

MODERN APPROACHES TO TAX AMNESTY

Ph.D. Student Aurelia ȚEPORDEI

International Institute of Management IMI-NOVA, Republic of Moldova

E-mail: atepordei@mail.ru

Abstract: Tax amnesty is an official exceptional proposal of central state administration for contributors to pay their outstanding payments at both state and local levels in exchange for cancellation of penalties to be applied in case of irregularities. Its necessity can be presented in three ways. The first is to eliminate confusion about legislation imperfections, its treatment and resulting consequences. The second is related to collection of budgetary means. The third is authorities' hope to discipline taxpayers and bring their work to legal area. Being applied in Republic of Moldova in the past, contradictory views on its application in the future are presented now. In this context are presented problems, which can be grouped in two directions: the lack of clear presentations of real results of previous tax amnesty and examining real interests of governors in new tax amnesty organizing. The purpose of research was to establish essence of fiscal amnesty, forms of its application and its effects. For this purpose, the country's experience, in which fiscal amnesty was carried out, was studied. Finally, some conclusions were drawn on effectiveness of fiscal amnesty as a specific method of public finance management that will be reflected in this article.

Key words: tax amnesty, taxpayer, debt, tax.

JEL Classification: E61, E62, H30, H61.

1. Introduction

The notion of "amnesty" comes from the Greek language - amnestia - which means forgiveness, forgetting. Amnesty has deep historical roots and is applied in various forms for hundreds of years, as a rule, to persons who have committed criminal offenses (Law Book, 2018).

Amnesty is a measure which can be applied by State authority to persons have committed crimes, which includes the removal of penalty or partial release of penalties, the replacement of for illness or the dismissal of a criminal offense (Dic Academic, 2018).

The use of amnesties is usually justified by considerations of humanism, but amnesties have purely practical tasks, or contribute to the achievement of specific political goals.

Recently, with the development of social relations in the field of economy, new forms of amnesty appeared - fiscal, financial, economic, capital amnesty etc.

Amnesty in the fiscal sphere can take the form of tax amnesty, amnesty of capital (also called financial amnesty), tax debt restructuring and amnesty of persons who have committed tax offenses as part of amnesty of persons who committed criminal offenses (Law Book, 2018).

At present, the opportunity of tax amnesty is discussed in the hope of number of problems solving, which implies the need to study international experience in this field in order to apply optimal solutions in Republic of Moldova.

2. The essence of tax amnesty

2.1. Tax amnesty definition

The specialized literature contains several concepts of fiscal amnesty:

- Tax amnesty is a series of measures to provide taxpayers with the right to pay amounts of taxes for which payment deadlines established by tax legislation have expired (Tax amnesty (b), n. d.).
- Tax amnesty is a release of person guilty of tax offense (crime) committing from administrative, financial and criminal liability provided by law for specified offense (crime), on the basis of Amnesty Act, adopted by supreme body of state authorities. Acts of amnesty are of a normal nature, i.e. apply to all persons who committed punishable acts

before the entry into force of these laws and meet established requirements (Tax amnesty (a), n. d.).

- Tax amnesty is a set of measures to pay off tax and other obligatory payments by taxpayers, as well as exemption from payment of fines and penalties from the amount of voluntarily paid payments to budget and extra-budgetary state funds (Dic Academic, 2018a).

- Tax amnesty is a limited opportunity for a certain group of taxpayers to pay a certain amount in exchange for forgiving a tax obligation (including interest and penalties) related to an earlier tax period and without fear of prosecution. Usually, this expires when an authority starts a tax audit of tax previously owed. In some cases, legislation providing for amnesty also imposes more severe sanctions on persons eligible for amnesty but who do not accept it (Tax amnesty, n.d.).

Some literary sources contain the notion of tax evasion amnesty, which refers to a rule or law issued by central authorities to forgive tax liabilities of previous years to taxpayers. With this measure, government offers an advantage to taxpayers, allowing them to fix mistakes or omissions in tax returns without fear of legal action. It is usually set for a fixed period of time and may be linked to outstanding tax liabilities from one or more annual periods. If taxpayer fails to cancel the debt by using amnesty and then evasion is discovered, severe punishments and sanctions apply (Tax evasion, n.d.).

