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CENTRAL AND LOCAL FISCAL JURISDICTION IN ROMANIA: A TAXONOMY OF PROPERTY TAXATION

Abstract

The study ensures an inventory of Romanian taxation forms under the criteria of taxable object property. It uses a scale based on the components of property, *usus*, *fructus* and *abusus*, to catalogue all taxation forms regulated under the Romanian Fiscal Code. A secondary criterion extracted from legal provisions is the subject of taxation. Furtherly, the study corelates this inventory with the destination of the revenue, hence the financed budget. It shows that some taxes have a more holistic approach on property as part of an activity flow, while others target property directly. To assess these contents, the study implies answering a quartet of questions: "who?", "what for?", "what from?", "how much?". The explicit responses allow us to identify the subject of the tax; the chargeable act or fact; the taxable base and rate of each tax. This common base is further transferred in a budgetary key and measured as to the contributory force to central and local budgets. The normative budget factor of distributing revenues from central to local authorities is also illustrated.

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1. Introduction: hypothesis, issue, method

Taxation attaches to a chargeable event with patrimonial content; it is a universal rule that determines the rather secondary nature of fiscal effects in relation to the patrimony. The dimensions in which taxation rules bond to property could be organised on two axes: one considering the time factor and another the intent factor. Being such, patrimony can have a taxable relevancy *per se*, or it could be a frame taxable unit. This plurality of hypotheses raises the issue of our study as it is the legislators royal attribute to choose amongst these shapes and even to territorially distribute taxation forms. Hence, taxation appears as the place where two wills meet: the will of the tax legislator and the will of the taxpayer. The criterion of this inevitable interaction is generically ensured by tax law and met when and where a taxable person chooses to conclude a legal act or participate in an event indicated by the prior.

Our study brings forward an analysis of the Romanian state of the arts in the matter of property taxation following the thread of the Romanian Fiscal Code, with an accent on the local revenues generated through taxation means.

The method used is the analytical legal research, with the objective to expound legal concepts, principles, and jurisdiction of these forms of taxation, focusing on legal doctrines, theories, and concepts. The means to create this analytical legal research are logical reasoning, deduction, and critical analysis.

The study will be constructed on the axes previously mentioned, questioning the subject factor and the object factor in shaping different forms of taxation with an inquiry on the decision of centralising or decentralising these forms. The intrinsic method in tax analysis is intuitive and implies answering a quartet of questions: “who?”, “what for?”, “what from?”, “how much?”. The explicit responses allow us to identify the subject of the tax; the chargeable act or fact; the taxable base and the rate of each tax.

2. The first step: sorting property taxations forms

Patrimony is an autonomous concept, defining the ensemble of all the rights and obligations that can be evaluated in money, belonging to a natural or legal person [Lipcanu 2009: 69–75; Sferdian 2012: 156–170; Stoica 2013: 13–23]. The patrimony is a legal construct incorporating all active and passive elements; this duality of components allows an overall evaluation of the patrimony as deficient, surplus, or balanced in a pecuniary sense. The patrimony might acquire a plural dimension when affection patrimonies are formed through an intentional element of the holder to organise patrimonial masses around a common purpose.

The unit for measuring patrimony is given by *goods – assets (eng.) – res (lat.)*, qualifiable as tangible or intangible, consumable or non-consumable, movable and immovable, fungible or non-fungible, divisible and non-divisible, main assets and accessory assets [Sferdian 2013: 41–57; Ungureanu 2012: 117–128]. According to civil norms, *assets are things, tangible or intangible, that constitute the object of a patrimonial right* [Romanian Civil Code: Art. 535] – in our case, property. Property also knows a legal definition derived from its main attributes as consecrated by roman law – ... *property is the right of the holder to possess, use and dispose* (*usus*, *fructus* and *abusus* – lat.) *of a good exclusively, absolutely, and perpetually, within the limits established by law*. Considering these three coordinates: pecuniary dimension, variety and inherent dynamic, goods become relevant as they enter, stay in, or leave a patrimony or a patrimonial mass.

Hence, the tax norms place fiscal relevancy on these mobile elements by the will of the Sovereign [Codrea 2023: 309–312]. When we are unable to divide sovereignty in principle, we "divide it according to its object: into force and will, into legislative power and executive power, into rights of taxation, justice and war (...)" [Rousseau 2008: 75] and in a first lecture of the Romanian Fiscal Code, one can spot a variety of shapes:

Object of taxation	Form of tax	Taxpayer	Financed budget
Taxation of generated property – usus, fructus, abusus	1. Profit Tax	Legal person	Central
	2. Micro-enterprise Tax	Romanian Legal person	Central
	3. Revenue Tax		
	3.1. Independent activities	Natural person	Local-distributed
	3.2. Copyright	Natural person	Local-distributed
	4. VAT		
	4.1. Supply of goods	Final consumer	Central
		Natural person	
Taxation of products or fruits – fructus	5. Profit tax	Legal person	Central
	6. Micro-entreprise tax	Romanian Legal person	Central
	7. Dividend tax	Legal person	Central
	8. Revenue Tax		
	8.1. lease;	Natural person	Local-distributed
	8.2. agriculture;	Natural person	Local-distributed
	8.3. investments	Natural person	Local-distributed
Taxation of property in itself – usus	9. Real estate property tax	Natural person	Local-local
		Legal person	
	10. Means of transportation property tax	Natural person	Local
		Legal person	
	11. Construction tax	Legal person	Central
	12. High-value goods property tax	Natural person	Central
Taxation of transfer of property – abusus	13. Profit tax	Legal person	Central
	14. Revenue Tax		
	14.1. Transfer of personal real estate	Natural person	Central

Source: author's own elaboration.

