

Appeals Against Tax Claims. The Incentives for Regulatory Attention in Romania

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Abstract. *Along with the frequent legislative changes and the pressure on companies imposed by the fiscal authorities in order to increase the level of collection of budgetary revenues, the companies' attitude towards tax control has come to a new stage. Managers increasingly resort to lawful litigation leeway against the measures imposed by tax authorities. New legal solutions are being sought for protection against sanctions and potential abuse of tax inspectors, because of the unclear or interpretable legal framework. Our study examines the incentives of tax appeals by using comparative and explicative analysis of statistical data, along with the principal component analysis. Thus, we explored the specific statistical indicators of appeals against tax claims following audits in Romania and managed to obtain important incentives of public reports on tax control appeals issued by legal authorities. The data analysis establishes the premises for a regulatory focus of active companies on the market, as the results of the study indicate the possibility of determining predictive elements of the tolerance to the fiscal error and of the sanctions applied by the tax control bodies.*

Keywords: *Tax appeals; corporate governance; reports; financial performance*

Introduction

In the context of Romania, a country with an emerging economy, the attention to a stable regulatory reference, able to create the premises for a competitive business environment is of great importance both for the state administrative bodies and for investors. The objectives of sustainable development can be achieved by designing an adequate strategy for the legal framework capable of achieving synergy between legal, social, economic, fiscal and political norms.

Tax aggressiveness should be correlated with social responsibility and corporate responsibility, the new approach creating a better base of the link between the public and business administration (Lanis & Richardson, 2012; Desai & Dharmapala, 2006; Narotzki, 2016).

Economic and business synergy studies have been developed over time, starting from the concept of "synergy" primarily defined by Fuller in 1979 (Fuller, 1979) and implemented in the economic sphere. Over the past years, the Romanian tax regulations have undergone substantial and unpredictable changes. The unstable legal reference created an attitude of distrust and uncertainty of investors, both domestic and foreign, and influenced the development of many businesses in Romania. The relation between the public environment and the business environment is influenced by the regulations frameworks (Grigorescu, 2006; Grigorescu & Bob, 2010).

The present study focuses on the issue of appeals formulated against administrative acts issued by tax inspectors. Statistical data shows that the number and structure of tax appeals in our country is of particular importance. The taxation is one of the main levers used to correlate the public services and the conformity of the economic players (Grigorescu, 2008; Grigorescu, Lincaru, Pirciog, & Chitescu, 2019). The implementation of a legal framework capable to allow taxpayers to contest tax decisions is a long-standing

issue discussed by the European Union and is still under implementation in our country. In Romania, the possibility to formulate appeals against fiscal administrative acts is set out in general terms in the Fiscal Procedure Code and in a number of complementary instructions.

Since 2012, a series of strategies have been outlined by the European Commission to develop the fight against tax evasion and fraud. The proposals for the creation of a European Taxpayer's Code and the use of an EU Taxpayer Identification Number (TIN) have therefore been subject to public debate. The conclusions of the debates were that the implementation of such a code contributes to a better understanding of the rights and obligations of each taxpayer (EU Summary report, 2013), as well as to an increase of collected tax receivables by the state (Press release, 2013). Also, the use of TINs facilitates the verification of business partners at the national level, enhancing knowledge and solvability check between partners located in different State Members.

The contributors to the topics subject to public debate considered that the implementation of a European taxpayer's code could allow the application of a common set of principles in the field of taxation. Among the principles considered to be primordial by respondents, there is the possibility of appealing against administrative acts to an independent court (Judicial review, or the possibility of a judicial appeal with an independent court) (EU Summary report, 2013).

There are various examples of analyzing the evolution of the relationship between tax and financial reporting, for example, Italy after the mandatory introduction of International Financial Reporting Standards (IFRS) in 2005, accepting the (GAAP), focused on creditor protection and looking for a close connection of financial and tax accounting (Gavana, Guggiola, & Marenzi, 2013). As well as we can consider the US GAAP reconciliation with the IACS for better integration of the multinational or foreign companies (Street, Nichols, & Gray, 2000).

