

FORENSIC ACCOUNTING – EVIDENCE IN CASES OF INCORRECT APPLICATION BY TAX INSPECTORS OF THE ESTIMATION PROCEDURE OF THE TAX BASE IN AGRICULTURE

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Abstract: *During a tax investigation, conducted at a taxpayer, in determining the tax base, have to be taken into account documents, accounting records and any other evidence of the situation. For the correct fiscal situation of taxpayers, in some cases, tax inspectors determine the taxable base, for certain tax obligations, by estimation. Considering that, in many cases, it was found that setting the tax base estimate was done incorrectly, especially for taxpayers who work in agriculture, so there are a large number of disputes. In this cases, prosecutions or law courts could use, in establishing the truth, forensic accounting activity. This paper aims to describe a such engagement realized by a forensic accountant.*

Key words: *forensic accounting, evidence, tax base, agriculture*

INTRODUCTION

In the framework of the tax inspection in Romania, in accordance with the Code of Fiscal Procedure, in order to determine the actual fiscal situation of a taxpayer, which is subject to verification on the correct determination, declaration and payment of tax, tax authority can manage evidence, and thereby:

- a. request information of any kind from taxpayers and other persons;
- b. require accounting expertise;
- c. use of documents;
- d. conducting research on the firm.

Samples taken will be combined and appreciated taking into account their proving force recognized by law.

The fiscal body *may require taxpayer's presence at his headquarters in order to provide information and clarifications necessary to establish its real fiscal situation*, and establishing the documents that the taxpayer is required to submit.

Taxpayer or other person authorized by him must provide to tax authority all the information necessary to determine the actual fiscal situation.

For the same purpose, tax authority is entitled to request information to other persons or firms with whom the taxpayer has or had economic or legal activities. Information provided by others shall be considered only if they are confirmed by other evidence or documents.

MATERIALS AND METHODS

In order to establish the actual fiscal situation, taxpayer is required to provide the tax authority registers, records, business documents and any other documents. For the same purpose, the tax authority has the right to request documents and to other persons with whom the taxpayer has or had economic or legal activities.

Supporting documents and accounting records of the taxpayer constitute evidence in determining the tax base, and if there are other documents, they will be taken into account in determining the tax base.

The taxpayer has the duty to prove the documents and facts that were the basis of his statements or any application submitted to the tax authority. And the tax authority has the obligation to justify its decision to impose based on evidence and their findings.

In order to determine the scope and content of an economic transactions at the

request of the competent tax authority, taxpayers are required to submit, within the time limits set forth, also the transaction file if the transaction is concluded with persons located in countries with which are not legal instrument to carry out the exchange of information.

If the tax authority finds that certain goods, income or other assets which, by law, represent tax base are held by people who continuously receive earnings or any regular benefits derived from them, and that those people declare in writing that do not own the property, proceeds or securities in question, but without showing that they are holders of the property, the tax authority will establish temporary that the tax liability corresponding burden those people.

Fiscal authority sets the tax base and tax liability for payment, through *the reasonable estimation of the tax base*, by any evidence or means of evidence provided by law, whenever it cannot determine the correct fiscal situation.

Thus, in situations when tax authorities are entitled to determine by estimation tax bases, they identify those elements that are closest to the facts tax, taking into account the market price of the transaction or taxable property, and information or documents existing in tax file of the taxpayer that are relevant for taxation, and, in their absence, the tax authority will consider the information and data held by it about taxpayers with similar activities.

For the correct determination of the taxpayer's situation the fiscal body may proceed to a documentary check, which consists of an analysis of the consistency of the taxpayer's situation based on existing documents of the taxpayer's tax file or on any other information and documents submitted by third parties or held by the tax authorities, relevant to the determination of the tax situation. In certain cases, when, as a result of verification, the tax authority finds differences from tax liability reported by taxpayers, will notify these. In the same time with the notification fiscal body requests the documents which have be presented in order to clarify the tax situation

In conducting of tax inspection, in many cases it was found that setting by tax base estimate was done in error, especially for taxpayers who work in agriculture, with a series of disputes about this situation. Thus, to establish the material truth, justice (enforcement investigation or prosecution, or the court), use *the forensic accounting*, performed by professional accountants - forensic accountants.

Therefore, forensic accounting is scientific research activity carried out by one or more accounting experts, who, based on theoretical knowledge and practical experience in the financial accounting, investigating and clarify how accounting facts or circumstances are reflected in various documents, and shows the result of this research in an forensic accounting report. The main steps in forensic analytics are data collection, data preparation, data analysis, and reporting.