3. Second step: who's who and what's what?

Our study focuses on a specific object of taxation: property and its derivatives, hence apparently, we would state a limited object of taxation. This limitation is rather scarce since under an economic lens taxation targets goods and services. In the above-mentioned classification of goods, we underlined a difference between material and de-materialised assets, which in a taxation lecture are qualifiable as services. Therefore, the answer to "what for?" in the purpose of this study will be limited to chargeable act or fact regarding goods, in both dimensions: material assets and de-materialised ones. Taxation of property is keen to the division of assets especially under the criteria material-de-materialised, consumable-non-consumable and to the targeted element of property: *usus*, *fructus* and/or *abusus*.

Property – fiscal relevancy

Usus	Fructus	Abusus

• Profit tax
• Revenue Tax
  • Independent activities
  • Copyright
  • Agricultural activities
• VAT
• Excise duty
• **Construction tax**
• **Real estate tax**
• **Means of transportation tax**
• **High value good tax**
	• Profit tax
	• Micro-enterprise Tax
	• Revenue Tax
	  • Independent activities
	  • Copyright
	  • Agricultural activities
	  • Lease contracts
	  • Investments
	• VAT
		• Profit tax
		• Micro-enterprise Tax
		• Revenue Tax
		  • Independent activities
		  • Copyright
		  • Agricultural activities
		  • Investments
		  • **Real estate sale tax**
		• VAT
		• Excise duty

Source: author's own elaboration.

3.1. Taxation of generated property: usus, (fructus) and abusus

Who? In the grand scheme of the Romanian Fiscal Code (RFC from hereon), the answer is everyone, including companies in all forms and shapes, non-profit entities, natural persons as holders of an enterprise, self-employed persons, all other entities, even if lacking legal personality regardless of their nationality, all Romanian entities and all foreign entities acting throughout a Romanian permanent establishment. Exemptions are regulated through different normative techniques such as expressly indicating non-taxpayers or exempted revenues – in case of legal persons or detailing specific working

hypotheses for natural persons. The motivation for exceptions is either *intuitu personae* undertaking public entities or subjects with special status or *ratione materiae* excluding a certain type of revenue for the taxes scope. The most comprehensive definition with jurisprudential accents for a generic concept of economic activity correlated with exerting property right in all its dimensions could be extracted from the VAT provisions [Costea 2013: 21]: generically, non-profit activities do not fall within the definition [ECJ, C-150/99]; the preparatory activities fall within this scope; the economic activity is a direct activity with involvement in economic decisions. Involving an element of public authority in the activity does not exclude it from the scope of economic activities with specific normative exemptions, where the "market" is hosting also private initiative.

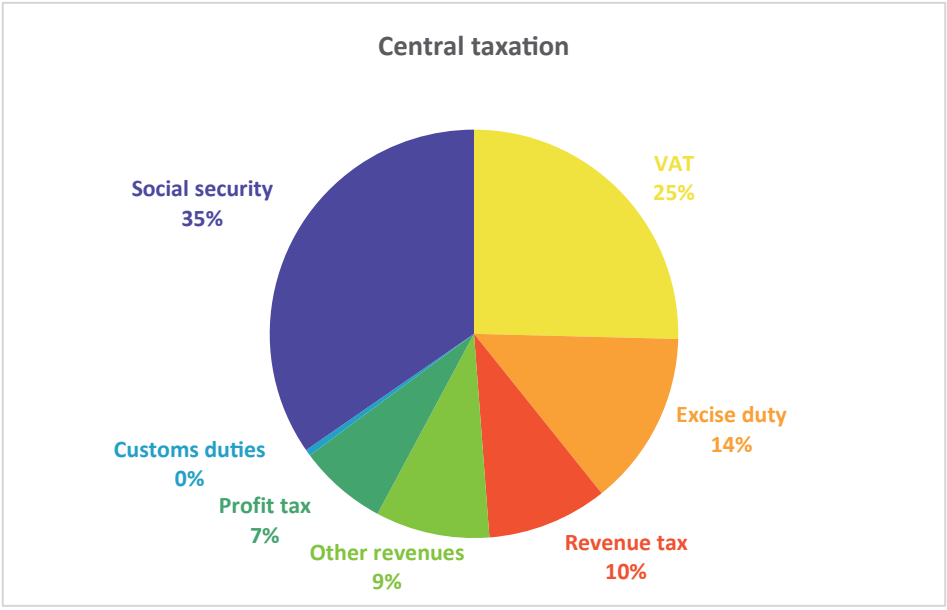
What for? In a dual perspective, goods are part of an enterprise in two dimensions: 'incoming' goods – supplies for the economic activity – and 'outgoing' goods – results of the economic activity. In some cases, including VAT, the legislator enumerates a series of actions with economic nature with an illustrative purpose: production, trade, services, mining, agriculture, and professions [Ţâţu, Brăgaru, Sasu 2011: 114] and usually doubles this enumeration with *et alia* element. The incoming goods are fuelling the economic activity as an expense, along with other expenses. The mediate or immediate result of an enterprise resides in generating goods or services; in some cases – retail commerce, e-commerce, the transformation is minimal or non-existing. In the main frame, an economic activity rendered through legal acts or facts will have (i) an internal dimension within the enterprise, under the form of production of goods in industry, agriculture, mining, electricity generation, copyright, and (2) in due time an external dimension, taking the form of self-consumption, including lost property (more infrequently) or the form of a translative legal act (in most cases), resulting from an agreement of the participants to a bilateral, onerous report [ECJ, C-16/93], even if it lacks enforcement, in exchange of a fee [ECJ, C-498/99]. As to the fiscally relevant dimensions of the property right, in a general approach, under the umbrella of economic activity there is no distinction between its attributes: *usus*, *fructus* and *abusus*. *Usus* is treated as a revenue where it presents itself as self-consumption or is incorporated even obliquely in the delivered goods; *fructus* is relevant as the source a new good, object to further *usus* or *abusus* (natural fruits or industrial fruits) or as revenue from exploitation (civil fruits); *abusus*, the most obvious element, is always (except for *animus donandi* acts permitted by fiscal law) equivalent to a revenue source. More

often, the delivery of a good *lato sensu* will generate revenues for the taxpayer as it is almost implicitly correlated with a consideration. In the grand scheme of things, an economic activity is characterised by continuity and is translated for the legal mindset as an infinite succession of contractual bonds regarding goods as forms of exerting property or its derivatives. This contractual bond could arise from a classic, named contract, such as sale, exchange, supply, repurchase, construction works, works with suppliers' material, deposit of fungible goods, disputed property transaction, or an unnamed contract involving a plurality of reciprocal benefits incorporated in any kind of asset, such as sale and transportation, sale and assembling, building and maintenance. The principle of fiscal neutrality does not differentiate between legal and illegal operations.