In Romania, the possibility of challenging fiscal administrative acts is generally set out in the Fiscal Procedure Code and in some complementary instructions. During the past years, the appeal formalities have undergone a continuous change, the procedures for filing complaints (appeals) being regularly amended almost every year. As a consequence, according to the EU recommendations, in our country, it is unclear the provision of tax appeals against the "tax ruling". (Study for the ECON Committee, 2015)

The attitude towards appeals has strategic importance, given the following:

- Considered from the point of view of state institutions, the number of complaints and the way to solve them is an indicator by which the efficiency and competence of control institutions are being evaluated. As a result, the manner in which these indicators are publicly reported and the possible factors that can influence or distort the quality of reporting require a thorough analysis.
- Continuous change in law and inconsistency in tax strategies may result in uncertain or interpretable laws. Thus, reporting of the amounts established through tax decisions issued following fiscal audits may be distorted, if the law allows the possibility of tax inspectors to interpret different norms to their institutional benefit. The consequence may lead to an erroneous substantiation of the revenue the state expects to cash in and distorted increases in the collection rate of tax control institutions.
- From the companies' perspective, the existence of a proper mechanism for appealing against administrative acts can represent a measure of protection against abuse or corruption.

By processing the statistical data as this paper shows, we could determine a series of correlations and determinants regarding the reports on appeals against tax decisions. The results of the study suggest that the quality of the indicator on appeals reported by fiscal authorities may be enhanced in certain situations, in order to enhance the performance of the control body's activity. The regulations in force in Romania are not very clear regarding the compulsory elements to be considered when publicly reports are being issued by public institutions.

Reflections on noncompliance

When it comes to appeals, the concept of nonconformity to regulations gains intrinsic importance. Non-compliance is a term that has become increasingly used in the economic context of today.

The concept of noncompliance derives, on the one hand, from understanding and non-conformity with the regulatory framework, when laws are being perceived by its users as sufficiently clear and precise. From this perspective, the information gains a special pre-eminence, the cognitive value being the prime consideration in substantiating correct managerial decisions and developing proper business behavior, according to the comprehensive and extensive legislative repertoire.

On the other hand, empirical studies show that regulations can often be confusing or incomplete, leaving room for interpretations or contradictions of reasoning (Chiu, 2008). The situation is one of aprioria and derives from the absence of a clear rule, because in practice two reasoning can be considered, at the same time, valid. The actors involved in the contradictory argumentation gain special value from this perspective. In the economic context, the two actors are usually the next:

- Company managers, as issuers of financial decisions, materialized in the form of specific reports;
- State control authorities that issue judgments on the basis of the regulatory framework for assessing the compliance of financial decisions.

Any divergence of opinion between the two involved parties may lead, implicitly, to a situation of appealing the acts issued by the authorized institution.

Methodology

This paper uses the Principal Component Analysis (APC) as a methodology in order to assess the similarities and differences between the various statistical data regarding the number or value of appeals against tax decisions, as well as the correlations between the variables considered. (Juganaru, 2016)

The elements analyzed in the present paper are strongly correlated. The data consists of the number and amounts contested deriving from additional claims issued by tax inspectors following audits, as well as their evolution over time. PCA method allows, in this case, highlighting the correlations between variables and their distribution on the axis of inertia. (Aivaz, 2013)

The results of the study allow concluding on the significance of the disputed amounts that were accepted or rejected and the way they reflect in the performances of tax authorities. The statistical analysis is also complemented by practical assertions, able to propose incentives for the attitude of the parties involved in the act of challenge.

Data and results

This paper assessed the public data disseminated by the National Agency for Fiscal Administration (ANAF) during the period 2011-2016 regarding the number of companies' complaints against claims issued by the tax inspectors following fiscal audits.

