing their way of operating. However, the use of levers of this type involves the pursuit of their effectiveness, To mobilize the necessary volume of revenues while encouraging economic activity, investment, ensuring fiscal equity, social protection and the environment, requiring consideration of the fact that appreciably influences the behavior of taxpayers, which has an impact on the balance of goods and services market, the labor market or on the financial, etc. It turned out, moreover, that tax cuts on income/ gains influence the dynamics of financial market transactions. Possible actions of fiscal instruments which, by their actions, influence, one way or another growth in a context of sustainable development (Padurean *et al.*, 2014) include the fact that the government can use fiscal instruments in order to reduce tax profits of enterprises to restore economy in the expansion phase or the personal income tax reduction leads to increased disposable income and can affect the growth rate of capital accumulation; reduction of income tax from wages can stimulate labor supply. In our case, insisting the direction of tax - sustainable development, we cannot avoid complications to the plan of the recent global financial crisis discussion (Maha and Mariciuc, 2009; Oprea *et al.*, 2013; Stoica and Capraru, 2012). Fiscal policies sustainable based - always on the law (emphasis. Ns.) – being those "policies that do not lead to the explosive growth of indebtedness of the state, or after which no action is taken to increase taxation to curb spending monetization of the budget deficit or public debt repudiation" (Blanchard, 1990), by the way we relate to them, we believe bring more conviction. Certainly, knowing the mechanism of legal and tax on the formation and use of budgetary resources (Drosu-Saguna and Tofan, 2010), given the context showed some approaches to the position of financial law located in better connection to economics, and we consider its key problems - crisis/ growth, sustainable development strategies/ policies, state intervention tools, etc., are intended to make easier out various budgetary implications caused by certain processes/ phenomena in the real economy. Therefore, in

the following we bring some elements of analysis, comments and views coming to justify the importance of rights (set of rules and principles of major influence) strengthening financial and tax based in the extent possible, on durable development type.

**1. The need of creating awareness of the contributors when creating financial tax normative act from the light of sustainable economy/ development**

Overall, about an act we can say that it is effective if its implementation is reached as high as targets on which was promoted/ adopted the rule. As is known, the legal standard is the more effective so as includes appropriate sanctions for infringements of the provisions set (Dogaru, 2006). It is true, the sanction materializes the legal responsibility of offenders - ensuring effective law in general, along with moral, political and religious penalties - and represents a measure against the will of which infringes the rules of law being applied by bodies empowered in this. But in our opinion, the standard efficiency depends on other factors, which, if content having financial fiscal rules, that we will stop here briefly. First, be noted that the rules having financial content-tax figure composition to financial law and regulates many aspects of public finance, as funds available to the state (or local communities) to perform the functions and tasks (DEX, 1996). The main regulations include the Public Finance Act (Law no. 500/2002), Local Public Finance Law (Law no. 273/2006), Tax Code (Law no. 571/2003), the Tax Procedure Code (Government Ordinance no. 92/2003), stating that from 1 January 2016 become applicable - new codes in tax Fiscal Code (Law no. 227/2015) and the Fiscal Procedure Code (Law no. 207/2015). Considering financial law (Mining and Costas, 2006; Costas and Minea, 2015a, 2015b; Balan, 1999; Bostan and Grosu, 2009; Grosu and Bostan, 2010; Bostan, 2007, 2010a, 2010b; Bostan and Radu, 2003) of course, must be included other sources (in their totality, they are grouped as follows: i) constitutional rules; ii) primary legislation; iii) secondary legislation; iv) European legislation), but we, in our references we only target the primary and secondary legislation. To some extent, when we make remarks on the line of need to strengthen the financial and tax-based sustainable development/ economy, we stop and on legislation adjacent respectively the governing of specific issues regarding public finances, institutions assimilated financial support measures/ encouragement of economic activities etc. Stated briefly, we can say that the rules of law, finance, be they budgetary concerning budgetary procedure, accounting standards, relative to budget execution and asset management, tax rules relating to the main taxes, fees, contributions - that public revenues are characterized by efficiency, only in so far as those below are valid played. Accordingly, the consolidated budget - the result of applying these rules - one type balanced behaves dynamics, correlations and proportions that reflect the health obvious socio-