What from? The aim of an economic activity is profit, *animus lucri*, conceptualised as the difference between the value of incoming goods and services and the value of outgoing goods and services for a given period. Due to the nature of the enterprise, both dimensions are evaluated or evaluable in monetary dimensions: *price*, *fee*, *consideration*, regardless of its nature, payer, or time of chargeability. The ECJ jurisprudence emphasized since early stages the onerous nature of the taxable activity, *which is due only if … is provided for a fee (...) so there must be a direct link between the services provided and the consideration received* [ECJ, C-154/80]. The link between the two results, incoming – expenses – and outgoing – revenues – is 'a must' in the fiscal matrix; tax law consequences depend on this link [ECJ C-334/20], with significant jurisprudential nuances [Varju 2019: 324–334; Kristoffersson 2016: 121–125; Terzea 2014: 34; Lamensch 2017: 129–137; Nagy, Zilahi 2019: 68–76; Dmowski 2023: 6–17; Merkx 2018: 53–75]. This is a constant in all taxes connected to economic activity (except for Romanian micro-enterprise tax), hence, also in the case of the supply of goods: profit tax, revenue tax (under certain forms: independent activities, intellectual property, agricultural activities, some forms of investments), VAT. In the case of agricultural revenues of the natural person, the legal construct is based on the presumed volume of the activity with a lucrative purpose, and implicitly a redeem process of natural produces. In the case of investments, as generating and/or using financial instruments, the *abusus* element is relevant per se, indicating a chargeable act. The legal fiction is adjusting to the continuity of the activity by dividing it in periods of time for evaluating its results. In modern tax systems, timelines are organised monthly, quarterly, semi-annually, and annually, for computing the result of an activity in search of a taxable mass or a loss, as a result of subtracting deductible expenses from revenues. The right to deduct VAT

is a variety of this legal construct based also on the duality of *'in amonte' – 'in aval'* transactions. The compass for this exploration is the accounting system with its idiosyncrasy as to the treatment of goods: amortization, value of merchandise, price of sale, cost of production, etc.

How much? The division within the tax system between direct taxes – profit and revenue tax – and indirect taxation – VAT and excise duties – allows the public authority to distribute the burden of taxation between economic agents and consumers; this distribution is amongst other determined by the tax rate, which is 16% of the profit for companies and 1 or 3% of total revenues for micro-enterprises; 10% for natural persons; and 19% – with reduced rates of 9% and 5% – for VAT; as for the excise duty, the tax is presenting itself as a lump sum and not a percentage. Hence, Romania's budgetary distribution of taxation revenues in 2022 [NAFA Performance Report 2022], representing central taxation under all its objects, both for goods and services, illustrates a significant accent: 39% on indirect taxation and 10% direct taxation indubitably related to goods and services. The revenue tax is subsequently distributed *in integrum* to the local government: town, city, municipality, or county, under the share quotas rule.



Source: author's own elaboration.

3.2. Taxation of products or fruits – fructus in a more focused approach

Who? The *fructus* dimension is incorporated in the scope of the enterprise and it overlaps with the concept of profit as a surplus generated by the economic activity: natural fruits, such as those that the earth produces by itself, the production and growth of animals; industrial fruits, such as harvests of any kind; civil fruits, such as rents, leases, interest, annuity income and dividends. Taxation is prioritising the entrepreneurial context over the content of the transaction, hence giving main relevancy to the purpose of the overall activity. In this context, no matter what the content of the transaction, the frame of completion will prevail. In principle, an economic activity submitted to profit tax, micro-enterprise or revenue tax is generating taxable mass under the same provisions, regardless of the object of the legal acts it encompasses – exploitation of goods or transfer of assets. In this indeterminate context, some normative accents are obviously generating a separation of the tax effects, based not only on the object of the transaction, but mainly on its subject. For example, civil fruits, such as rents, leases generated by a rental, lease contracts concluded within a professional frame, will attract – depending on nature of the subject – the application of profit tax/micro-enterprise tax in case of legal persons, or revenue tax in case of natural persons. *Per exceptione*, when lacking the specific purpose of professionals and limiting to the mere administration of the personal patrimony, the Romanian legislator tends to customize the tax regime and to autonomize a specific form of taxation. Such is the case of lease contract, fiscally treated under specific regimes according to its object: one for more than five contracts for mobile or immobile goods; one for rooms located in privately owned homes and one for rural goods. Ownership is not a condition for collecting revenues from lease or rural lease, as the contract could be based on a real right or on another title.