The indicators pursued in the analysis are presented below, together with a brief description, which emerges from the public reports of ANAF:

- The number of resolutions to tax appeals, issued by the General Division for Solving Appeals or by a Court of Law
- Admitted contested sums
- Rejected contested sums
- Sums derived from dismantled claims
- Sums derives from other types of resolutions - In addition to the admission, rejection and dissolution solutions, the appeal bodies also adopted other solutions, namely: the rejection of the appeal without the substance of the case (rejection as not valid within the time-limit, rejection, since the person who filed the complaint is not in a position to contest the dismissal of the case as unjustified), the annulment of the fiscal administrative acts, the finding of lack of competence to resolve the appeals, the

renunciation by the taxpayer of the appeal, the suspension of the case settlement through administrative appeal, and the finding as remaining without object of the objection formulated.

Main findings

In Romania, the rules on appealing against administrative acts issued by the tax authorities involve the following stages: formulating the appeal in compliance with certain conditions related to the form and content set by regulations, observing the terms of filing or withdrawing the appeal, the jurisdiction that can be pronounced on the appeal, the form and the content of the decision to solve the appeal, the suspension of the appeal procedures by administrative measures, the appeal's resolution, the ways of communicating the resolution on the dispute, the correction of the material errors included in the decisions for solving the appeals.

Any taxpayer who considers that his / her rights or legitimate interests have been breached by the issuance of fiscal claims following tax audits may appeal against these acts. On the other hand, distinctly from the recommendations of the European Commission, the tax appeals formulated in our country are not submitted for resolution to an independent institution, but they are analyzed within the same entity that issued the contested act. Thus, the ability to objectively analyze the formulated complaints raises doubts. The matter requires, from our point of view, in-depth analysis.

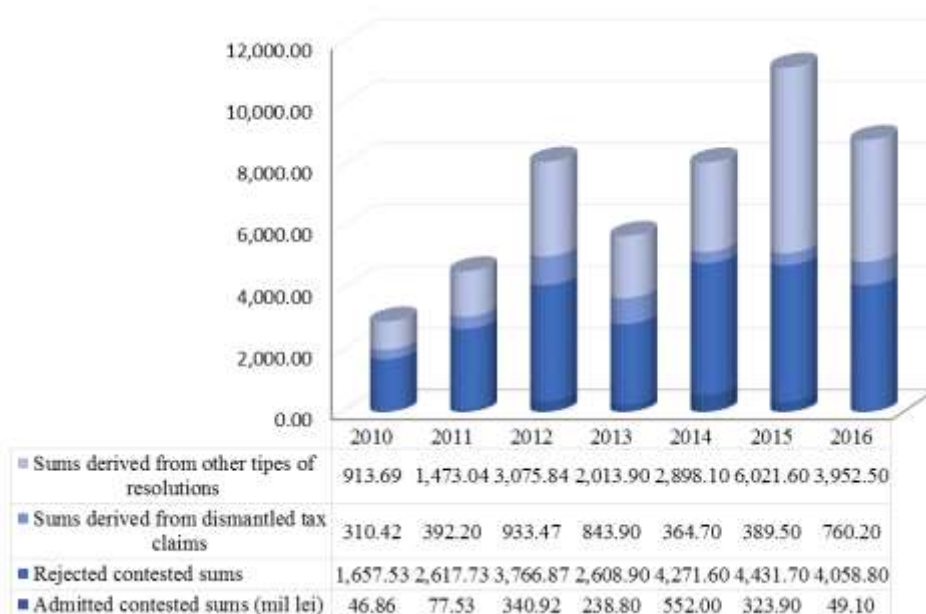


Figure 1. The evolution of appeals against tax control decisions
(authors' analysis of the reported indicators by the National Agency for Fiscal Administration - ANAF)

By analyzing the above chart, it can be observed that the maximum number of appeals against tax administrative acts was reached in 2011, although the amount of contested amounts is lower than in the following years.