In some cases, the fiscal amnesty is combined with capital amnesty, which means the legalization of money in the form established by state. As a rule, a mandatory condition for amnesty of capital is payment of a certain tax and demand for partial or total bringing of capital into country (Politike, 2018).

Violations of legislation on taxes and fees are divided into three main types (Belova, 2014):

- Tax offenses;
- Violations of legislation on taxes and fees, which contain signs of an administrative offense;
- Violations of legislation on taxes and fees, which contain elements of crime.

For them, respectively, three types of legal liability are provided: criminal, administrative and tax (Belova, 2014).

Therefore, the essence of tax amnesty consists in release of individuals from tax liability, basis of which is a perfect tax offense.

At the same time, the act of amnesty of persons accused of committing tax crimes presupposes their release from criminal responsibility, and not any other. Consequently, tax amnesty and amnesty for committing tax crimes are completely different kinds of amnesties, having different grounds and entailing different consequences.

Tax liability, as is known, taking into account the correlation between financial and tax law as a branch and sub-sector of law, is a kind of financial and legal responsibility. Proceeding from this, the State will to free from tax liability does not fully cover the entire scope of financial and legal responsibility, which, in addition to tax, may include budgetary, banking and monetary responsibility (Belova, 2014).

That is, financial amnesty in its content is much broader than tax amnesty and correlates with the latter as a whole and part. This allows us to assert that financial amnesty is an independent type of amnesty (Belova, 2014).

Usually the interest of a taxpayer is that having paid off the state on old accounts, he gets the opportunity to legalize all his savings and start a tax life from scratch, without fear that at any moment authorities can arrest his bills, describe his house and himself it should be prosecuted for old sins (Tax amnesty (c), n. d.).

Of course, there is an unpleasant side here. First, he needs to pay debts, which usually do not want to do. Secondly, there are reasonable fears that tax authorities, having received information on past non-payments, will not release the perpetrator from their field of vision and will not allow them to live peacefully in the future (Tax amnesty (c), n. d.).

2.2. Technological aspects of tax amnesty

World practice knows a lot of variants of fiscal amnesty. They can be organized at both state and local levels. They may refer to certain categories of taxpayers (representatives of certain professions, companies and entrepreneurs who operate in certain branches of the economy). Tax amnesty can also be carried out against certain types of tax (Law Book, 2018).

The amnesty may refer to the debt now found by State or at the stage of judicial examination, which was not previously known to competent institutions. Amnesty conditions may provide for collection of the entire amount of debt together with calculated penalties, but the payment of hidden income tax at a usually new preferential rate may be required. For hidden amounts of tax, interest may be applied for the period of admission of tax offense. Debt payment can be claimed in full or in installments. Often taxpayers who have refused to participate in the amnesty program are subject to additional sanctions (penalties for non-participation). However, notwithstanding the diversity of possible conditions, mandatory condition of "forgiveness of sins" is always payment of debts to State (Law Book, 2018; Tax amnesty (c), n. d.).

Basic goals of tax amnesty as a rule are as follows (Monikov, 2016):

- 1) State budget supplementing on account of received funds as a result of declaring hidden or late payments of taxes;
- 2) Financial stabilization of bad payers debtors, ensuring, in certain cases, the passage of funds from shadow sector of economy into legal one;
- 3) Repatriation of foreign capital in the real sector of economy;
- 4) Creating legal bases and mechanisms in State relations with taxpayers;
- 5) Prophylaxis of tax offenses.

In each specific case, tax amnesty implies any combination of following options (Tserliukevichi et al., 2014):

1. Partial or (rarely) total exemption from debt;
2. Partial or complete disposal of penalties and fines;
3. Getting rid of criminal liability;
4. Payments by installments.

In addition, within the framework of a tax amnesty, following guarantees can be provided (Tserliukevichi et al., 2014):

1. Prohibition on checking declarations for past years in the event that the last declaration is true;
2. Immunity from inspections for a certain period, in case of increase in tax payments by a certain percentage in current and future periods in relation to previous year.

There are several prerequisites for tax amnesty (Tserliukevichi et al., 2014):

1. Amnesty in most cases is associated with tax reform.
2. State that considers amnesty should be prepared, on the one hand, to simplify the regulatory environment, and, on the other hand, to strengthen control over compliance with tax legislation at the end of amnesty.
3. A frequent reason for amnesty is the unsatisfactory state of fiscal system and desire to achieve macroeconomic stabilization.