RESEARCH RESULTS

In this paper, we will present, through an example, the contribution of forensic accounting, as means of evidence, in a dispute resulting from misapplication of the tax inspectors of the estimation procedure in tax base determination. This example is under a tax inspection conducted at SC X SRL, a company operating in the agricultural sector.

In the tax inspection report no. 1234, fiscal inspection authority states that by comparing the production of SC X SRL with average yields per hectare achieved in Timis area have resulted differences (kg/ha), as follows:

-The company registered for 200 hectares surface A-area cultivated with rape, a crop of 332 kg/ha and Timis County Department of Statistics inform an average yield per hectare for rape in Timis county, respectively a quantity of 1774 kg/ha average production

and that according to the address registered at Timis AIF DGFP no. 109. Also, culture expenditure analysis found that the company had to obtain an average production of 1774 kg/ha, while the area under cultivation of 250 hectares the amount of 443.500 kilograms, which worth 399.150 lei and this represents additional tax base in the amount of 259.560 lei obtained by taxable at a rate of 19%, for which currently result a difference of VAT collected in the amount of 49.316 lei.

-For the surface of 50 hectares in B-area, the company presented the Minutes of finding damage to the culture of rape ended on 02.11.2009 stating the following: as a result of unfavorable natural conditions, respectively due to excessive drought sterility of clusters found in 80% - 90% of total, the culture was compromised. For this area of 50 hectares, tax inspectors proceeded to estimate production registered and taken into account the average yield/ha press at Timis Department of Statistics, according to the letter no. 281 registered DGFP Timis-AIF no. 109 and the market price of 0.9 lei/ha, price used by company to the market of rape collected.

By multiplying the average production per hectare in kg and the market price result the tax base of agricultural production unregistered in 2009. Additional tax base thus obtained is taxable at a rate of 19%, which has established a difference in the amount of VAT collected of 15.168 lei. Company X Ltd, for this culture of rape that were found damage draws Note accounts no. 7 and collect VAT in the amount of 11,660.85 lei, this amount also enroll her 15 rows - adjustments to the VAT tax collected for the month of February 2010. Additional tax base thus obtained is taxable at a rate of 19%, for which result a difference in the amount of VAT collected by 3.507 lei (15168-11661).

By comparing data on cultivated areas of accounting's entity with APIA (Agency for Payments and Intervention in Agriculture) report have noted the following:

- The data analysis from APIA report result an area of 20.69 hectares of wheat and 772.90 hectares cultivated with rape but trader only accounted rape cultivation of an area of 250 hectares.

- For area 543.59 hectares (793.59 to 250), planted with rape and wheat which received subsidies for culture, the company has not recorded in the financial accounting income from these crops.

- Tax inspectors proceeded to estimate the unrecorded production by SC X SRL on the surface of 543.59 hectares which benefited from subsidies and unregistered as being cultivated in the accounts of the company.

- The taxable amount of 864.172 lei additional obtained is taxable at a rate of 19 %, and determines a difference of VAT collected to the amount of 164.193 lei.

- Hall of Y Village notify us with the address no. 32 registered at Timis - AIF DGFP no. 85 that, in 2009, the company X SRL is listed in the agricultural land register with an area of 105.32 hectares, soybean acreage in its entirety.

- Hall of Z Village in the letter no. 15 registered at Timis - AIF DGFP no. 80 informs us that in 2009 the company is listed in the agricultural land register with an area of 788.34 hectares, of which said crops over an area of 200 hectares of maize and an area of 200 acres of soybeans.

- Comparing data from the two municipalities with the data reported and recorded in management accounting and financial records of the company it appears that in 2009 the company X SRL has unrecorded expenditure and revenue accounting for soybeans and corn in the areas declared as being cultivated in these villages.

According to art. 67, al. (1) of Ordinance 92/2003 regarding the Fiscal Procedure Code - republished, subsequently amended and supplemented, if the tax authority cannot determine the tax base, have to estimate it, in which case based on all relevant data and

documents that should be considered in order to estimate it, and all facts which are closest to the tax situation.

Under those mentioned above, were calculated by estimating the income unregistered in the accounts made by harvesting of corn and soybeans from the areas of notified city halls as planted amounting to 854,224.94 lei, and calculated as follows:

- 105.32 ha soybean x 1408 prod. medium/ha x 0.96 lei (price) = 142,358.94 lei;
- 200 ha maize x 3295 prod. medium/ha x 0.67 lei (price) = 441,530 lei;
- 200 ha soybean x 1408 prod. medium/ha x 0.96 lei (price) = 270,336 lei

Supplementary, to the total estimated income 854,224.94 lei have to calculate VAT collected on the basis of art. 14, para. (1) of Law 571/2003, as amended and supplemented, in the amount of 162,303 lei (854,224.94 x 19%).