The trajectory of the number of disputes between 2011 and 2016 is fluctuating, but with a downward trend. Instead, the contested amounts appear to oscillate in an upward direction. The situation demonstrates that the impact of tax audits on companies has been finalized with increasing budget receivables claims. The evolution of statistical results highlights the fact that tax inspectors have been increasingly focused on applying sanctions, calculating penalties, enforcing taxpayers' accounts for ever-increasing amounts.

Observed structurally, the contested amounts reveal a paradoxical situation:

- Of the total sums contested, the level of contested amounts admitted is well below the level of contested amounts rejected during the analysis period. Apparently, the situation indicates the correct enforcement of sanctions by tax inspectors.
- However, over the entire analyzed period, it can be noticed that from the total number of resolutions to the disputed sums, a significant share consists of amounts from "other solutions". Thus, it can be deduced that the decisions of the control bodies may not be entirely correct and there are other elements that affect the level of sanctions applied.
- As a result of the audits carried out, the fiscal inspectors issue tax claims decisions for additional amounts as well as for penalties. The resulting sums increased considerably over the past years. At the same time, in cases where there are suspicions of tax evasion, criminal complaints are filed against the audited companies. In practice, the latter situation is more and more frequent. According to the rule of law, "the criminal prevails over the civilian in the sense that the trial before the civil court is suspended after the criminal proceedings have been initiated and until the criminal case has been resolved at first instance, but not more than one year." (Dumitrache, 2011).
- As a result, until resolution of the criminal trial, the resolution on the appeal remains on hold, which can be translated into a hindrance to taxpayers' access to justice.
- The consequences of the measures ordered by ANAF lead to the growth of companies that become insolvent or go into bankruptcy.
- Nevertheless, there are no public reports issued by ANAF regarding the justification of the duration of most fiscal audits which are being carried out on over 5-year periods. Actually, the fiscal audits verify the maximum period before overrun according to tax regulations. One possible explanation is that the past controls carried out by the same institutions were ineffective. The additional tax claims set as a result of the controls represent an unbearable tax burden for most taxpayers. At the same time, the actions of tax authorities regarding the prevention of tax evasion facts and the increase of voluntary tax compliance are obviously ineffective or non-existent.
- Also, there are no public statistical data in Romania regarding the number of appeals or the value of contested tax claims that have been resolved in favor of the taxpayer in the civil courts.

The annual evolution of the number of complaints and the value of the disputed appeals were investigated using the principal component analysis (PCA), with the following results:

1. The variance of the initial data can be observed with the Correlation Matrix. The higher the variance values, the better it can be concluded that the data measured for those characteristics are more conclusive. The values taken for analysis are outside the range -0.5 and +0.5. (Dumitrache, 2011)

Table 1. Correlation Matrix

Indicators	Year	Total contested sums	Admitted contested sums	Rejected contested sums	Sums derived from dismantled tax claims	Sums derived from other types of resolutions
Year	1.000					
Total contested sums	.713	1.000				
Admitted contested sums	-.494	.034	1.000			
Rejected contested sums	.696	.870	.274	1.000		
Sums derived from dismantled tax claims	-.118	-.655	-.772	-.790	1.000	
Sums derived from other types of resolutions	.669	.972	-.098	.729	-.522	1.000

(Source: authors' computation)

Taking into account the values close to +1 or -1 of the results, it can be noticed that there are significant connections between the analyzed indicators. The results colored in red in the matrix were considered insignificant and were not taken into account in the analysis.

Depending on the year of reports, the elements processed with the PCA method distinguish the evolution of the total contested amounts as important. The contested amounts rejected and those that received other solutions held the greater share in the total amount contested.