economic system national allow reasonable allocation on all destinations for which the state/government is responsible, the characteristic durability. However, the same rules should ensure a better management of public assets management, integrity/ its development, budget combating fraud/ tax evasion etc. Or, as shown on aspects of the last indicators shown, it can be appreciated that the rules in question have fully achieved the objectives for which they were introduced. Therefore, outside their (hardness of sanctions imposed), an increase in quality of performance submitted by contributors to the creation of financial-fiscal enactment is required. In particular, due to their often very technical, but mostly justified by the importance of budget component of a country, we suggest that it a professionalization of the activities of the makers of financial and fiscal norms is imposed, with consideration of what is important in terms of economic/ sustainable development. We have in mind that these contributors, beyond members of Parliament - the legislature classic - include specialists/ consultants of the initiators of legislature, drawn in the impact assessment draft legislation on the basis of cooperation with scientific research institutes, universities, companies or NGOs. It also leaves its mark on the quality standards the staff of the authorities concerned in their implementation, depending on the purpose of the legislation, which must issue opinions (Law no. 24/2000). Obviously, it matters to some extent and trends of citizens' views on the formation and use of budgetary resources ("public money"), but this order issues (fiscal) leaves no place for action for the citizen legislative initiative; according to Art. 74 - Legislative initiative of the Romanian Constitution, "... (2) may not be legislative initiative of citizens tax issues, international affairs, amnesty or pardon" (Constitution, 2003). So under "legislative initiative in the sphere of taxation" chapter registers solely Government and Members of Parliament. In general, a draft law "should establish rules necessary, sufficient and potential rules to lead to a greater *stability and efficiency as legislative*. The solutions contained therein must be duly substantiated, taking into consideration the interests of social, legislative policy of the Romanian state and the requirements correlation with all internal regulations, as well as the harmonization of national legislation with Community law and international treaties to which Romania is a party" and always "To substantiate the new rules will start from current and future social desires and the inadequacies of current legislation" (Law no. 24/2000). Returning to real contributors one mentioned that between them entering and experts who prepare the explanatory memorandum, the substantiation or essays approval and impact studies, as appropriate, accompanying draft legislation, or those who conclude documents of Public Policy - approved by parliament or by government - for normative acts impacting the social, economic and environmental impact on the consolidated budget, the legislation in force (Law no. 24/2000). Then as well, we can add here and specialist staff drawn into "documentation and scientific analysis for a

thorough knowledge of economical and social reality to be regulated, the history of legislation in that area, as well as similar regulations in foreign legislation ..." or members of specialized committees to draft codes or other complex legislation, namely due to the initiative of Parliament or Government, constituted Legislative Council or under its coordination (Law no. 24/2000). Awareness of all these participants - directly or indirectly – at the act of building the standard financial and tax must be stated that the imposition, through legislation, only the new taxes / fees or increasing existing ones, although it is easy and leads on short term to an increase in public revenue is not sustainable in the long term. On the contrary, it is jeopardizing the entire social-economic activity following such measures. Therefore, we consider that the familiarity of factors discussed with real economic problems (micro- and macro-) and sustainable development is intended to lead to highly efficient financial and tax legal rules and ensuring the sustainability of economic and social policies, in budgetary terms.

## **2. Short term budgetary objectives and legal environment of regulation in the context of sustainable economy/ sustainable development**

Referring to some aspects of the medium-term budgetary objectives and the legal framework, we show that the stability of public finances depends on the smooth functioning of the Economic and Monetary Union (EMU). Equally, financial discipline is a prerequisite for sustainable economic growth.

### ***2.1. European regulations on tax policy***

The euro zone sovereign debt crisis led to boosting coordination of fiscal policies, appearing more than necessary to achieve consistency with the national fiscal governance of the European Union (EU). Rules enacted in fiscal policy at EU level include (i) The Stability and Growth Pact (SGP), (ii) European Semester (SE), (iii) The package of six legislative measures on economic governance, (iv) the Treaty on Stability, Coordination and Governance in the EMU, including fiscal pact. The EU economic governance structure is based on macroeconomic SE for policy coordination - introduced in the first half of 2011, which aims at evolving our economies synchronized without considerable macroeconomic differences with budget deficits below 3%. SE is a common instrument for coordinating economic and fiscal policies of the Member States of the EU, which monitors budgetary discipline, macroeconomic stability and policies to promote growth which provides that states which do not obey the rules will be fined. PSC is a rules-based legal framework for the coordination of national fiscal policies in the EU, established to strengthen public finances. Medium-

