

THE STAMP DUTY REGULATION IN DIFFERENT EUROPEAN COUNTRIES

Assistant Bogdan-Dumitru DÎMBU
„ Ștefan cel Mare” University of Suceava, Romania
Faculty of Economics and Public Administration
bogdandimbu84@yahoo.com

Abstract:

In any European democratic state, for an individual or juridical person's accession to justice, he/it must pay for the service provided by the court authority meant to solve the existing litigation. Even though the stamp duties differ from one state to another, they appear to be a budgetary obligation owed by those individuals who request a certain prestation from the judicial institutions. These taxes may be definite or may represent a certain percent out of the value of the request.

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INTRODUCTION

Although one may say that we're dealing with a topic not so "up-to-date", given the prolonged economic crisis, we decided to tackle an issue that found resonance even from the birth of maybe the most important democratic principle: the separation of powers. The fundamental law of different countries promotes the idea of free access to justice, but for this, the E.U. members solicit the payment for the provided service through the so called "stamp duties".

By this paper, we try, as simply and efficiently as possible, to bring forth to the reader the stamp duty's meaning, its features and the way it is collected in different states of the E.U.

Romania signed on the 1st of February 1993 the E.U. Association Agreement, enforced on the 1st of February 1995. The Agreement set the judicial and institutional frame of the Romanian-Community reports, fundamentally aiming at Romania's European integration.

Along with our country's E.U. integration, Romania accepted the Union's fundamental objectives, including its strategies and instruments. This engagement is necessary in order to ensure the proper functioning, under the same rules, of all economic and social life components; we're, therefore, talking about "the legal and institutional frame known as *acquis communautaire*", through which the European Union puts into practice its objectives.

In the fiscal area, the European Union is first of all interested in the indirect taxes, the E.U. *acquis* referring to the value added tax, duties and customs duties.

The process of indirect tax harmonization comprises those measures necessary for guaranteeing the creation and functioning of the single internal market so as to prevent the competitor distortion and to allow the dissolution of any obstacles that may jeopardize the goods and service free movement.

The E.U. adherence brought about the alignment to the single market regulations and the assumptions of the responsibilities to permanently respect the obligations coming with it.

In the fiscal field one could find reflected the results of million of people's activities, the participation of individuals or juridical persons in the formation of financial resource stocks, the processes of the latter's redistribution to different beneficiaries, as well as the impact of these processes on the country's economical and social development. It is in this field that different interests confront: general versus group, individual and local, immediate versus long term, today versus next generations.

Since the financial relations reflect cash flows, power supply transfer, patrimonial mutations and changes in the population's life conditions, it is vital that all acts generating such changes should be thoroughly regulated. We mean here regulations coming from the legislative or executive state powers, as appropriate, bearing compulsory spirit top to bottom; furtheron, they should be unitary throughout the entire country and they should set the conditions in which such acts are being produced as well as the sanctions to be applied when the legal provisions are not obeyed.

Among the most important financial problems that should get judicial regulation one can put the system of taxes; the way to assess the taxable field, to place and distinguish the duties; the individuals and juridical persons' tax obligations; Romania's fiscal sovereignty limits.

If we refer to the fiscal activity, it can be considered to combine four interacting forms: preparing and initiating the legislative regulations; the execution and methodological guidance of the fiscal activity, the compliance control as well as the fulfillment of tax obligations; the tax perception itself and, respectively, their collection and highlighting in the budgetary accounts (Topciu and Vintila, 1998).

The reform of the fiscal-budgetary system can be still enhanced since there are some aspects unsufficiently regulated and some practices require correction.

The stamp duties represent the payment for the services provided or the work performed by different State bodies or institutions which receive, prepare or issue different acts, provide different services or solve certain interests of parts (Costas si Mintea,2006).

The stamp duties embody a large and heterogeneous category of budgetary revenues. Although most of them are direct duties, they have been assimilated in the indirect duty doctrine because of the features that customize them compared with other budgetary revenue categories. It is that revenue category that they stand for, which, being currently accomplished – with a certain rhythmicity to the budget – are being obtained, most of them, from occasional payments made by different types of legal subjects (individuals or juridical persons), who either introduce claims and legal actions, or solicit the accomplishment of different acts or services from various public institutions or State bodies.