According to the matrix of correlations, there is a strong direct proportionality between the sums contested and the amounts resolved by rejection (0.870). The link is very strong between the contested amounts and the amounts that have received other settlement solutions (0.972). At the same time, it can be noticed that amounts receiving other solutions increase the sums of appeals rejected and inversely influence the amounts in the canceled control acts.

The strong link between the indicators supports the premise that the formulation of criminal proceedings by ANAF increases the amount of the rejected appeals on claims. The situation is not entirely accurate, as the initiation of criminal proceedings suspends the right of civil litigation and, implicitly, of setting resolutions to current appeals. Practically, "other solutions" for the appealed amounts may lead to an artificial increase of the performance indicators regarding the amounts made by ANAF and, implicitly, the level of collection of the budget revenues.

2. The use of the PCA method in this analysis, carried out using SPSS software, proves to be relevant due to the strongly correlated variables in the *Communalities* table.

The results obtained by extraction indicate a very good representation of the variables on the extracted components. The situation is due to the fact that all the indicators being analyzed are in the sphere of the appealed amounts claimed by fiscal administrative acts. At the same time, the regulatory framework at the national level is uniformly related to all the investigated elements.

Table 2. Communalities

	Initial	Extraction
Year	1.000	.905
Total contested sums	1.000	.969
Admitted contested sums	1.000	.997
Rejected contested sums	1.000	.920
Sums derived from dismantled tax claims	1.000	1.000
Sums derived from other types of resolutions	1.000	.862

(Source: Authors' computation; Extraction Method: Principal Component Analysis)

The institution capable to resolve the appeals is integrated into ANAF. In practice, the General Structure for Solving Appeals is part of the same institutional framework with tax inspectors issuing the contested acts. The lack of independence in the process of solving complaints is supported by both the Matrix of Correlations and the Components extracted according to the Communalities.

3. The values variance and the extracted components are shown in the following table:

Table 3. Total Variance Explained

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	3.768	62.807	62.807	3.768	62.807	62.807
2	1.885	31.419	94.226	1.885	31.419	94.226
3	.346	5.774	100.000			
4	1.040E-15	1.734E-14	100.000			
5	2.652E-16	4.420E-15	100.000			
6	-1.636E-16	-2.726E-15	100.000			

(Source: Authors computation; extraction method: principal component analysis)

Eigenvalue indicators show the deviations between the groups and the sum of the squares of the deviations within the groups. (Jaba, 2009) The "Total" column indicates the variance of the calculated components, the

'% of Variance' column indicates the average of these variations and the column 'Cumulative %' calculates the sums of the percentages of the first n components.

Extraction sums of squared loadings show that the first factorial axis explains 62.807% of the total variation of the cloud. Together, the first two axes together represent 94.226% of the total variation in the variation of the initial variables.

- The optimal number of components for each initial component is represented graphically in the following Scree Plot:

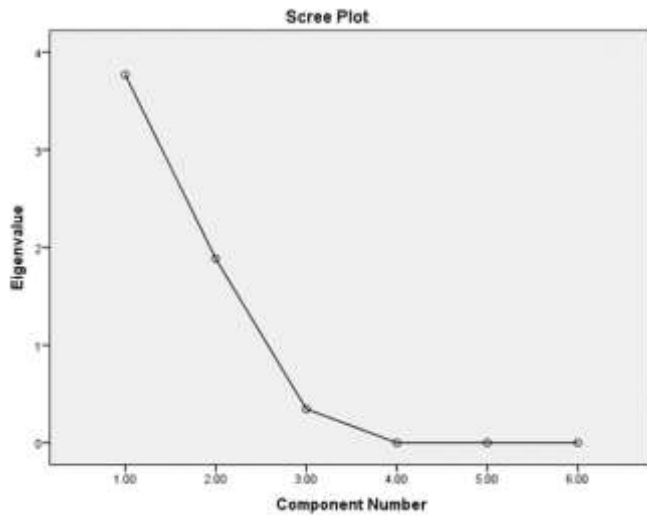


Figure 2. Scree plot
(Authors' representation)

The diagram indicates that the first two components form the most accentuated slope of the graph.

