

LEGAL NATURE OF OBLIGATIONS RELATING TO SETTLEMENTS OF 0.1% QUOTAS OF THE VALUE OF CERTIFIED WORKS OWED ACCORDING TO ARTICLE 30 OF LAW NO. 50/1991 REGARDING CERTIFICATION OF CONSTRUCTION WORKS AND 0.5 % OWED BY VIRTUE OF ARTICLE 43 OF LAW NO. 10/1995 REGARDING QUALITY IN CONSTRUCTION. ASPECTS ON THE SUBJECT MATTER JURISDICTION OF THE COURTS OF LAW REGARDING SETTLEMENT OF DISPUTES AND STATUTE OF LIMITATIONS APPLICABLE

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Abstract

The judicial practice has met with the issue of the legal nature of obligations relating to settlements of quotas of 0.1% of Law no. 50/1991 regarding certification of construction works and 0.5% owed according to article 43 of Law no.10/1995 regarding quality in construction. Classification of these obligations as to whether they are of fiscal nature or not triggers significant legal consequences relating to statute of limitations, date of which late penalties are calculated and subject matter jurisdiction of the courts of law regarding settlement of disputes.

Keywords: construction works, certification, quotas owed, tax liability, tax receivables, statute of limitations.

JEL Classification: K33, K34

1. Regulation

1.1. Regulation on the obligation relating to settlement of 0.1% of the value of certified works according to article 30 of Law no. 50/1991 regarding certification of execution of works, as amended and supplemented

According to article 30 of Law no. 50/1991³ „Expenses relating to state control in land management, urbanism and certification of execution of works in construction and regulation in the field of urbanism shall be borne by the investors, in a value equivalent to a quota of 0.1% of the value of certified works, except those provided by article 3 (1) letter b), churches / monasteries and high emergency intervention works to secure existing buildings, including related installations which represent a danger to public, regardless of their use.”

The amounts owed are to be transferred into the accounts of the Construction Inspectorates and the Inspectorate of Bucharest Municipality on the same date of the notification on the date of the commencement of works. Late settlements of the quota of 0.1% are penalized by 0.15%/late day, without exceeding the amount already owed. The 0.1% quota shall also apply to differences provided by regulations on the values of certified works, which are to be settled by the date of the reception conducted upon completion of works.

1.2. Debtors of 0.1% quota of value of certified works

According to article 30 (1), the 0.1% quota „shall be borne by the investors” and is calculated

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³ Law 50/1991 regarding certification of the execution of construction works, published in the Official Gazette no. 933 of 13.10.2004, as amended and supplemented. With regard to urbanism permits – the urbanism certificate and the building permit, Elena Maria Mirea, *Urban planning. Urbanism. Doctrine and Legal Regulations*, Pro Universitaria Publisher, Bucharest, 2016, p. 117-126. Also see Cristina Titirișcă, Anca Stroi, Dumitru Dobrev, *Urbanism Law. Judicial Practice, II Building Permit* Hamangiu Publisher, 2019.

as a percentage of the value of the works performed. Law no. 50/1991 does not include a definition of the investor; however, there is a definition in article 22 of Law no. 10/1995 regarding quality in construction⁴ according to which the investors as natural persons or companies financing, investing or intervening upon existing civil constructions. Construing article 30 (1) in corroboration with article 3 of Law no. 50/1991 leads us to the conclusion that the quota of 0.1% is owed for all construction works subjected to certification set forth in article 3 (1) letter a) – i)⁵.

According to article 30 (1), the 1% quota is not owed for:

- a) building, rebuilding, expanding, repairing, consolidating, protecting, restoring, preserving works as well as for all and any other types of works irrespective of their value, which are to be carried out for all categories of historical monuments laid down by the law – monuments, ensembles, sites – including their annexes, identified in the same building – land and/or constructions, in constructions located in areas protected for their monuments, and protected built areas, laid down by the law or in connection with constructions of special architectural or historic value, according to urban planning documents approved;
- b) works performed in relation to churches and monasteries;
- c) high emergency intervention works to secure existing buildings, including related installations which represent a danger to public, regardless of their use.

