

Carmen COMANICIU, Ph.D. Professor
“Lucian Blaga” University
Faculty of Economic Sciences

FEW COORDINATES OF THE TAX INCENTIVES IN ROMANIA

Abstract: *Each taxpayer willingness to pay as little in taxes and duties can be materialized by the benefit provided by tax incentives. Tax incentives are an essential component of the technical elements required for sampling, and they appear as economic and social policy measures, with a stimulating role. Without claiming a comprehensive approach, through this paper, we refer to the typology, methodology and effects of granting tax incentives, trying to specify for which tax relief is granted, who are awarded and for whose benefit they were designed.*

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JEL Classification: *E62, H21, H30*

Action functions of public finance for and distribution control, reflected in attracting public resources, allocation public resources, redistribution of national net product, stabilizing the national economy, boosting national economy, coordination demand and economic setting priorities, highlights the need for tax incentives for certain categories of taxpayers or to certain fields, depending on their status and conditions for operation. Therefore, must defined the concept of tax incentives and identified those elements which highlight the need to apply.

Tax incentives are part of the technical details of tax obligations and is economic and social policy measures relating to exemptions,

postponements or rescheduling of the total or partial payment of taxes and contributions.

Frequently asked questions like: What is the role of tax incentives? What are the effects of fiscal facilities at micro and macro economic level?

In this sense, ***the purpose of tax incentives*** is not to give tax benefits to certain categories of taxpayers in violation of the principle of taxation relating to non-discrimination, but to ensure a conducive climate to improvement and development.

At first view, granting tax concessions to taxpayers bring benefit only those taxpayers receiving of fiscal incentives, in the sense that they will have more cash resources for further work. At the public financial resources, it is considered that these facilities will attract income tax reduction, level which may be correct through increased tax burden for those who do not have facilities.

Based on these considerations, it requires that ***the action of providing tax incentives must produce beneficial effects at micro and macro economic level***, by:

Identify phenomena and processes taking place at national level and the economic and social tasks arising from these, to determine first, which taxpayers/activities which may fall outside the tax liability, and secondly, which are conditions to be met to qualify for tax relief;

Determination of endogenous and exogenous factors affecting economic and financial performance of companies, to enable them to promote direct investment with significant impact on the economy;

Broadening the tax base by applying the partial exemption from tax obligations, thus ensuring increased budgetary revenues;

Ensure greater flexibility and mobility to adapt to market requirements;

Existence of clear and concise rules, which does not give rise to any arbitrary and should be known in advance by taxpayers;

Specify the exact period for action of tax incentives;

Appropriate action of control function to those receive tax relief;

Sanction those who use tax incentives for deliberate circumvention of tax obligations, thus bringing serious damage to central or local government budget.

Legal provisions on tax incentives lead us to identify their typology:

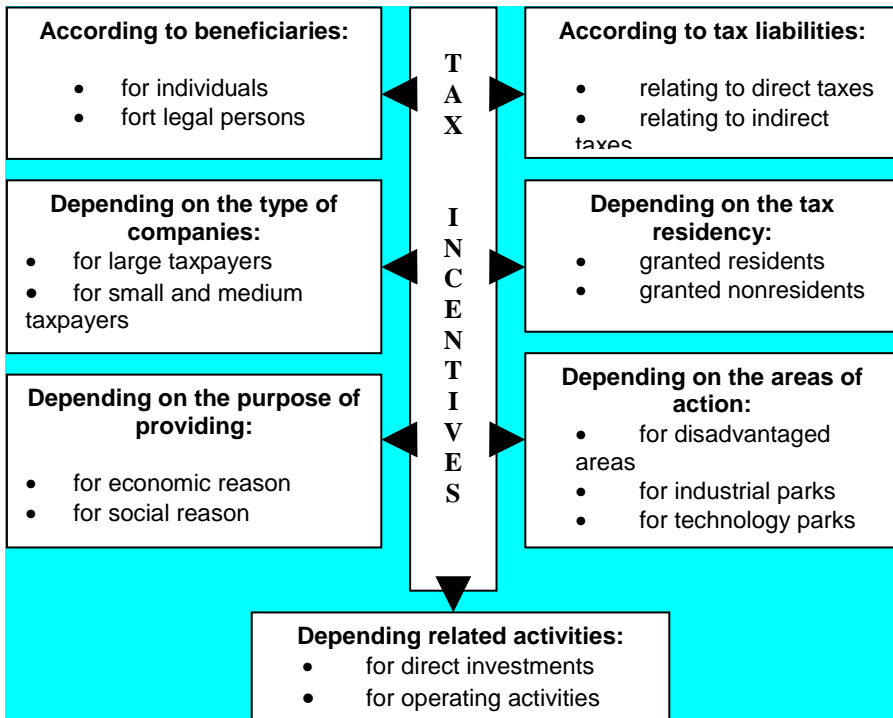


Fig. no. 1 Types of fiscal incentives

Specificity of tax incentives does not allow, in the present study, their whole approach. Thus, we present some of these facilities, except that all tax provisions contain, in greater or lesser measure, reference to total or partial exemptions from tax liabilities.

Tax incentives for corporate taxpayers

According to legal regulations, since 1 January 2009, corporate taxpayers receive a series of tax incentives, aimed at following¹:

calculating taxable profits, for research development: additional deduction of 20% of eligible expenses for such activities, which is calculated quarterly or annually; application accelerated depreciation method for equipment and equipment for research and development.

dividends reinvested: exemption from tax on dividends, when reinvested dividends, in order to preserve and increase jobs for new business development; exemption from tax on dividends to dividends

invested capital of another Romanian legal entities to create new jobs for its business development.

limita de deductibilitate a contribuțiilor la sistemul de pensii facultative: majorarea limitei de deductibilitate a contribuțiilor la sistemul de pensii facultative din veniturile din salarii, de la 200 la 400 euro, pentru fiecare participant într-un an fiscal.

limit the deductibility of voluntary health insurance: increase the limit from 200 to 250 euros made in a fiscal year.

gains capital market: profit of romanian legal entities from trading equity stocks on authorized and supervised market by the National Securities Commission (NSC), in period 1.01.-31.12.2009, was not taxed, income from such transactions are un-taxable income when calculating income tax; losses from trading securities, other than shares and securities in the case of closed, recorded during fiscal year, compensated at the end of the fiscal year with earnings of the same kind made from trading securities during fiscal year; profits of foreign legal persons for participation in trading securities on authorized and supervised market by the National Securities Commission, is not taxable.

B. Legal persons eligible for tax incentives to local taxes under the Local Council's decision. By providing these facilities, aimed at regional development, supporting SME development, increasing labor employment, balanced development of all areas, economic stimulate, realization of tax benefits to the local budget for long periods, and supporting young people to establish small and medium enterprises. Local councils can establish criteria to be or not fulfilled by legal entities to benefit from these tax breaks. In this respect, may be granted a reduction in percentage (ex 20% reduction granted by the Local Council Eforie, for fiscal year 2010, for buildings and land taxes owed by corporate) or may be granted full exemption, where investments above a certain value (ex. building tax exemption granted by the Local Council Brasov, for fiscal year 2009, where the investment value is more than 500,000 euros in construction of new buildings).

C. Employers can receive tax incentives when hiring unemployed and graduates. Thus, if the hiring is done to unemployed who are over 45 years or are unique support to their families, firms are exempt for a period of 12 months, from contributing to the unemployed and receive, monthly, for each employee 523 lei, being required to provide employees a job at least two years. Companies offering jobs to graduates of educational

institutions are exempt from contributing to the unemployed for a period of 12 months, receive monthly, depending on employee surveys, between 523 lei and 785 lei for each employee.