- The position of the extracted components in the factorial axes is calculated as shown in the Component Matrix. The values higher than 0.5 or lower than -0.5 indicate a strong link between the variable and the factorial axis in question. The values of reduced significance are designed in red.

Table 4. Matrix Components

	Component	
	1	2
Year	.713	.629
Total contested sums	.978	.110
Admitted contested sums	.155	-.986
Rejected contested sums	.952	-.113
Sums derived from dismantled tax claims	-.747	.665
Sums derived from other types of resolutions	.902	.222

(Source: Authors' computation; Extraction Method: Principal Component Analysis)

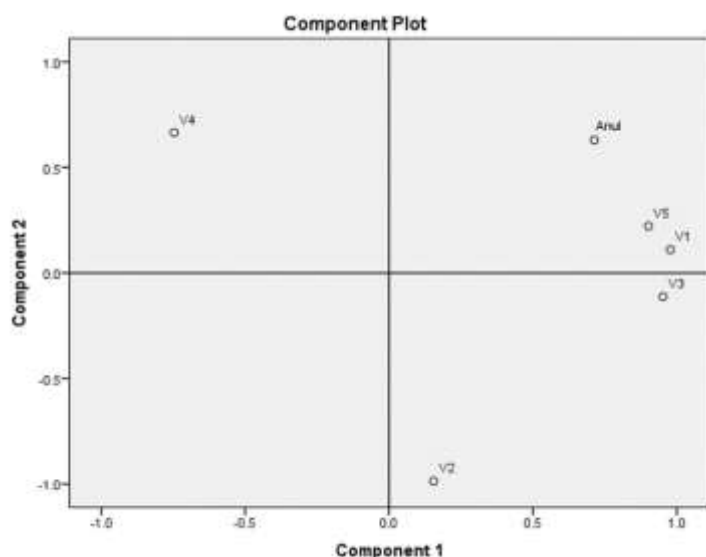


Figure 3. Factorial axes
(Authors' representation)

Reflections on public governance issues

The results of this study demonstrate the importance of publicly reported indicators regarding appeals against tax claims, by tax authorities in Romania. The main results clearly show that the way in which statistics on tax appeals are presented is of dual importance.

On the one hand, the state institutions present the situation as a performance indicator of the tax audit procedures - the results obtained clearly show that the manner in which the elements are presented can distort the quality of this indicator.

The lack of independence of the law enforcement bodies capable to resolve tax appeals may encourage an abusive attitude of tax inspectors and corruption offenses of civil servants. The reporting of such corruption offenses following public internal controls led, in 2013, to the need to reorganize structures within ANAF. Analysis of the procedural framework in tax matters indicates that the risk of abuse (Kahneman, 1979) by tax inspectors still exists.

EU recommendations focus on increasing objectivity in addressing complaints, creating independent institutions and increasing transparency in reporting. However, in Romania, the institutional framework is still insufficiently adapted to meet the objectivity requirements. At the same time, the unstable and unpredictable legal framework regarding taxation, the unclear reporting criteria and the possibility for the tax authorities to delay the procedures for solving the complaints by starting the criminal proceedings are elements that affect the accuracy of the performance indicators of the fiscal audit procedure.

Managerial implications rise, referring to the business environment, from the procedural framework of the complaints that grants the possibility for protection of rights against abuses and corruption. Preventing access to justice leads to a decrease in investors' interest in developing businesses. Also, the delay in the exercise of rights against abusive tax claims is a cause of the increase in insolvency and the number of companies forced to go bankrupt following the audits.

Conclusions

The results of this study indicate the need to improve the Romanian regulatory framework, in the sense of creating independent structures for objectively solving tax appeals. It is also imperative to establish clear criteria for transparent, clear and centralized reporting, with the possibility to find out the number of tax appeals formulated, to classify the complaints according to the subject matter and the way of solving.