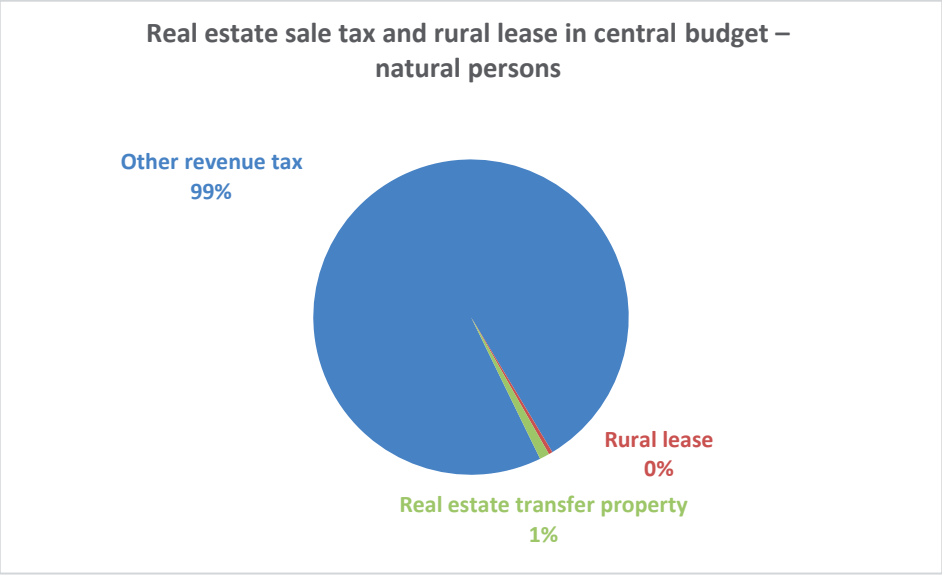
What for? So, professionals' revenues are covered by profit tax or revenue tax [Costea 2024: 151–258; Costaș, Puț 2023: 164–355; Ene 2024: 125–243] entailing, as mentioned above, a flux of transactions, a fluidity between expenditure and revenue. Procuring a leasable good involves expenses directly linked to the future income from lease contracts. This connection is relevant as to the fiscal treatment of both elements, debt, and credit, allowing to determine a profit/revenue or a recoverable loss. This connection is ignored in the micro-enterprise taxation, where all revenues form the taxable mass.

As to the chargeable act, it is represented by the conclusion of one or several contracts (location, rental, lease) that transfer the *usus* and *fructus* of a good, material, or dematerialised, with exception of copyrights, in exchange for a *fee*, *price*, *consideration*, determined or determinable. In the case of natural persons, the fiscal regime considers the number of contracts in force, with a threshold of five contracts as an indication of professional activity.

What from? In the case of legal persons, the equation for computing a taxable base will follow the rules of article 19 in RFC, namely the algorithm to determine the result of the economic activity, profit or loss, comprising fruits within the general results of the legal entity. In the case of micro-enterprises, all revenues are consolidated in the taxable mass. As for independent activities of natural persons (reflected in more than five ongoing contracts), as a rule, the taxable base is determined by the accounting results; in the case of less than five contracts and of rural leas, the taxable mass is assessed in a mixed system, where the revenue is evaluated by the contractual bonds *(fructus)*, including expenses ensured by the tenant, and a *pro-rata* deduction of expenses, in amount of 20% of the revenue. Considering the flexibility of personal patrimony and the individual profile of natural persons as taxpayers – less knowledgeable, less prone to conducting accounts – the Romanian tax legislator organises a simplified model of taxation based on *income quotas*, acting as a presumption for the taxable mass in the case of leasing rooms (from one to five) in personal houses. The quotas are established considering the location of the immobile as to the nature of the locality: a city or a touristic resort. In case of some investment forms, such as bank deposit or dividends, the civil fruits are taxable per se as an addition to the person's patrimony. In other cases, the chargeable base is more autonomous, as is the case stock, foreign currency, crypto assets or investment gold transactions, where fruits are the positive result of two subsequent transactions.

How much? In the case of profit tax, the rate is 16% of the profit; for a micro-enterprise (a nationals' limited exceptional tax), the rate is 1% or 3% from the total revenues, for dividends it is 8%, for natural persons the rate is 10%. All professionals ensure the collection of the tax through the auto-determination system; for natural persons that contract with a legal person, the latter will withhold the tax and pay it to the central budget. As a source of revenue, the *fructus* does not have a real autonomy, except for the case of natural persons acting as non-professionals. Hence, *fructus* is not autonomous as a tax object *per se*, as obviously illustrated in the enclosed graphic

featuring autonomized central taxation of property revenue, in correlation with all revenues from natural persons, underlining *abusus* taxation – real estate sale tax and *fructus* taxation – agricultural lease in 2022 [Romania State Budget 2022]. Following the share quotas rule, these revenues will fuel (via the central budget) the local budgets.



Source: author's own elaboration.

3.3. Taxation of property in itself – usus of non-consumable goods

Who? In a similar manner to the taxation of generated property, everyone can be a taxpayer in this instance, meaning both natural and legal persons, and for the latter, both private law legal entities and public institutions. Some forms of taxation are limited to certain subjects of law, namely the construction tax is owed solely by legal persons, either Romanian legal persons, either foreign legal persons carrying out activities in Romania through a permanent establishment or legal entities with registered office in Romania established according to European legislation. A second limitation in terms of the 'who?' is visible in the case of high-value goods, where the taxation for the ownership of residential buildings with a taxable value of over 2.5 million lei (approx. 500.000 EUR at the current exchange rate) devolves solely upon a natural person.

Several exemptions are established based on personal characteristics of the taxpayer, while others, as we will discuss below, are related to the use or the destination of the property or require meeting the double criteria of being owned by a certain subject of law and used in a specific way. In the case of real estate tax, which includes land tax and building tax, personal exemptions include real estate in the public or private property of the state or of administrative territorial units, real estate owned by foundations established by will for national cultural institutions aid or for humanitarian actions, real estate in the property of public (or in some cases, private) health facilities, in the property of the Romanian Academy, real estate owned or co-owned by war veterans, war widows and by war veterans' widows that have not remarried, etc. For the means of transportation tax, personal exemptions refer in an identical way to foundations established by will or to war veterans, but also to severely handicapped or disabled persons, to means of transportation owned by public institutions or to means of transportation owned by organizations that have the sole purpose of providing social services for free. Finally, in terms of the construction tax, public institutions, national institutes of research and development, associations, foundations, and other legal persons with no patrimonial purpose are exempt from it. Furthermore, the RFC allows local councils – as local governing bodies – to establish other exemptions or tax reductions within the limits set by the law, as a controlled form of fiscal local autonomy [Juchniewicz 2017: 33–43].