D. Traders operating in free zones enjoy financial support, consisting in reducing the fee which they charged the free zones administrations (measure valid until 31 december 2011), under concession contracts concluded before 1 july 2002 (under the provisions of HG 1900/2004 matching state aid, granted under Law No. 84/1992 on the free areas). According to data presented by the National Customs Authority, list of existing free zones operating in the community, notified the European Commission by Member States on 01.01.2007, included for Romania: Free Zone Curtici Arad; Free Zone Galati; Free Zone Giurgiu; Free Zone Braila; Free Zone Sulina, Free Zone South Constanta and Basarabi.²

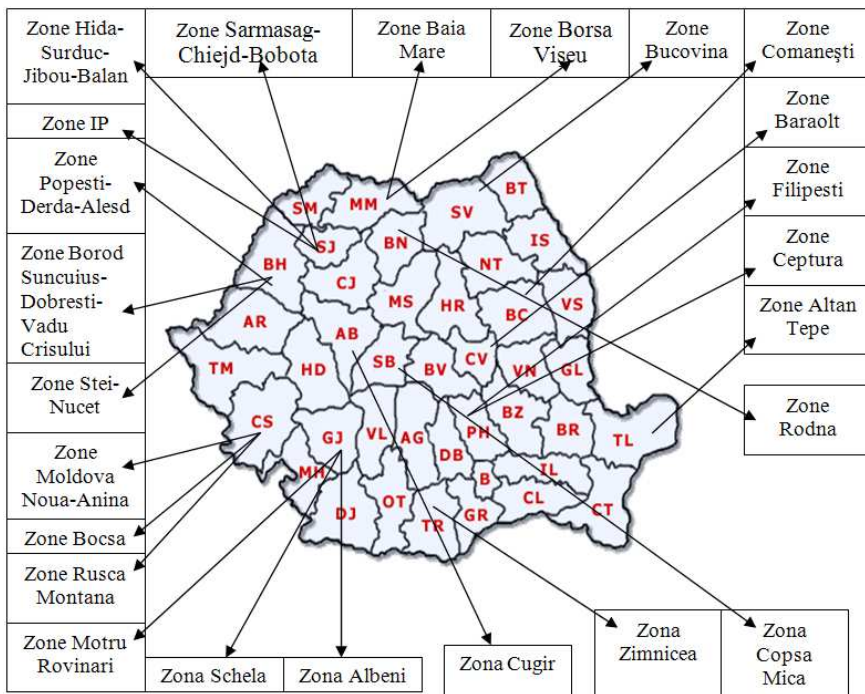


Fig. no. 2 Disadvantaged areas for the period 01.04.1999-15.12.2010

E. Business entities that operate in disadvantaged areas benefit from reductions or exemptions from income tax for new investments, during the existence of disadvantaged area, only if obtained before 1 July 2003 permanent investor certificate in disadvantaged areas. In the years 2009-2010³, disadvantaged areas which were also provided tax incentives include:

- for period 01.04.1999-01.04.2009, disadvantaged areas were declared in 20 counties: Bacau, Bihor, Caras Severin, Covasna, Gorj, Maramures, Prahova, Salaj, Suceava, Tulcea;
- for period 12.12.2000-12.12.2010 was declared one disadvantaged area in the county of Bistrita Nasaud;
for period 15.12.2000-15.12.2010 two disadvantaged areas were declared in the counties of Sibiu and Teleorman.

Tax facilities for individuals owning land and buildings

Based on legal provisions, Local Councils may decide to grant tax relief to individuals, for taxes on buildings and land, having regard to the financial situation of these people. Individuals eligible for exemption from taxes on land and buildings must meet the following conditions:

- individuals do not have any income or revenues consist exclusively of social support: person does not realize any income or revenues come exclusively from social welfare; person may not hold more than one property.
- individuals with income less than or equal to the national gross minimum guaranteed salary: total monthly income per family (for family members who have the same home with the petitioner) be less than or equal to gross minimum wages by country; the petitioner may not hold more than one property; tax for the fiscal year have not been paid previously application for the grant request facility; area of dwelling, seeking relief from tax, depending on the number of people, must not exceed the area covered by Law No. 114/1996 (updated) on housing.

Tax relief for students

Students who want a business establishment has a series of tax incentives that entail exemption from payment of fees and charges.⁴ Facilities are granted only once to form a single firm.

