



Inaccurate or misleading accountancy : who said that ?

Nowadays, a business of any type and size, has to hold an accounting, meaning a record of its assets and liabilities, receipts and disbursements, through a number of books called financial statements.

The tax administration, or, rather, the state, is interested by perceiving its rights, called taxes and duties, once a revenue is generated though. In Algeria, businesses have to submit their statement of results on the April 30th of each year, at the latest, and pay the duties proportionally to the profits made.

A contrario, when the company would have suffered from a loss once, which should stay exceptional*, it has normally no obligation of payment towards the Treasury.

We have to stress out that the authorities ought to watch out when a business, that is supposed to generate profits, declares losses for more than 3 consecutive years. Indeed, it might either be a major negligence in running the company, and we should

presume the good faith of the owner as a general law principle, and the owner deserves to be seconded by the trade services (why not ?).

Or, that could also possibly be a presentation aiming notably to harm third parties' rights. In the latest situation, both the private and public creditors have got plenty of measures they could usefully implement in order to prevent or take back their legitimate interests before a fraudulent actor.

One of those would be to retain the debtor's self-owned goods until being desinterested (which is not totally safe, as there is the criminal infringement of abuse of confidence though...) or, ask for the opening of a bankruptcy procedure if the fraudulent insolvency is material, based on Article 216 of the code of commerce.

But, let us be back to our subject. A company sets up its financial statements every fiscal year and pays the due amounts of taxes.

Article 18 of the Algerian tax procedures code enables the tax administration to control the reports of the businesses. This is a direct encounter between two fiscal guidelines : why do we say, on one side, that the administration is committed by a « non-interference rule », meaning it should let the accountancy of the tax payer as it stands (intangible) and as it has been submitted to it, and, in the other side, we state that the tax authorities may control, review, and re-adjust that accounting data of the tax payer, if the need be (same article 18).

The Regulation goes even further and gives the right to the administration to challenge the truthness of any document submitted by the contributor in the frame of a control procedure (Article 19). That statement is a recognition - no more and no less - of the theory of the abuse of right in the fiscal matter. A dreadful weapon in the hands of the tax administration.

However the code strives to mitigate the negative effects of that arsenal by giving the tax payer some rights, that are- in parallel- obligations for the controller (meeting the contributor at first then write to him if the need be, grounding and motivating his

readjustment, giving him the ability of raising his observations and arguments, etc). It is obvious that this is an appliance of the principle of the rights of defence in Algerian domestic Tax law.

So, when the controller deems an accountancy as incorrect, or, more major than that, as misleading, what happens ?

The answer should be found in public law : the tax administration, or the controller is a person holding public authority and discharging a public service. Controllers are all sworn officials, having the mission to apply the whole Regulation pertaining to fiscality in order to protect, sanction and collect taxes for the state.

Then, actually, in case of a re-adjustment of the accountancy, the tax payer has no other reasonable option than paying what has been ordered, and, thereafter, he might exercise a number of recourses, administrative then judicial, if he deems the re-adjustment as non-grounded, on the form or on the substance aspects. It is the famous taxing rule of « pay, then challenge ».

We close these humble thoughts by saying that the tax administration enjoys huge powers towards its dependent contributors, when it rejects an accountancy, considering it as inaccurate and increases the taxes the company has already paid, which is quite harmful. But, hopefully, a number of rights and procedures has been set up by the Algerian state in order to enable the businesses to give their own point of view, because « we have touched their wallet » again and in an unusual way.

And, broadly speaking, why not think of a global new discipline : the « accounting compliance » or « accounting law » ? ...

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