What for? In a general sense, both immovable and movable property can generate a form of taxation of property, but in the case of movable property, it is limited to various types of means of transportation, covering auto-vehicles, trailers, semi-trailers, caravans and means of water transport. As mentioned above, the high-value goods tax is owed for residential buildings with a taxable value of over 2.5 million lei, but also for passenger cars registered in Romania with an individual purchase value of over 375,000 lei, and it notably becomes a form of surtax, as it is cumulative with the real estate tax or with the means of transportation tax. We may also note the fact that there is no fortune taxation under Romanian law *per se* and that cherry-picking taxes, even if focusing on certain items and not on the over-all patrimonial active play an incipient role of taxing of criteria of wealth.

The real estate tax, the means of transportation tax and the high-value goods tax arise from ownership, with all the attributes of *usus*, *fructus* and *abusus*.

On the other hand, the construction tax is owed for constructions "existing in the taxpayer's patrimony", which can encompass other real rights, such as the right of use, the right of usufruct, the right of servitude, etc. Furthermore, the construction tax is not to be cumulated with the building tax. Two different forms of taxation, titled "land fee" and "building fee", are visible in the case of real estate in the public or private property of the state or of administrative territorial units that are concessioned, rented, given in administration or in use to any type of entity, apart from public law ones. In this case, the "fee" is imposed on the concessionaires, lessees, holders of the right of administration or use, in the same way as the corresponding tax, which is not owed for the period while the fee is being imposed. These "fees" are only apparently different from the taxes, as they are identical in purpose and amount, while only being levied on different taxpayers. Furthermore, the notion of "fee" is not used with its *stricto sensu* acceptance, that of an amount paid by a taxpayer to a public institution for a service provided by the latter, but with the broader scope of delimiting the subjects of law on which it is imposed.

As previously mentioned, some exemptions are established based on a particular use or destination of the goods, which makes them objective exemptions. For example, funeral buildings and land in cemeteries and crematoriums are exempt from real estate tax, as the same goes for buildings and land used in the public railway system or for the metro infrastructure and for those used in hydro-technical activities or by educational institutions. Historical vehicles, electric vehicles, means of transportation used exclusively for emergency interventions are exempt from the means of transportation tax.

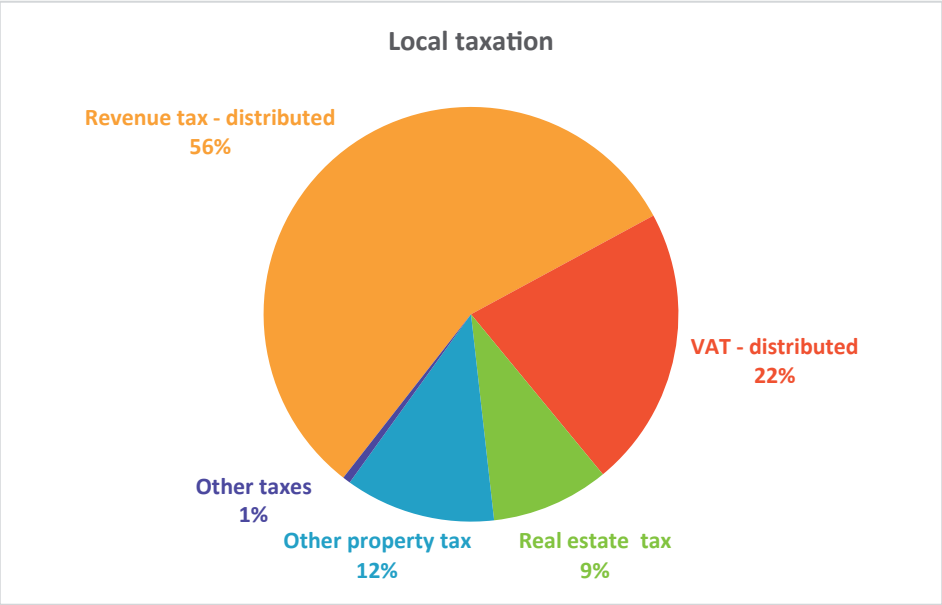
If the exemptions require meeting the double criteria of the good being owned by a certain subject of law and used in a specific way, then these become personal-objective exemptions, such as in the case of buildings owned by officially recognized religious cults that are by destination places of worship. The personal exemptions established for public institutions become inapplicable if the goods are objectively used for economic activities.

What from? In the case of the building tax, the taxable base is given by the taxable value of the building, determined differently depending on whether the building is residential, non-residential or with a mixed destination. For natural persons, the taxable value of a residential building is predetermined by the RFC as a certain value per unit of surface, varying on account of the type

of building, on it having or not water, sewage, heating, and electrical facilities, on its location within a township. For non-residential buildings owned by natural persons and for buildings owned by legal persons, the taxable value tends to be the one established by an independent evaluator through an expertise report. In the case of the construction tax, it is levied on the value of the construction. A rather interesting approach can be found in the case of high-value goods tax, where the taxable base is calculated by subtracting the amount of 2.5 million lei from the taxable value of a building or the amount of 375,000 lei from the purchase value of a passenger car.