To qualify for this exemption, a student must meet the following conditions: attending accredited institutions of higher education; be at least second year of study, with promotion of all obligations under the University Senate; did not exceed 30 years of age.

Once satisfied, for establishment of their business, students receive exemptions from duties and charges on:

- registration operations conducted by the National Trade Register;
- operations by Single Office of the trade registry;
- support services provided by the trade registry to record the establishment of traders;
- a license dealers;
- obtained authorization from local government to conduct independent economic activities;
- publication of the statement in the Official Gazette;
- notarial services, related acts for which their conclusion is under obligation to form.

Tax relief for people with severe disabilities

According to the law⁵, people with severe and emphasized disabilities enjoy the following tax incentives:

- exemption from tax on income from wages;
- exemption from tax on buildings and land;
- exemption from tax on cars, motorcycles with sidecars and motorcycles adjusted disability;
- exemption authorization fee for economic activities and operation of their annual target;
- exemption from tourist tax;
- free to use suitable parking spaces reserved and marked with the international sign of the parking spaces near public buildings, as well as those organized
- exemption from tariff for using the national road network (vignettes).

Tax relief granted to the heroes and survivors heroes of the December 1989 Revolution

Under Law no. 42/18.12.1990 ⁶ is done honor and memory perpetuation to those who have sacrificed their lives for the revolution, appreciation and gratitude for those who were wounded in fighting,

appreciation to the direct participants in actions for the revolution, appreciation to the descendants of the heroes of the revolution.

In terms of tax, descendants of the heroes-martyrs of the revolution, wounded, and disability pensioners who have lost all or part of work capacity in the fight for revolution enjoy the following facilities:

- priority to hire and purchase housing of state fund;
- credits for purchase or construction of housing in the most favorable conditions provided by law;
- free access to treatment and counseling in hospitals and clinics of the Ministry of Health and Ministry of National Defense;
- medicines and prostheses free of charge;
- exemption from taxes on buildings and related land, for car hycomat and and radio-TV subscription;
- exemption from tax on income;
- possibility of aggregation pension with any other income;
- scholarships for students in state schools, regardless of income, for children of heroes, martyrs, disabled or wounded revolution;
- priority to employment in state companies;
- providing an area of land under the Land Law.

Beneficiaries of tax facilities are on the one hand, individuals belonging to the categories that require the social protection or make activities in areas relevant to economic development growth, and secondly, by legal entities which contribute significantly at growth and development of an area or sector.

To qualify for total or partial exemptions from payment of compulsory levies, taxpayers must demonstrate that the criteria are met and to assume responsibility that, any changes to initial requirements will be notified to the competent insitutions within the time specified. All these elements come to support that *tax incentives should act as levers of economic and social opportunities not as evading tax obligations.*

Sometimes, statistics are presented by the competent insitutions put in doubt what we are specified above. All people who currently benefit from tax relief are entitled to this benefit? Does public finance control function was performed properly? The answer to these questions can be provided only by competent authorities. We try to present some case, leaving the reader to ponder...

a) According to data presented on the website <http://www.revoluție89.info>, there are a total of 10 lists of persons eligible for nr.42/1990 Law. Each list has a different number of persons, namely: List of official monitors – 51.576 people; Presidential List – 25.449 people; List of files in SSPR – 66.566 people; List of files sent for approval from SSPR to CPRD – 14.935 people; List of approved files for CPDR – 14.017 people; Certificate list from Law 341 – 25.069 people; List with the same number of certificates issued by many names - 761 persons; List the various court processes – 1.206 persons; List of acquired rights – 5.454 people; Various lists – 3.124 persons. These data lead us to ask questions such as: How many people actually benefit from tax relief? There is a rigorous scrutiny of how these facilities have been acquired?

b) According to statistics, the number of disabled people in Romania increased from 74,000 persons in 1992 to 437,024 persons in 2002 (an increase of almost six times)⁷. On September 30, 2009, according to data from the National Authority for Disabled Persons⁸, the number of disabled people was 669.523 people, which represented 3.11% of the population. And these data lead us to ask questions such as: Criteria for inclusion in the category of persons with disabilities are well established or are very „elastic”? The case assessment process is conducted properly?