term objective (MTO) gives preventive arm structure in accordance with the provisions of Regulation (EC) 1466/97. It stipulates that each Member State should have differentiated targets in the medium term for their budgetary position, objectives (budget) that may diverge from the requirement of *close to balance* or position *in surplus* while providing a safety margin limit 3% of GDP budget deficit. This limit provides some budgetary flexibility, taking into account public investment needs of MS. In Romania, according to the Treaty on Stability, Coordination and Governance in the EMU, signed on the 2<sup>nd</sup> of March 2012, the rule concerning the structural budget deficit, finding situation deviation from this and automatic correction mechanism in case of deviations have been introduced in national legislation by amending the fiscal Responsibility Law (Law no. 69/2010). This change was made later by another law (Law no. 377/2013).

## ***2.2. The importance of respecting the medium-term budgetary objective to ensure the rapid developments towards a sustainable situation***

Limiting the structural deficit that we have previously referred too leads to the impossibility of engaging in pro-cyclical fiscal policies and fiscal discipline imposed by budgetary resources being spent responsibly and efficiency. What it is pursued, essentially, is to avoid rising public debt, public expenditure interest and overload monetary policy. In other words, through a mix of future policies it is achieved the assumed medium-term objective, ensuring rapid progress towards a sustainable situation, favoring public investment growth.

### **Quadrant 1 (MFP, 2014, 2015):**

*Projection of fiscal policy over the medium term is based on its anchoring in some economic benchmarks and institutional pillars: macroeconomic balance, fiscal responsibility and financial discipline. It is continued the balanced conduct, which began in the second half of 2012, sustainable fiscal consolidation and, in this context of economic recovery. Among the fundamental objectives of simplifying taxation falls predictability in taxation and creating a tax environment - stimulating budget for public and private economic development environment. Characteristics of fiscal policy for the period 2014-2017 include that it must be subordinated to the fundamental objective of economic, fiscal vision to be one qualitative requiring that stimulate economic environment, investment and entrepreneurship. Concurrently, is increased the efficiency of public spending and investment promotion. The reference period 2015-2018 will be marked by continued fiscal consolidation by reducing ESA deficit from 2.0% of GDP in 2014 to 1.2% of GDP in 2015, plus 0.25 percentage points adjusted for co-financing projects supported by European funds and 1.1% of GDP in 2016 and 2017.*

Referring to the 2014 data, Romania's GDP grew by 2.8%, the fourth year of growth (1.1% in 2011, 0.6% in 2012, 3.4% in 2013), which reinforces the tendency for recovery from the economic and financial crisis of 2009 and 2010 (Romanian Government, 2015). The increase was mainly due to private consumption growth, which was supported by strong growth in real wages and low interest rates. Since the EC and IMF forecasts an acceleration of economic activity in the EU and domestic

economic environment will improve in the context of reducing VAT (GEO no. 6/2015), Romania would register a gradual improvement in economic performance in the period 2015 - 2018, so as to recover decreases in the crisis years - 2009 and 2010. Turning to fiscal policy applicable in 2015, we show that in the course on improving economic governance in the European Fiscal Treaty, applicable from January 2013 are established clear rules requiring the Contracting Parties compliance/convergence towards budgetary target in the medium term (MTO) of the country, with a lower limit of a structural deficit (cyclical effects and one-off are not taken into account) 0.5% of GDP (1.0% of GDP for Member States with a debt ratio significantly below 60% of GDP). For 2015, the specific objectives of fiscal policy are related to continued fiscal consolidation through further adjustment ESA deficit from 2.2% of GDP in 2013 to an estimated deficit target of 1.2% of GDP in 2015 plus an adjustor of 0.25 percentage points of GDP to co-finance European projects. In terms of budget revenues there are felt the effects of previously agreed measures such as the reduction of social insurance contributions (CASS) 5% for the employer tax exemption on profits reinvested profits, reducing the tax rate from 1.5% to construction 1%, the broadening of the application of the reduced VAT rate of 9% for food etc. However, the negative impact would be offset due to economic multiplier effects, but also by implementing efficient measures by ANAF revenue collection system.