Prior to organizing tax amnesty, it is necessary to establish its format (Tserliukevichi et al., 2014):

- Groups of taxpayers whose aim is amnesty;
- Amnesty agreement with basic laws of country, including the Constitution;
- Basic legal consequences for taxpayers;
- Specifying whether amnesty is permanent or one-time;
- Specifying whether anonymous payments of tax debts are possible;
- Specifying should the taxpayer return the declared income abroad, back to the country;
- Note how to file amnesty in information sources and how to make sure that everyone who can use the amnesty knows about it and understands its mechanisms.

As a rule, tax amnesty has following characteristics (Tax amnesty (b), n. d.):

- Applying once, meaning that the state grants the right to legalize earnings once in a limited time.
- The main purpose of fiscal amnesty is not to complete the budget but to move to legal base in relations between taxpayers and State.
- There must be objective premises for fiscal amnesty. Usually, it is about fiscal system's imperfection during fiscal amnesty.
- Legalization of property for which tax is paid and refusal of state to lawfully persecute offenders.

2.3. Positive and negative aspects of tax amnesty

Analyzing the experience of different countries allows to highlight some positive aspects of fiscal amnesty:

- First of all, an obvious advantage of tax amnesty is to obtain State resources for the State budget from collection of hidden taxes or with expired payment deadline. Also, a certain economy is obtained from funds, which would be spent by public bodies for undertaking fiscal and other control measures related to conduct of investigations, prosecution of lawsuits (Law Book, 2018).

- Secondly, it is the widening of tax base on the account of removing oppressors from the shadow sector of economy into legal economic circuit. It is assumed that by getting the chance to get rid of old debts, taxpayer will not want to buy new ones and will pay taxes correctly and on time (Tax amnesty (c), n. d.).

- Thirdly, if taxpayer obtains the possibility of his assets accumulated outside the country legalizing, under the conditions of amnesty, it is possible to increase the volume of investments on the territory of country on the account of repatriated means (Tax amnesty (c), n. d.).

- Fourthly, we can talk about the prophylactic importance of fiscal amnesty. Given that discovery of tax violations is fully real and subsequent punishment is unavoidable, the forgiving of tax violations in return for debt repayment to State contributes to formation of a favorable business climate in the country and, in particular, to creation of trust relationships between taxpayers and State.

The group of authors led by Tserliukevichi has a separate opinion on the benefits of tax amnesty (Tserliukevichi et al., 2014):

- Rapid increase in budget revenues, as a rule, is the main advantage in short term. However, in longer term, tax amnesty can generate positive effects for fiscal sphere and national economy as a whole.

- If this campaign is successful, we can expect an expansion of tax base in subsequent periods by including part of shadow segment of economy in the perimeter of tax control.

- Tax amnesty can generate an inflow of capital into country, which was derived from it to avoid taxation.

- Tax amnesty can help increase tax discipline by providing horizontal (subjects with the same level of income are subject to the same tax burden) and vertical (the probability of tax evasion does not depend on size of firm's turnover) tax equality. The latter effects are favorable not only for fiscal stability, but also for a competitive environment.

At the same time, the same authors argue that any campaign of fiscal amnesty will inevitably have direct and indirect costs (Tserliukevichi et al., 2014):

- As direct costs, it is appropriate to consider administrative costs of the campaign. Often, this component is ignored, although government spending on development of the campaign itself, its administration and conduct can be very significant.

- As a lost profit, can be considered income that budget would receive in absence of tax amnesty. For example, the revealed tax infringements would cause inflow of incomes on them in the form of penalties, fines, etc. It is logical to omit these costs only if economic authorities without tax amnesty could not provide (as result of compulsory measures to enforce tax legislation) any revenues to budget from unobserved economy.

- As result of tax amnesty can be not only improved tax discipline, but also its deterioration.

But, at the same time, tax amnesties have a number of negative aspects:

- First of all, it basically represents a violation of the main principle of tax equity, expressed through the equality of all before the law and the obligation to pay taxes.

- Secondly, it is the psychological effect expressed by the wrong perception of the situation by taxpayers that the state, exonerating from liability the fraudulent violation of fiscal legislation, has no significant power to ensure tax collection.