How much? The answer to this question is twofold. Firstly, if there is a taxable value determined according to the aspects mentioned above, then the tax is calculated by applying the tax rate to the taxable value. To this end, tax rates vary from 0.08%-0.2% in the case of residential buildings, to 0.2%–1.3% for non-residential buildings, to 1% for construction tax and 0.3% for the high-value goods tax. When the tax rate is provided by the RFC as a range between a minimum and a maximum, each local council will set the tax rate within that range. As a penalty for the non-diligent legal person owner of a building, who did not update the taxable value of it by having evaluation reports done every 5 years, the tax rate increases to 5%. Secondly, in the case of the land tax and of the means of transportation tax, the legislator opts not to determine them as a percentage applied to a taxable value, but rather as a fixed value per unit of measure, with several objective factors being considered, such as the location of the land and its destination or the type of vehicle and engine cylindrical capacity, number of axes or weight.

Most of these types of taxes hold a significant share within the revenues of local budgets – albeit not as great as the distributed revenue tax and VAT – and substantially aid the financing of local communities, as it can be observed in the case of Iași municipality budget for 2024 [Iasi Municipality Local Budget 2024] or in other European countries and cities [Maličká, Lukáčová, Hadačová 2022: 1–13; Vartašová, Červená 2020: 82–104].



Source: author's own elaboration.

However, the state budget for 2024 also "pockets" the construction tax – which by law was stated to be applicable until the end of 2016, yet the provisions regarding this tax have not been repelled so far – and the high-value goods tax. Most interestingly, the high-value goods tax for personal cars is the only tax limited in time, as it is owed only for the first 5 years since the car was handed over and received by the owner.

3.4. Taxation of property transfers – abusus in some special cases

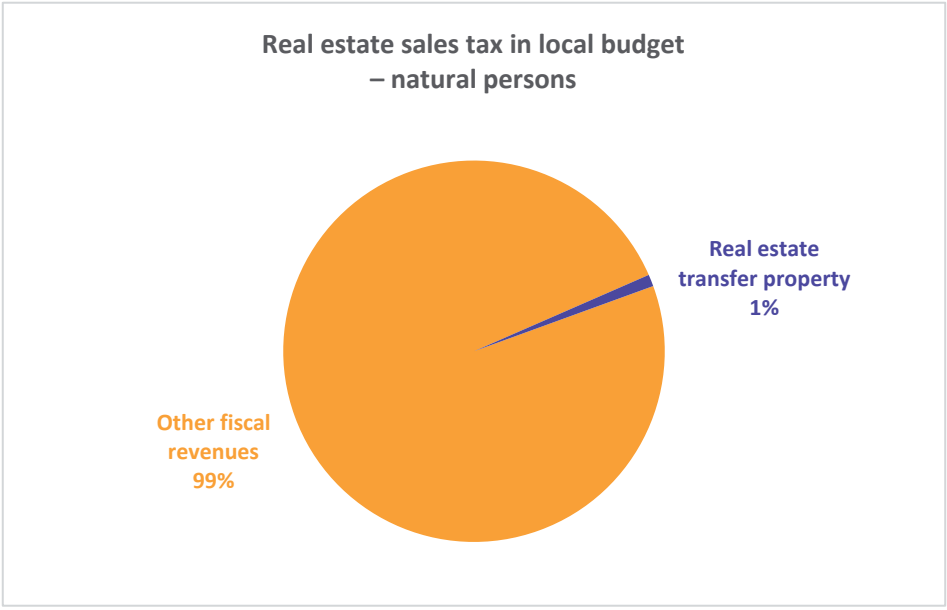
Who? As extensively illustrated above, *abusus* is an inherent part of an entrepreneurial flow; goods are bought, built, generated, produced to be consumed or sold, as the entrepreneur follows his most basic instinct: *animus lucri*. Therefore, taxable *abusus* is largely incorporated into the concept of 'economic activity' and part along with services of direct taxation and indirect taxation. In one specific case, the legislator chooses to give circumstantial fiscal content on the nature of the subject – natural person – and on the subsequent context of action – administering the personal patrimony.

What for? This form of taxation, regulated under articles 111–113 RFC, is due upon the transfer of the right of ownership and its dismemberments (i) by means of legal *acts inter vivos* on constructions of any kind and the lands

related to them, as well as on lands of any kind without constructions or (ii) *mortis causa*, if the succession is finalized in more than 2 years from the date of death of the author. The legal definitions are rather circular as they encompass all immobile assets, the enumeration being superfluous. By means of exception, some transfers are not taxable, such as reconstituting the right of ownership, donation between relatives up to the 3rd degree inclusively, as well as between spouses, etc.

What from? The tax is calculated at the value declared by the parties, contractual evaluation or at the value established by market studies carried out by the chambers of public notaries, updated annually – *de minimis*. In the case of exchange contracts, the tax is determined for each delivered good; in case of unfinished constructions the value is determined by an expert.

How much? In the case of *inter vivos* acts, the tax rate is 3% or 1% depending on the duration of prior holding of property or the dismemberment (less/more than three years). In case of a *mortis causa* transfer, the rate is 1%. The tax is calculated and paid by the public notary when the transaction is authenticated or by the seller through direct declaration. The established tax is distributed as follows: a share of 50% goes to the state budget (that will be redistributed to the local budget where the seller has its domicile); a share of 50% is allocated to the local budget on the territory of which the immovable property is located. This legal construct is rather complicated and involves a significant volume of administrative resources in comparison to its budgetary significance as illustrated enclosed for Iași Municipality budget for 2024 [Iasi Municipality Local Budget 2024].



Source: author's own elaboration.

4. Third step – miscellaneous: Why? Where? What is not?

Why? The intentional element [Costea, Ilucă 2019: 655] is crucial in taxation matter; it is probably the most volatile component of tax audit procedures and a key filter between the licit and illicit tax behaviour [Costea 2017: 229–258]. The 'why' is relevant on two levels. Firstly, it separates the professional and occasional human behaviours, materialised in the cause of concluding a legal act at a certain point. For example, the buying and selling of second-hand cars is targeted in recent Romanian jurisprudence as an act of tax fraud where the multitude of operations reveals a professional intent and not a personal purpose [Costea 2019: 138–172]. Secondly, it is the bond between expenses and revenues and the bone-structure of deducting expenses and exerting the deduction right. The major element of property right as incorporating purpose is *usus*, where one can verify the entrepreneurial relevancy of a certain acquisition. In some cases, the legislator turns the blind eye to this element, and transforms taxation in an objective burden.