The stamp duties are differently established, according to the nature and complexity of the service, the property value or the nature and importance of the acts or facts subject to taxation. In accordance with the provisions of the Fiscal Code, the stamp duty level is yearly adjusted by the Finance Ministry and the Interior Ministry, depending on the inflation.

FEATURES OF THE STAMP DUTIES

We remind, as subject to taxation, the individuals or juridical persons who benefit from the services included in the category above mentioned. Since they are a tax, stamp duties bear compulsory nature and are taken over as non-refundable. Nevertheless, there is a major difference between stamp duties and taxes. Thus, whereas the taxes are assumed by the budget without a counter-prestation on behalf of the latter, the stamp duties represent, in most cases, payments directly related to a certain service accomplished by a public institution or by a State body, as well as by a notary public or other bodies with notary attributions. Even though the stamp duties represent payment for a service, we must mention the fact that, in many cases, their value is greater than that of the service provided. The term "stamp duty" appears because of the fact that law-value taxes are payed by application of revenue stamps. The taxes represent the payment made by individuals or juridical persons for the service provided to them by the public institutions.

Duties (stamp duties, registration fees, metrology charges, consultation fees etc.) constitute, along with taxes, the second most important revenue category of the state or local budgets.

Therefore, taxes are set as *budgetary obligations* owed by individuals or juridical persons, who request a certain prestation from certain state institutions. According to the principle that taxes are payed as a direct and immediate counter-equivalent, their monetary amount should be equal to the economic value of the service. In the absence of this equivalence (this is the general rule), if the monetary amount of a duty exceeds the value of the service provided, this duty will be subject to an element of taxation, established with fiscal purposes of creating greater revenue for the state budget. Usually, the duty quantum is not set following the cost or the value of the service, but independent of economical criteria.

THE DUTY STAMP REGULATION IN EUROPEAN COUNTIES

In **England** and **Wales**, the judicial stamp taxes are established in lump sum, according to the nature of the case (when this one is not ratable) or to the value of the request (when it is ratable). For the appeal, there are two stamp taxes, regardless of the object of the request; they are payed depending on the classification as being minor or major.

In **Sweden**, the judicial proceedings are free of charge, except a fixed tax, the same regardless of the object of the request, whic is to be payed at its registration.

In **Austria**, the stamp duties are set according to the value of the request and also cover the registration costs.

In **Belgium**, when the request is handed in, one will pay the registration costs (the registration number, the request's wording, the certification of the copies of the documents).

In **Denmark**, the judicial stamp taxes are established according to the Law no. 806 from the 24th of August 2000, with later modifications. Stamp duties for ratable requests which exceed a certain sum will be payed by applying a 2% out of the value of the request. When dealing with unratable requests, the stamp duties are lump sums, dependind on their nature. In appeals, the stamp duties are set in the same way as those in the first instance, mentioning that a minimum suplimentary tax will be payed, depending on the Court that will judge the appeal (the so called Superior Courts). When the appeal is judged at the Supreme Court, the taxes increase with 50 %.

In **France**, as a rule, there are no taxes employed for entering the cases or appeals (civil, administrative or criminal), except the commercial Courts where stamp duties are set. Law no. 77-1468 from 30.12.1997 established the gratoutitousness of legal actions in front of civil and administrative courts.

In **Germany**, the stamp duties are established depending on the value dispute, in all materials, according to the 2004 regulation. In appeals, taxes are paid under the same criterion, the value dispute being limited to the case object value in the first court.

As a scope, taxes are payed for the requests entered at the following court categories:

- ordinary – in civil matters, family law, insolvency procedure, forced sale procedure, criminal law, criminal execution, contravention matters, competition;
- finacial disputes;
- administrative disputes;
- social disputes;
- labour law,

as well as for the Prosecution, within the law.

Since 1986, **Spain** eliminated the judicial stamp duties, Court access being free of charge. The legislation stipulates however the obligation for the parts to pay some taxes for the copies of the documents from the case.

In **Italy**, the Presidential Decree no.115 from 30.05.2002 comprises the procedure and the level of the stamp taxes; they consist in a lump sum, according to the nature and the value of the request, representing the registration costs (registration number, judicial consultance, the

certification of the copies). The standard tax is payed at any case phase, except the cases provided in the law (Beju 1999).

In **Malta**, the judicial stamp taxes are set by law, in lump sums, according to the object of the request.

In **Lithuania**, the stamp taxes are payed depending on the value of the request, representing a certain percent out of this sum; there is a maximum limit of judicial stamp duties that is not to be exceeded, regardless of the value of the request.