In the theoretical literature there is a whole list of channels and mechanisms that can cause deterioration in tax discipline (Tserliukevichi et al., 2014):

- Conscientious taxpayers may have expectations of new amnesties and incentives to evade taxes. Expectations of amnesty can become self-fulfilling, since with mass evasion from taxes, government will increasingly be inclined to a new amnesty;

- Amnesty sends a signal that tax authorities are not able to ensure the collection of taxes;

- Amnesty cannot always affect those who had reasons to evade taxes earlier;

- The injustice of amnesty can affect the attitude of bona fide taxpayers to tax system;

- Undeclared income can often have illegal sources. Often such revenues are not declared in any case, because the amnesty does not provide protection from crime.

Given the availability of both benefits and costs, the final financial result of tax amnesty is appropriate to be considered on a net basis that is as the difference between the inflow of funds as result of favorable effects of tax amnesty and corresponding direct and indirect losses (Tserliukevichi et al., 2014).

3. Experience in the field of fiscal amnesty

3.1. International experience in application of tax amnesties

There is a widespread experience of tax amnesty in the world. Examples include the following (Tax amnesty, c):

- In 2004, Germany organized a fiscal amnesty in connection with tax evasion.

- In 2010, fiscal amnesty for millions of Greek citizens was deployed in Greece by paying only 55% of outstanding debts. In 2011, European Commission asked Greece to

amend its tax legislation, because tax amnesty was considered discriminatory and incompatible with EU treaties.

- Italy organized a tax amnesty in 2001, which became known as Scudo Fiscale and which was prolonged in 2003. In 2009, the object of Italian tax amnesty was repatriated with a 5% single tax. A total of around €80 billion has been declared, resulting in tax revenue of €4 billion. Italian Bank estimated that Italian citizens had about €500 billion in undeclared funds outside the country.

- In 2007, \$130 million was collected in first six months under Russian tax amnesty program. Russian program did not refer to people previously convicted of tax offenses.

- The 1988 Irish tax amnesty is considered one of the most effective, since perceived means accounted for about 2.5% of country's GDP, which was enough to cover the budget deficit of that year.

- In the US, tax amnesty is often organized in some states. Thus, in 1998 they were held in Louisiana and Wisconsin. From 1982 to 1997, various fiscal amnesty programs were implemented in 35 states. Money resources were collected in the amount of USD 2.1 billion and most successful programs increased local budgets by 1-3%.

Successfully achieved success amnesties have been deployed in United States in 2009, 2010, 2011 and 2012. In 2009, fiscal amnesty benefited 14700 people. In 2012, their number exceeded 33,000 people, and budget revenues - \$ 5 billion. (Zaharov, 2014)

Tax amnesties in Brazil have led to fact that taxpayers have strengthened their opinion that it is better not to pay taxes, but wait for the next amnesty. To ensure the flow of funds from amnesties, local authorities greatly increased the number of inspections, which led to a large number of litigation and created a huge burden on judicial system. In addition, amnesties led to cases where companies sued the State to delay the time in anticipation of next amnesty (Tserliukevichi et al., 2014).

As Adrian Lupusor says, "long-term tax and capital amnesty leads to an even greater indebtedness of countries because it creates expectations for population, economic agents about future amnesty. In some countries, firms at a certain point in time, ceased paying taxes, anticipating new amnesties. For example, seven amnesties were organized in Kazakhstan. Argentina, another country thriving in this vicious circle, is at the 21st amnesty" (Moldova Curată, 2018).

3.2. Experience of Republic of Moldova

Republic of Moldova also has the experience of applying tax amnesty.

On April 27, 2007 Parliament of Republic of Moldova adopted the Law no. 111-IV, which foresaw the introduction of amendments and completions in some legislative acts with the aim of liberalizing the economic activity.

This initiative was based on three pillars (Berbeca and Tăbârță, 2016):

- 1) Capital legalization program - State has proposed to support the legalization of capital or value of capital declared through amnesty in exchange for payment to state budget of 5% of this amount.

- 2) Tax amnesty provided for cancellation of arrears reflected in the system of evidence of State Tax Service, National Social Insurance House registered on 1 January 2007. Tax amnesty meant the cancellation of about 4.4 billion lei - 2.16 billion lei basic payments and 2.18 billion lei the amount of increases and fines related to National Public Budget, not paid on 1 January 2007. The argument in favor of these debts cancellation with control suspension of previous periods was claimed that several production assets, economic assets are removed from economic circuit due to existing historical debts, which led to seizure of these assets. In other words, this law provided for the cancellation of all

tax arrears accumulated up to 2007, regardless of whether it might have been possible to collect some of them.