So, does intent matter? Most of the times, yes, since in most of the analysed cases the chargeable event is a changeable one, which shows a patrimonial dynamic. However, in the case of taxation of property in itself, the chargeable

event is completely static, as the mere ownership – or even less than so, the mere *usus* – is enough to generate continuous tax consequences. Even though it is one of the primary forms of taxation, which exists from long before our times, it remains the most erosive kind, seeing that nothing changes, yet taxation arises. Hypothetically, should the owner of a taxable property have no source of income, this would mean that such a person is extrinsically coerced into concluding legal acts that generate revenue to be able to pay the property tax. Such acts could consist of renting the property, thus losing the *usus* in favour of the *fructus*, or even transferring the property altogether – hence, losing the *abusus* – which would defeat the purpose of having said property.

Obviously, "there is no such thing as a good tax", as Winston Churchill supposedly said, but then again, "no government can exist without taxation and it must necessarily be levied on the people; the grand art consists of levying so as not to oppress" – a quote attributed to Frederick the Great, though unverifiable, that should guide the activity of the fiscal legislator. This is very much in the same line as the school of thought proposed by Rousseau as early as 1755, who argues that in order to be lawful, taxation should be voluntary, as "it must depend, not indeed on a particular will, as if it were necessary to have the consent of each individual, and that he should give no more than just what he pleased, but on a general will, decided by vote of a majority, and on the basis of a proportional rating which leaves nothing arbitrary in the imposition of the tax" [Rousseau 1755: 18]. He later ventures to state that far from the common view, he finds "enforced labour to be less opposed to liberty than taxes" [Rousseau 2008: 156], which is indeed far from our view as well, but his theories on the social contract can lead to developing a model of tax compliance [Mangoting et al. 2015: 966–971].

Where? The classification of assets and indirectly the qualification of contracts regarding these assets is a key element in determining the place of taxation. In transactions connected to two or more fiscal jurisdictions (local, regional, or even national), the 'where' is of central importance. 'Where' is translated in fiscal voice in the concept of 'fiscal residency', if taxation targets the revenues and in the concept of 'place of taxable transaction', if taxation targets consumption, with nuances in the case of movable tangible property. Such is the case for VAT, where the nature of the supply, good or service, may alter the place of taxation. When taxation targets property

directly, the distribution of the authority to tax follows the venue especially for immovable assets.

What is not? What is not taxed in the Romanian legislation is a question that involves a thorough investigation, as chargeable acts or facts are horizontally distributed within the RFC. The normative technique is to indicate exemptions, such as public property or donations [Codrea 2016: 116–208], or to leave unregulated a part of the transactions, such is the case of transfer of property from personal patrimony when it regards movable goods, but within the limits of a non-professional activity. Hence, a clear response requires a holistic approach.

5. Conclusions

Taxation is a normative field dominated by the core will of the Sovereign; its power with constitutional limits is overwhelming and apparently tackles all values in the taxpayers' patrimony. The sanctity of property, as a fundamental right, is no match for this force; taxpayers will see their assets evaluated, challenged, and then taxed. Our study shows clearly that the transfer of resources from the private space to public revenue is mainly conducted through the concept of property. This interaction has its own variables deriving from public policies, as to the destination of the revenue, the object and rate of taxes, even a certain aleatoric element within 'who's who' and 'what's what'? The core truth is that property within all its elements is a focus point for taxation, and that it represents the corner stone of the budgetary construct.

References

Codrea, C.: Donaţia în dreptul european: aspecte de drept comparat [Donation in the European Law: Private Law Aspects], Bucuresti: Universul Juridic [The Legal Universe], 2016

Codrea, C.: Logică juridică. Curs universitar [Legal Logics. University course], Bucuresti: Hamangiu, 2023

Costaș, C.F., Puț, S.I.: Drept fiscal [Tax Law], Bucuresti: Universul Juridic [The Legal Universe], 2023

Costea, I. M.: Evaziunea fiscală, Legea nr. 241/2005 comentată și adnotată [Tax evasion, Law no. 241/2005 commented and annotated], Bucuresti: Hamangiu, 2019

Costea, I.M., Ilucă, D.M.: From Promise to Permission: The Right to VAT Deduction (in:) Tofan, M. et. al. (eds.): European Union Financial Regulation and Administrative Area, Iasi: Editura Universitatii „Alexandru Ioan Cuza" din Iasi [Alexandru Ioan Cuza University of Iasi Publishing House], 2019

Costea, I.M.: Delimitări între ilicitul fiscal și penal [Delimitations Between Fiscal and Criminal Illicit], Analele Științifice ale Universităţii Alexandru Ioan Cuza din Iași, seria Ştiinţe Juridice [Scientific Annals of Alexandru Ioan Cuza University of Iasi, Juridical Sciences Series], no. 1 [43], 2017

Costea, I.M.: Drept financiar. Note de curs. Editia a 9-a [Financial Law. Course Notes. 9th Edition], Bucuresti: Hamangiu, 2024

Costea, I.M.: Jurisprudential accents on the notion of economic activity in value added tax matter, AGORA International Journal of Juridical Sciences, no. 7, 2013

Dmowski, A.: The right to deduct input VAT and the limitation of this right – a summary of domestic and international experience, Tax advisory - Tax Studies Institute Bulletin, no. 7 [323], 2023

Ene, M.: Drept fiscal [Tax Law], Bucuresti: Solomon, 2024

Juchniewicz, E.: The principle of fiscal local autonomy in the light of Polish Constitution, Financial Law Review, no. 2 [6], 2017