Limited statistical data in this regard is a signal that improvement is needed in the current institutional framework.

Developing studies on the impact of ethical practices in tax appeals could also help improve administrative performance. Creating an effective framework for appealing against tax receivables can be an indicator of reducing corruption, as well as a healthy rise in voluntary business compliance with tax regulations.

References

- Aivaz, K. (2013). Aspects of Romanian Education during 1990-2011, by the Principal Component Analysis. *Ovidius University Annals, Economic Sciences Series*, XIII (1), 383-388.
- Chiu, I.H.Y. (2008). Regulatory Convergence in EU Securities Regulation, Kluwer Law International BV, The Netherlands.
- Desai, M., & Dharmapala, D. (2006). Corporate social responsibility and taxation: The missing link. *Leading Perspectives*, 4-5.
- Dumitrache, S. (2011). Unele considerații privind cumulul răspunderii disciplinare cu răspunderea penală [Some considerations regarding the cumulation of disciplinary liability with criminal liability]. *Juridical Tribune*, 1(2), December 2011, 180.
- Fuller, R.B. (1979). *Synergetics*, Macmillan Publishing, pp. 32-72.
- Gavana, G., Guggiola, G., & Marenzi, A. (2013). Evolving connections between tax and financial reporting in Italy. *Accounting in Europe*, 10(1), 43-70.
- Grigorescu, A. (2006). Marketing of public and private affairs—a link. *Kybernetes*, 35(7/8), 1179-1189.
- Grigorescu, A. (2008). Quality and customer satisfaction in public services. *Amfiteatru Economic*, 10, 130-135.
- Grigorescu, A., & Bob, C. (2010). Public & Business Management Confluences—Success Factors. *Romanian Journal of Economic Forecasting*, 43.
- Grigorescu, A., Lincaru, C., Pirciog, S., & Chițescu, R. I. (2019). Competitiveness and sustainable development in public services. *Management & Marketing. Challenges for the Knowledge Society*, 14(1), 108-129.
- Jaba, E, & Robu, I.B., (2009). The Use of the Discriminant Analysis for Obtaining Audit Evidence. *Audit financiar*, 7, 19-26.
- Juganaru, M., Juganaru, I.D., & Aivaz, K.A. (2016). Quantitative Aspects Regarding the Tourist Traffic Indicators in the Human Settlements Located on the Black Sea Coast. *Cross Cultural Management Journal*, XVIII, 1(9), 65-75.
- Kahneman, D., & Tversky, A. (1979). Prospect Theory: An Analysis of Decision under Risk. *Econometrica*, 47(2), 263-291.
- Lanis, R., & Richardson, G. (2012). Corporate social responsibility and tax aggressiveness: a test of legitimacy theory. *Accounting, Auditing & Accountability Journal*, 26(1), 75-100.
- Narotzki, D. (2016). Corporate social responsibility and taxation: the next step of the evolution. *Houston Business and Tax Law Journal*, 16, 167.
- Street, D.L., Nichols, N.B., & Gray, S.J. (2000). Assessing the acceptability of international accounting standards in the US: An empirical study of the materiality of US GAAP reconciliations by non-US companies complying with IASC standards. *International Journal of Accounting*, 35(1), 27-63.
- Press Release. Fighting evasion: Commission launches consultations on EU Taxpayer's Code and EU Tax Identification Number, press release 25 February 2013, http://europa.eu/rapid/press-release_IP-13-154_en.htm.
- Summary Report on the outcome of the public consultation from DG TAXUD, A European Taxpayer's Code, EUROPEAN COMMISSION, Brussels, 12 September 2013, TAXUD.D.2 (Ares 2013) 3252439, 7.
- "Tax Rulings" in the EU Member States, Study for the ECON Committee, European Parliament, Nov. 2015.