3) Reforming tax system for legal persons. Revenues for enterprise development and reinvestment would be taxed at zero. At the same time, the tax quota was maintained at 15 per cent if income was taken out of production and consumer-oriented production.

In 2007, the biggest stake was tax amnesty, because many economic agents who were actively working and could pay their debts were exempt from debt. In fact, it was an instrument to get these businesses to pay for 2009 election campaign. Tax amnesty was made before 2009 parliamentary elections.

Analyzing statistically reported data at the end of this 2007 amnesty capital move, we find that results are much lower than expected.

According to 2007 management's estimates, estimated legalization was about \$1 billion. In fact, legalized assets and money were in total amount of 360 million lei until 30 December 2008, which constituted about \$35 million at official rate of National Bank of Moldova on 30.12.2008. Respectively, revenues to state budget were about 18 million lei after applying legalization fee (5%).

The "zero" quota on reinvested tax has had a negative impact on revenues of local public authorities that have become dependent on transfers from state budget. The state lost about 4.3 billion lei (revenues projected for the 2007 budget) following the cancellation of debts, the increase of debts and unpaid fines. Much of these arrears were formed by January 1, 2001 - about 2.8 billion lei - but this package approach instead of an individual and rigorous approach canceled debts of state-owned enterprises without creating any incentive the exchange of this generous treatment, these enterprises continued to generate losses caused by inefficiency. The amount of debts in 2010, one year after their cancellation, amounted to about 1.2 billion lei.

On 16 December 2016, Parliament approved in first reading the draft law on capital liberalization and tax incentives which, essentially, was composed of two basic components (E-democracy, 2016).

The first one was to liberalize capital: any natural person (citizen of Republic of Moldova or his legal representative (parent, adopter, guardian, curator) can declare his assets (eg: money means, real estate, shares, securities, road transport) which were hitherto registered with other persons (eg relatives, interleaved persons, etc.) or not registered at all, or could re-evaluate declared assets at a lower value, legal protection being guaranteed (State can not verify the origin of these and not to impose sanctions on public officials for illicit acquisition or non-declaration of such property) in exchange for a 2% tax on the value of assets.

The second component concerned tax incentive: cancellation of all tax penalties of individuals and legal entities in exchange for payment of due amount.

In essence, the draft law provided for an amnesty of capital and a quasi-fiscal amnesty (it only referred to tax penalties, not basic debt).

The nominee draft law was severely criticized by civil society and experts. According to them, the document presents imminent risks for Republic of Moldova, which are to compromise the rule of law and fight corruption, legalize money laundering and tax evasion, further erode the image of banking sector and cool relationships with development partners, according to signatories of the statement (Anticorupție, 2018).

The opinion expressed by representatives of National Anti-Corruption Center on the draft law was particularly hard (Anticorupție, 2018):

- Project regulations on capital liberalization and fiscal stimulation create the risk of liberalization of capital from crimes, reduction of revenues to national public budget, fraudulent take-over of foreign property, proper functioning of Prosecutor's Office,

National Integrity Agency, National Anticorruption Center, Internal Affairs, other authorities with competence in integrating, preventing and combating corruption, preventing and combating money laundering, recovery of criminal assets, including in the process of investigating fraud in financial and banking sector, pose a risk of legalizing assets under seizure and those to whom the court did not order confiscation by a final judgment.

- The promotion of project in the current editorial office is inappropriate due to harmful nature of provisions and effects that will be generated for normative and institutional framework, economic and competitive environment, as well as image and reputation of public authorities and financial and banking sector in front of good citizens from Republic of Moldova, international bodies and other states with which authorities have strategic relations.

According to expert Adrian Lupușor, the nominated draft law has unexpected shortcomings (Moldova Curată, 2018):

- Expectations are being made about future recovery and, in the long run, tax discipline is undermined, because those who are violating legislation are being favored and those who comply.

- Capital amnesty could foster the development of money laundering phenomenon, as it could be used by interleaved persons from Republic of Moldova who declare assets of dubious origin and pay a modest tax of 2 percent. These assets, thus entered into the legal circuit, can also come from abroad and offshore areas.