Kristoffersson, E.: Full deduction of input VAT where goods are sold for a price lower than the cost price, World Journal of VAT/GST Law, no. 2 [5], 2016

Lamensch, M.: The principle of 'substance over form' with respect to the exercise of the right to deduct input VAT – A critical analysis of the Barlis jurisprudence, World Journal of VAT/GST Law, no. 2 [6], 2017

Lipcanu, E.: Actul de constituire a patrimoniului de afectaţiune al comerciantului şi de ocrotire a creditorilor comerciantului, fraudaţi prin constituirea unui atare patrimoniu [The Act of Establishing the Patrimony of the Merchant and Protecting the Creditors of the Merchant, Defrauded by the Establishment of Such Patrimony], Dreptul [The Law], nr. 1, 2009

Maličká, L., Lukáčová, J., Hadačová, D.: Demographic and Economic Characteristics of Population as Determinants of the Revenue from the Real property tax in the Slovak Republic, Financial Law Review, no. 4 [28], 2022

Mangoting, Y. et al.: Developing a Model of Tax Compliance from Social Contract Perspective: Mitigating the Tax Evasion, Procedia – Social and Behavioral Sciences, no. 211, 2015

Merkx, M.: VAT deduction and member state sovereignty: (still) a good idea?, World Journal of VAT/GST Law, no. 2 [7], 2018

Nagy, Z., Zilahi, R.: The European Judicial Practice Regarding the VAT Deduction Right and Its Impact on the Hungarian Practice, LESIJ – Lex et Scientia International Journal, no. 1 [26], 2019

Rousseau, J.-J.: Despre contractul social sau principiile dreptului politic [On the Social Contract or Principles of Political Right], Bucuresti: Nemira, 2008

Sferdian, I.: Drept civil: drepturile reale principale [Civil Law: Main Real Rights], Bucuresti: Hamangiu, 2013

Sferdian, I.: Patrimoniul profesional individual afectat desfăşurării unei profesii liberale în reglementarea Codului civil (Legea nr. 287/2009) [The Individual Professional Patrimony Affected to a Liberal Profession in the Regulation of the Civil Code (Law no. 287/2009)] (in:) Munteanu, C.: Culegere de studii in honorem Alexandru Bacaci, Ovidiu Ungureanu [Study Compendium in Honorem Alexandru Bacaci, Ovidiu Ungureanu], Bucuresti: Universul Juridic [The Legal Universe], 2012

Stoica, V.: Patrimoniul de afectaţiune – continuitate şi reformă [Patrimony of Professional Affectation – Continuity and Reform], Revista Română de Drept Privat [Romanian Private Law Journal], nr. 2, 2013

Terzea, V.: Drept de deducere a TVA-ului. Buna-credință a persoanei care solicită deducerea TVA-ului. Consecințe – cu notă explicativă [Right to Deduct VAT. Good Faith of the Person Seeking Deduction of VAT. Consequences – With Explanation], Tax Magazine, no. 3, 2014

Ţâţu, L., Brăgaru, M., Sasu, H.: Impozite, taxe, contribuţii [Taxes, Fees, Contributions], Bucuresti: C.H. Beck, 2011

Ungureanu, C.T., Drept civil: partea generală, persoanele (în reglementarea noului Cod civil) [Civil Law: General Part, Persons (in the Regulation of the New Civil Code)], Bucuresti: Hamangiu, 2012

Varju, M.: Case law note: The Right to VAT Deduction and the ECJ: Towards Neutral and Efficient Taxation in the Single Market?, Intertax, no. 3 [47], 2019

Vartašová, A., Červená, K.: The development of real property tax – the case of city of Košice, Financial Law Review, no. 4 [20], 2020

Legal Acts

Law no. 287/2009 – Romanian Civil Code (first published in the Official Journal of Romania no. 511 of 24 July, 2009, as subsequently republished and amended).

Law no. 227/2015 – Romanian Fiscal Code (first published in the Official Journal of Romania no. 688 of 10 September, 2015, as subsequently amended).

Court rulings

ECJ ruling of 25th November 2021, C-334/20, Amper Metal Kft. V. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, (ECLI:EU:C:2021:961)

ECJ ruling of 3rd March 1994, C-16/93, R. J. Tolsma v. Inspecteur der Omzetbelasting Leeuwarden, (ECLI:EU:C:1994:80)

ECJ ruling of 5th February 1981, C-154/80, Staatssecretaris van Financiën v. Coöperatieve Aardappelenbewaarplaats GA, (ECLI:EU:C:1981:38)

ECJ ruling of 18th January 2001, C-150/99, Svenska staten v. Stockholm Lindöpark AB et Stockholm Lindöpark AB v. Svenska staten, (ECLI:EU:C:2001:34)

ECJ ruling of 17th September 2002, C-498/99, Town & County Factors Ltd v. Commissioners of Customs & Excise, (ECLI:EU:C:2002:494)

Other official documents

Buget de stat 2022 [Romania State Budget 2022],
Available at:
https://mfinante.gov.ro/buget-20222, accessed: 31st March 2024

Bugetul Municipiului Iasi 2024 [Iasi Municipality Local Budget 2024],
Available at:
https://www.primaria-iasi.ro/dm_iasi/portal.nsf/atasament/4430FC507CA62D-CEC2258AD8004244D5/$FILE/anunt.pdf?Open, accessed: 31st March 2024

Raport de performanta al Agentiei Nationale de Administrare Fiscala 2022 [National Agency of Fiscal Administration Performance Report 2022],
Available at:
https://static.anaf.ro/static/10/Anaf/Informatii_R/Raport_performanta_2022_V6.pdf, accessed: 31st March 2024

Internet Resources

A Discourse on Political Economy by Jean-Jacques Rousseau
Available at:
https://www.files.ethz.ch/isn/125495/5020_Rousseau_A_Discourse_on_Political_Economy.pdf, accessed: 31st March 2024