According to articles no. 53 and 54 from the **Bulgarian** Civil Law, the judicial stamp taxes are payed for ratable or unratable requests, their level being set through special laws. The duties represent a certain percent out of the value of the request, while for the unratable ones the stamp duties are payed according to the criteria stipulated in the Civil Procedure Code (art.55). Also, in the procedures placed in front of administrative courts, a lump sum is usually payed , regardless of the object of the request.

In **Poland**, the judicial stamp taxes for civil and administrative cases are regulated in the Law from 13.06.1967, with subsequent modifications regarding especially their quantum updating.

STAMP DUTY EXEMPTIONS IN DIFFERENT EUROPEAN STATES

In **England, Wales, Northern Ireland, Scotland and Gibraltar**, the requests exempted from stamp duty payment are not provided by law; however, the procedures regarding the legal assistance are applicable. We mention that the legislations of England, Scotland and Northern Ireland stipulate that the Judge can establish that some taxes are to be payed by the winning party, also. Moreover, if the losing party benefitted of legal assistance, it will pay the trial costs reported in the legal assistance received.

Dispositions regarding the refunding of the judicial stamp duty can be found in the **Danish** legislation which provides that the stamp duty for the appeal against a closing interlocutor is refundable in case the court of appeal corrects the decision of the inferior court. Also, the stamp duty payed for entering an extraordinary means of redress is returned if the request is accepted.

In **Ireland**, some categories of requests are exempted from stamp duty payment, regardless of the Court that they are brought to (the Supreme Court, district Courts).

Thus, requests exempted from stamp duty will be found in matters as follows:

- extradition, the European warrant, bail procedures
- family law, divorce procedure, child protection
- the procedures provided by the Immigration Law no.6/1991

In both criminal and civil legal cases certain state institutions are exempted from stamp duty payment.

In **Italy**, the stamp duties are not owed in cases of Family Law, marital status stipulated in the Book IV of The Civil Procedure Code (for example in divorce cases, minors-related procedures or patrimonale relationships between spouses), in cases of requests of taking precautionary measures, in cadastral matters, enforcement, any procedure regardind the child rights.

The duties are not to be payed for requests of civil damages for moral or material causes arising from criminal cases.

France and Spain are stamp duty free.

In **Germany**, the federal laws provide stamp duty exemptions for categories of cases that can be found in Romania also. For example, in cases regarding the rights springing from the labor contracts, judicial stamp duties are not to be payed. In the same time, in procedures in front of ordinary courts, as well as in finacial disputes and social security, the Federal State, the Lands and the public institutions administrated by these are exempted from stamp duty payment (the same as in the Romanian regulation).

In **Bulgaria**, the special law regarding the stamp duty provides exemptions for requests related to pension maintenance, establishing paternity, establishing the pension maintenance for mothers with more children, procedures of social assistance, protection of minors, pension, labor contract rights, industrial property rights. Furtheron, no judicial tax is payed in criminal cases.

The **Slovene** legislation provides stamp duty exemption for requests in relation to labor disputes (the end, the performance or the termination of employment). The exemption is also applicable to employees or students against the organization or employer, to disputes regarding the execution of different short-term or timeshare works. In the other regulations, although the handy ones do not expressly foresee requests that are stamp duty exempted, one could find the possibility to solicit legal assistance under the form of exemptions, reductions, deffered or sliding scale payment. The procedures for granting this form of legal assistance are different from one regulation to another.

In **Lithuania**, the law sets stamp duty exemptions in certain cases, as requests for the establishment and the grant of compensations for damages caused to a person's life or health in labor accidents, occupational deseases, wrongful convictions, illegal arrest or detention, misapplication of an administrative sanction, as well as prejudice caused by the judges act in civil cases.

We may add on the list of stamp duty exempted the requests introduced by those injured in their rights by an administrative act or by an administrative authority's unjustified refusal to solve the request regarding the recognition of a right.

In **Poland**, the following categories of requests are stamp duty free:

- the matter of Family Law in issues regarding child care, recognition of child, name awarding
- testamentary matters
- compensations requested for material damages resulted from human rights and liberties limitation
- Health Insurance
- redressing against court ruling

Certain public institutions are exempted from stamp duty payment: the State Treasury and state institutions which do not develop economic activities, the local public administration bodies, except from the cases regarding the building cadastral registration, The Agricultural Market Agency, The Agency for Restructuring and Modernisation of Agriculture etc.; furtheron, the organizations which manage public goods, voluntary organizations, except the economic activity-related issues, as well as the N.G.O.s which don't conduct economic activities.