As a result, the draft law was withdrawn from Parliament.

3.3. Ways to streamline tax amnesties

The international experience allows us to highlight conditions in which tax amnesty can be effective (Tax amnesty, c):

- Serious lack of punishment guarantees;
- Confidentiality of information keeping;
- Applying amnesty once;
- Non-confiscation character;
- Developing a broad campaign of explanation and propaganda.
- Combining amnesty with real threat of punishment in the event of subsequent tax concealment.

The efficiency of fiscal amnesty also largely depends on general situation in economy as well as the state of mind in society.

In order to create real incentives for return of entrepreneurs from shadow to legal, it is important to have a clear tax system and tax burden must be bearable. In addition, an efficient tax service is needed, which is primarily able to detect bad payers and to hold them accountable and secondly to cooperate with honest taxpayers, to ensure them consultation and other assistance instead of creating bureaucratic problems (Tax amnesty, c).

In order to ensure the amnesty of capital, in the opinion of many specialists, this measure must be carried out under certain conditions, such as creating legislation, providing access to banking information, establishing serious liability for non-declaration of funds on bank accounts abroad, increasing investment attractiveness, reducing tax burden combined with compliance with tax equity rules. It is also important for the country's international authority to work with interesting countries for bad payers. (Zaharov, 2014)

Tax amnesties cannot be effective in corrupt countries, where ruling parties control policy enforcement bodies. Many of those who could benefit from the amnesty of capital

- democracy.md/files/pr/2016-12-19-nota-amnistia-fiscală.pdf> [Accessed 22 January 2018].
8. Interlic, 2007. *Moldova: amnistie fiscală de patru miliarde de lei*. [online] Available at: <<http://www.interlic.md/2007-08-09/2049-2049.html>> [Accessed 21 January 2018].
9. Law of Republic of Moldova Nr. 111 of 27.04.2007 for amendment and completion of some legislative acts. Monitorul Oficial No. 64-66.
10. Law Book, 2018. *Вопросы налоговой и экономической амнистии*. [online] Available at: <<http://lawbook.online/ugolovnoe-pravo-ross-kniga/333-voprosy-i-nalogovoy-ekonomicheskoy-13831.html>> [Accessed 16 January 2018].
11. Moldova Curată, 2018. *Adrian Lupușor: amnistia de capital ar putea transforma Republica Moldova în punte pentru spălările de bani internaționale*. [pdf] Available at: <<http://www.moldovacurata.md/news/view/adrian-lupușor-amnistia-de-capital-ar-putea-transforma-republica-moldova-in-punte-pentru-spalarile-de-bani-internationale>> [Accessed 16 January 2018].
12. Monkov, I.A., 2016. *Purposes of tax amnesty and capital amnesty in the Russian Federation*. [online] Available at: <<http://scientific-conference.com/images/PDF/2016/12/tseli-provedeniya-nalogovoj.pdf>> [Accessed 17 January 2018].
13. Politike, 2018. *Amnistia capitalului*. [online] Available at: <<http://politike.ru/termin/amnistija-kapitalov.html>> [Accessed 23 January 2018].
14. *Tax amnesty (a)*. [online] Available at: <https://finance_loan.academic.ru/1093/TAX_AMNESTY> [Accessed 17 January 2018].
15. *Tax amnesty (b)*. [online] Available at: <https://ru.wikipedia.org/wiki/Tax_amnesty> [Accessed 16 January 2018].
16. *Tax Amnesty: World experience (c)*. [online] Available at: <<http://www.rocheduffay.ru/articles/amnesty.htm>> [Accessed 16 January 2018].
17. Tserlukevich, Y., Kruk, D., Bornukova, K. and Shimanovich, G., 2014. *Tax Amnesty*. [online] Available at: <http://www.beroc.by/webroot/delivery/files/tax_amnesty_beroc_pp21.pdf> [Accessed 15 January 2018].
18. Zaharov, A., 2014. *The question of trust: What can be the amnesty of capital*. [online] Available at: <<http://www.forbes.ru/mneniya-column/gosplan/274945-vopros-o-doverii-kakoi-mozhet-byt-amnistiya-kapitalov>> [Accessed 18 January 2018].