For forensic accountant was established by the criminal investigation body, the following **objective**:

To establish whether the estimation of the tax base with the consequent of establishing additional VAT payments obtained as a result of comparing agricultural production by the company during the period checked with the average of agricultural production made in Timis county in the same period, was made in accordance with art. 67 GEO. 92/2003 and Government Decision no. 1050/2004.

Through the work performed by expert legal accounting expertise has made the following answer:

Article 67 of Ordinance no. 92/2003 regarding the Fiscal Procedure Code provides regarding the estimation of the tax base that:

(1) If the tax authority cannot determine the size of the tax base, it must have to estimate it. For this purpose, have to take into account all the data and documents relevant to the estimation. Estimation means to identify all those elements that are closest to the facts of tax.

(2) In cases where, by law, the tax authorities are entitled to estimate the tax base, they will take into account the market price of the transaction or taxable property as defined by the Tax Code.

Also, rules for the application of Government Ordinance no. 92/2003, approved by Government Decision no. 1050/2004, specifies that the estimated tax base will occur in situations such as:

(a) the taxpayer does not submit tax statements or does not allow the correct assessment of the tax base;

(b) the taxpayer refuses to cooperate in determining the actual fiscal situation, including situations where the taxpayer obstructs or refuses fiscal inspection;

(c) the taxpayer does not lead accounting or tax;

(d) the disappearance of the accounting records and supporting documents on the transactions of tax or income producing and the taxpayer did not fulfill the obligation of restoring them.

Follows from the above result that the tax inspection authority proceeded to estimate the tax base as a result of comparing the production of rape made by the company with average agricultural production achieved in Timis county, in violation of art. 67, para. (1) and (2) of Ordinance no. 92/2003 and Government Decision no. 1050/2004, because the company does not fall into any of the categories mentioned above. at a – d. Moreover, tax inspection authority does not argued correctly because the company would have to obtain rape yields in production environments of Timis county, without regard of soil characteristics, resulting from the company statements it was only in the first crop year, after 20 years of non-use, and other factors physic - chemical and efficiency, but for these

aspects inspectors must rely on the conclusions of specialists.

Regarding the estimation of producing corn and soybeans to forensic accountants have been provided by the company as follows:

- Certificate no. 26 issued by the Village Hall Y showing that SC X SRL is included in Agricultural Register in 2009 with a total area of 205,32 hectares sown with soybeans, but we have to consider that the entries in the Agricultural Register are only declarative in nature;

- Notice no. 12 issued by the Village Hall Z showing that SC X SRL appearing stated in 2009 in Agricultural Register of village Z with a total area of 841,36 ha of agricultural land used, property held and declared to be cultivated 200 hectares of maize, soya 200 ha and 441,36 ha area was declared uncultivated, also we have to consider that data are recorded in the Agricultural Register at declaratory nature, representing cultures plan considered by farmer crop year in question and the registration not prohibit the farmer to change the culture plan.

Of the two documents issued by Village Hall Village Hall Y and Z , it follows that the lands are registered in the Register of Agricultural declaratory nature , representing a forecast of what is to be cultivated and not proof that those cultures have actually achieved declaring may change the plan said crop.

Therefore, given the fact that the accounting SC X SRL, in 2009, does not reveal any expense of corn and soybean crop establishment claim the tax authority that the company would have obtained yields of corn and soybeans is not substantiated documented as a mere speculation.

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Also, available to the forensic accountants was put a address forwarded by the SC X SRL to APIA that, the new leadership of the company, notify the agency that the area of 793,59 ha declared in 2009, only 250 ha were actually grown and that there are doubts about the correctness of the rest of the area declared and cultivated, in this case 543,59 ha, therefore return the amount of 100.351,66 lei, corresponding to that surface as OP no. 12.

CONCLUSIONS

In conclusion, forensic accountant`s report shows that the estimation of the tax base, with the result of establishing additional VAT payment, as result of comparing agricultural production of the company during the period with the average of agricultural production made in Timis county, was made in breach of art. 67 GEO. 92/2003 and Government Decision no. 1050/2004.

From the example above result the probative value of forensic accounting as scientific research performed by accountants experts in dispute which result from misapplication by tax inspectors of the procedure for estimation of the tax base by comparing the effective agricultural output of SC X SRL in a given period for specific crops with agricultural production environments made in Timis county, in violation of tax laws on the matter, and without taking into account the peculiarities of work of the company.

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