The Polish legislation stipulates that, in justified cases, the stamp duty payed in advance is to be totally or partially returned, according to the decision of the first court. In case the appeal is introduced, the stamp tax is not charged; however, it will be payed if the request is rejected. The stamp duty already charged is also returned in case the court rejects the request without having discussed the merits. In these situations, the right of stamp duty refund can be claimed within three years from the date it was payed.

The **Czech** regulation on stamp duty foresees that, in case the request is refused without havinf discussed the merits, the party will be given back half of the charged stamp duty.

In case the aplication of summons is withdrawn before the first term or before pronouncing a decision or in case of transaction, half of the charged duty will be refunded.

We mention that the studied regulations foresee that stamp duties are to be payed when the request is introduced, except for the **Finnish** legislation where the process costs, including judicial taxes, are payed after pronouncing a final decision, being subsequently communicated by the court to the losing party. Other regulations, like the **Swedish** one, foresee that, when introducing the request, one must pay an advance from the sum owed as stamp duty, the rest being charged at the end of the trial, along with any other costs occured during the procedures.

CONCLUSIONS

The stamp duties represent the payment for the services provided or the work performed by different State bodies or institutions which receive, prepare or issue different acts, provide different services or solve certain interests of parts.

The stamp duties embody a large and heterogeneous category of budgetary revenues. Although most of them are direct duties, they have been assimilated in the indirect duty doctrine because of the features that customize them compared with other budgetary revenue categories. It is that revenue category that they stand for, which, being currently accomplished – with a certain rhythmicity to the budget – are being obtained, most of them, from occasional payments made by different types of legal subjects (individuals or juridical persons), who either introduce claims and legal actions, or solicit the accomplishment of different acts or services from various public institutions or State bodies. The stamp duties are differently established, according to the nature and complexity of the service, the property value or the nature and importance of the acts or facts subject to taxation. In accordance with the provisions of the Fiscal Code, the stamp duty level is yearly adjusted by the Finance Ministry and the Interior Ministry, depending on the inflation.

According to the regulations in force, the stamp duties can be classified in four categories. The most important according to the revenues brought to the budget are: **judicial stamp duties, stamp duties for notary work, judicial stamps and extrajudicial stamp duties.**

As for the Romanian legislation, the common law in relation to judicial stamp taxes establishes that these request will be differently charged, following the objects monetary ratability. In the case of ratable requests, the duties consist in a lump sum to which a percent is added, depending on the value of the request; as for the unratable requests, the judicial duty represents a lump sum, according to the type of request or action. The law foresees categories of requests or actions which, for legal assistance - related motives, are exempted from stamp duty payment. The setting of the duties' quantum is made by the court or, as appropriate, by the Ministry of Justice; against this manner a special reexamination procedure is stipulated, at the request of the person involved.

The stamp duties for notary work can be charged by the notary public, too, the latter bearing the obligation to empty them into the state budget in the circumstances set through the methodological standards regarding the application of the Ordinance no.12/1998 in respect to the stamp duties for notary work.

The stamp duties for notary acts and services are due in advance, except for the taxes for the inheritance procedure, which are due until the issuing of the certificate of inheritance.

The stamp duties for notary acts and services are state budget revenue and are comprised distinctly in the income and expenditure budget of the Interior Ministry, in the conditions and with the destination provided by the law for judicial stamp taxes.

The judicial stamps can appear under the form of lump taxes for different services as well as percentage shares.

"The requests and court actions as well as the requests addressed to the Ministry of Justice and to the Prosecutor of the Supreme Court of Justice are subject to the stamp duties, foreseen in the present law, and are charged in a differentiated manner, following the object's ratability, with the exceptions stipulated in the law." It applies to the court actions, requests, acts and services within the competence of all the courts, the Ministry of Justice, the Prosecutor of the Supreme Court of Justice, as well as of the notary publics.

The extrajudicial stamp duties are due for issuing all kinds of certificates (except for those issued by the courts, the Prosecutor of the Court of Cassation and Justice, the Ministry of Justice or

the notary publics), I.D. issuing or exchange, fishing and hunting permits, drivers examination for drivers licence, registration of vehicles.

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