### ***2.3. Characterization of fiscal policy for the period 2015-2017. Base normative***

The most important objective of taxation link to simplifying it and creating a predictable tax environment - stimulating budget for developing the economic environment, things mentioned under fiscal strategy for the years 2014-2016 (Romanian Government, 2014). Also during 2015-2017, fiscal policy retains the same principal characteristics as those mentioned in the previous strategy, namely: taxation must be subordinated to the fundamental objective of economic development; Fiscal vision must be qualitative, stimulate economic environment, investment and entrepreneurship; the efficiency of public spending and investment promotion. Also, in the medium term, the Government has proposed including elements of strengthening fiscal policy, further measures to increase the efficiency of the tax system by rewriting the Tax Code and the Fiscal Procedure Code - things made, incidentally. Law no. 227/2015 on the new Tax Code comes into effect, with some exceptions, from 1 January 2016 and brings a lot of changes from the old version - Fiscal Code - Law no. 571/2003, as further amended and supplemented (Milcev, 2015). The most important of these changes include Title VII of VAT, the standard VAT rate reduced to 20% from 1 January 2016 and 19% from 1 January 2017. VAT rate is reduced from 9% to 5% for delivery textbooks, books, newspapers,

magazines, and services on access to castles, museums, memorial houses, cultural events etc. The share of 5% applies for social housing for those households with a value of up to 450,000 lei, compared with 380,000 previously. We use the reverse charge mechanism for the supply of buildings or parts of buildings and land of any kind, for whose delivery apply tolling scheme by law or by choice, provided that both the supplier and recipient, to be registered for the purpose VAT. It will apply the reverse charge mechanism for the supply of mobile phones, tablet PCs, laptops, game consoles and integrated circuit devices (microprocessor), provided also that both the supplier and recipient to be registered for the purpose of VAT. VAT adjustment for capital goods will also apply to goods whose payback period is under 5 years. With respect to excise, their level has been modified for products: sparkling wines: 47.38 lei/hl of product; still fermented beverages other than beer and wine: 396.84 lei/hl of product; Alcohol: 3306.98 lei/hl of pure alcohol. Also, since 1 January 2017, the excise duty for the following products will be reduced as follows: leaded petrol: 1948.23 lei to 1,000 liters; unleaded petrol: 1656.36 lei to 1,000 liters; Diesel: 1518.04 lei to 1,000 liters. It was removed non-harmonized excise duty for coffee, luxury goods such as jewelry, furs, natural, cars with an engine capacity greater than or equal to 3,000 cm<sup>3</sup>, weapons, yachts etc. Non-harmonized excise duty will be applicable for the following products: liquid containing nicotine (electronic cigarettes) and heated tobacco products. In terms of local taxes was liberated hotel tax and have introduced a number of exemptions linked to them, while others were transferred to the section on community facilities in chapters on each of these taxes/ fees. There were introduced new provisions according to which the tax on buildings, land and means of transport will be due for the entire fiscal year of the person who owns the asset at December 31 of the prior fiscal year and not fractions of a year before. Tax buildings/ tax land will not pay annually (in two installments), but monthly. The local council may increase the building tax and land tax by up to 500% for untidy buildings and land, located in town. In addition, local governments can increase local taxes by 50% from the peak levels established in the Tax Code, compared to 20% as it was previously. Relative to all these, some experts consider that there is a sizeable fiscal relaxation appreciable “the first-round negative effect on the budget is over 2% of GDP in 2016” (Dumitru, 2015). On the other hand - as if invoking the fact that an important principle in tax administration is the principle of substance over form, whereby, when the IRS is working towards establishing the tax, it must reflect the realities and not appearance - are taxed all income and values property, whether the activities of which are obtained meet or not the legal requirements and economic results of certain invalid legal acts. In this context, we consider adequate several references to the New Code of Fiscal Procedure (NCPF) (Milcev, 2015b). The main changes related to the principle of “*In dubio contra fiscum*”, found in the new regulation (Law no.