c) Declaration of the disadvantaged areas was seen as a source of economic recovery and create jobs. Attracting investors to these areas could not be achieved only through tax incentives, such reduction in tax obligations. Many investors have shown interest in the facility for disadvantaged areas, but it appears that the impact on infrastructure and living standards in these areas has not increased dramatically. Why? Because the ability of certain entrepreneurs, obtain the certificate of investor in disadvantaged areas, has not generated investment in those areas, but circumvent the tax authorities. What is the explanation for those companies that have benefited from facilities three or four times their investments made? According to data from the Ministry of Development and Prognosis, in late 2000, in three of the seven regions that were deprived areas, share facilities far exceeded the value of investments (facilities volume in relation to invested capital, representing in the South East Area 140%, in South Zone 120% and in Center Zone 104%.⁹ And this time, it can be said that the control function of public finances has not exercised properly.

Negative examples could go on ... Stopping them can be done if the role of tax incentives will be fully understood by all taxpayers (respectively, stimulating factor in economic and social development), and policy makers who will check closely and receiving tax breaks.

In this respect, it is essential to examine the impact of any tax advantage in the overall balance, because the positive in a given sector, can attract a negative impact in other sectors. Provide tax incentives in a given field must take into account all constraints in that area, to avoid negative responses to the fiscal stimulus action. Actions to grant tax incentives must be taken in a framework that involves optimizing all the objectives of fiscal policy.

Notes:

1. according to the Ordinance 127/2008 (published in Official Gazette 705/2008) and OUG 200/2008 (published in MO 815/2008) to amend Law 571/2003 on Fiscal Code
2. http://www.customs.ro/ro/agenti_economici/proceduri_vamale/zone_1_iber_si_antrepozite_libere.aspx
3. see in this regard, Annex 2 „Unfavorable areas”; published on the website <http://www.mai.gov.ro>
4. according to HG 166/13.02.2003 on granting tax breaks for students wishing to start their own business, published in Official Gazette 114/24.02.2003
5. see Law 448/06.12.2006 on the Protection and Promotion of the Rights of Persons with Disabilities, Law 207/02.06.2006 approving Ordinance 86/2008, Law 448/2006 amending Law 359/20.11.2009
6. Law No. 42 of December 18, 1990, republished, for honoring heroes, martyrs and to grant rights to their survivors, the wounded, who were detained during 16-22 decembrie 1989 as a result of participation in the revolution actions, and those who participated directly, during 16-25 December 1989, fighting for the Revolution in December 1989, published in Official Gazette 204/21.08.1992
7. <http://www.curierulnational.ro/Specializat/2003-02-03>
8. <http://www.anph.ro>
9. <http://www.capital.ro/articol/zone-defavorizate-sau-paradis-pentru-frauda-4042.html>

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- 1.** HG 166/13.02.2003 on granting tax breaks for students wishing to start their own business
- 2.** Ordinance 127/2008 to amend Law 571/2003 on Fiscal Code
- 3.** OUG 200/2008 to amend Law 571/2003 on Fiscal Code
- 4.** Law 42/18.12.1990, republished, for honoring heroes, martyrs and to grant rights to their survivors, the wounded, who were detained during 16-22 decembrie 1989 as a result of participation in the revolution actions, and those who participated directly, during 16-25 December 1989, fighting for the Revolution in December 1989,
- 5.** Law 448/06.12.2006 on the Protection and Promotion of the Rights of Persons with Disabilities
- 6.** Law 207/02.06.2006 approving Ordinance 86/2008
- 7.** Law 448/2006 amending Law 359/20.11.2009
- 8.** http://www.customs.ro/ro/agenti_economici/proceduri_vamale/zone_1_ibere_si_antrepozite_libere.aspx
- 9.** <http://www.mai.gov.ro>
- 10.** <http://www.curierulnational.ro/Specializat/2003-02-03>
- 11.** <http://www.anph.ro>
- 12.** <http://www.capital.ro/articol/zone-defavorizate-sau-paradis-pentru-frauda-4042.html>