207/2015), which enters into force on 1 January 2016, include five main rules of interpretation of tax law. If, when using these rules of interpretation there are still unclear issues it will be applied interpreting tax rules in favor of the taxpayer. NCPF sanctions by absolute nullity issuing a fiscal administrative act in breach of competence. It introduces the possibility of tax authority to issue a new administrative act if the originally issued has been cancelled. But this is limited by the expiry of limitation or if the annulment of the act concerned substantive flaws. NCPF amends the term for the applications submitted by the taxpayer within 90 days if it is necessary to conduct a tax audit for its resolution. There are also introduced new cases of extension of this term by the tax authority. It was covered for all tax obligations a start of one flow limitation period, namely 1 July of the following year for which tax liability is due. Making a tax audit would suspend the limitation period for fiscal body right to determine tax obligations, only during its legal period. The duration of the tax audit has been differentiated according to the category of taxpayer (180 days - large taxpayers, 90 days - medium taxpayers, 45 days for other taxpayers). If the legal duration of the fiscal inspection is exceeded illegally by statutory tax audit by a period equal to the duration of the legal one, the tax audit terminated without issuing a tax audit report. In this case the tax inspection can be resumed with the consent of superior body and observing the period of limitation. The new legislation establishes a maximum period of suspension of the tax audit for 6 months. It covers the possibility that at the request of the taxpayer, the tax auditor to issue a decision to impose provisional during a tax audit, the taxpayer for the purpose of paying the additional tax liability set by the tax. As unplanned, this cannot be longer than 30 days. Also for the same transactions and related tax obligations cannot simultaneously carry out unannounced checks and tax inspection. NCPF concealing establishes a penalty of 0.08% per day for the main tax obligations undeclared or incorrectly declared by the taxpayer and the tax authority established by the tax decision. The penalty for failure to declare the tax will apply to claims arising after 1 January 2016. Finally, precautionary measures have been limited and the ability to appeal to the administrative court; precautionary measures will not be able to establish for a period longer than 6 months or for one year in special circumstances and their decision of establishing is direct attacked through the administrative court.

## **Conclusions**

A right of fiscal consolidation based on sustainability excludes easy implementation - as unique – of those rules allowing direct recourse to those instruments to increase consolidated budget revenues by raising tax rates/ charges in the economy. Strengthening the financial and fiscal we see based

solely on development/ sustainable style economy and efficiency this is why we brought to debate the financial rules of law. They are characterized by efficiency, only to the extent that the consolidated budget - the result of their application - is one of type balanced, behaves dynamics, correlations and proportions that reflect the obvious health of socio-economic system, allows national reasonable allocation on all destinations legal, the sent the characteristic's durability. However, as shown on aspects of the last indicators shown, it can be appreciated that the rules in question have fully achieved the objectives for which they were introduced. Therefore, outside is a need to increase the quality of their performance contributors submitted - directly or indirectly - to the creation of financial-fiscal enactment, with consideration of what is important in terms of economic/ sustainable development. In particular, due to their often very technical, but mostly justified by the importance of budget component macroeconomic we suggest that it is required a professionalization of the activity of the makers of rules fiscal-financial, focusing on the side of economic and financial. We considered that these contributors beyond MPs - classic legislature - include specialists/ consultants of the initiators of legislature, drawn in the impact assessment of draft legislation. Also, on the quality standards puts its mark the staff of the authorities concerned in their implementation, depending on the purpose of the legislation, which must deliver opinions, the experts who develop explanatory memorandum and impact studies accompanying the draft legislation, or those concluding public policy documents, expert staff drawn in documentation and scientific analysis for a thorough knowledge of economical and social reality to be regulated, the history of legislation in that area, as well as similar regulations in foreign law or members of specialized committees drafting of codes etc. All these motivated the first part of our work to be devoted to explaining the need to create awareness contributors financial fiscal enactment in terms of economic/ sustainable development. Then, trying to justify the direct link which must be imposed between the issue of taxation and issues of sustainable economic development in the context of specific legislation bearing the European print accentuated in the second part of the approach we approached the budgetary targets over the medium term and the legal framework in the context of sustainable economy/ sustainable development. What is clear is that the stability of public finances plays a special role in ensuring the smooth functioning of Economic and Monetary Union, which is explained by the fact that ensuring financial discipline is a prerequisite for achieving a stable price level over the medium term and sustainable economic growth. Characterization of fiscal policy for the period 2015-2017, finally achieved, and some references to the basic laws in our theme - new Tax Code and the new Code of Fiscal Procedure - were meant to emphasize the importance of character as sustainable print Romanian fiscal system.

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