1.3. Debtor of the obligation relating to settlement of 0.1% quota of the value of certified works and destination of amounts correlated

The creditor of the financial obligation is the State Construction Inspectorate through the county construction inspectorates and the inspectorate of Bucharest Municipality. The 0.1% quota represents the settlement made in exchange for a public service rendered and is intended to cover the expenses for the state control in land management, urbanism and certification of execution of works in construction and regulation in the field of urbanism.

According to articles 1 and 4 of G.O. no. 63/2001⁶, the State Construction Inspectorate is a

⁴ Law no. 10/1995 regarding quality in construction published in the Official Gazette no. 765 of 30 September 2016.

⁵ As per article 3 of Law no. 50/1991 (1) Civil, industrial, farming constructions, the constructions intended to support technological installations and machinery, for infrastructure of all types or of any other nature may be performed only in compliance with the building permit and the regulations on designing and executing works, for: a) building, rebuilding, consolidating, modifying, expanding, rehabilitating, use changing or repairing works of any type as well as related installations, except those stated in article 11; b) building, rebuilding, expanding, repairing, consolidating, protecting, restoring, preserving works as well as all and any other works, irrespective of their value, which are to be performed in connection with all categories of historical monuments laid down by the law – monuments, ensembles, sites – including their annexes, identified in the same building – land and/or constructions, in constructions located in areas protected for their monuments, and protected built areas, laid down by the law or in connection with constructions of special architectural or historic value, according to urban planning documents approved; c) building, rebuilding, modifying, expanding, repairing, modernizing, rehabilitating, works performed on communication routes of any type, forest roads, artworks, technical and municipal networks and equipment, hydro-technical works, riverbed planning works, land improving works, infrastructure installations works, works intended to develop new manufacturing facilities, transportation, power and heat distribution as well as rehabilitation and upgrade of the existing ones; d) surroundings and urban furniture, green area planning, parks, playgrounds and amusement parks, markets and other planning works of public spaces; e) drilling and excavating works intended to carry out geo-technical studies and geological explorations, design and opening of quarries and gravel pits, gas and oil wellbores, as well as other surface, underground and underwater exploitations; f) temporary works, planning works and constructions intended to organize execution of works, under the conditions laid down in article 7 (1) and (1[^]3);g) organizing camping sites; h) temporary construction works: kiosks, stands, cabins, exhibition spaces, boards, signs and billboards, canopies, pergolas, household annexes as well as annexes of farming areas located outer-village; i) cemeteries – new and expansions. (2) In order to simplify the certification procedure applicable to performance of temporary construction works stated in (1) letter d), g) and h), the building permit is issued based on the technical documentation – T.D. with simplified content in line with the framework content stated in appendix no. 1.

⁶ Ordinance 63/2001 regarding establishment of the State Construction Inspectorate - I.S.C., published in the Official Gazette no. 536 of 01.09.2001. This ordinance was amended by GO 24/2014 intended to set some actions regarding control of state in the field of construction, published in the Official Gazette no. 638/29.08.2014. In accordance with GO 63/2001, the State Construction Inspectorate acted under the Ministry of Public Works, Transportation and Dwelling. According to Law no. 329/2009 regarding reorganization of an authority and public institution, cutting down public costs, supporting the business environment and complying with the framework agreements concluded with European Commission and the International Monetary Fund, published in the Official Gazette no. 761/09.11.2009, the State Construction Inspectorate acted under the Government and the coordination of the Prime Minister between 9 November 2009 and 29 August 2014. In the present regulation, the State Construction Inspectorate is set up as a public institution with legal personality under the Ministry of Regional Development and Public Administration – article 1 of GO No. 63/2001, as amended by GO 24/2014 published in the Official Gazette no. 638/29.08.2014.

public institution with legal personality reporting to the Ministry of Regional Development and Public Administration, which is fully financed from their own revenues. The income and expenditure budget regarding activities fully financed from their own revenue is approved on an annual basis as an appendix to the budget of the Ministry of Regional Development and Public Administration.

The Construction Inspectorate (ISC) uses 70% of the funds to perform their tasks, including staff-related expenses, in compliance with the legal provisions. In addition, they transfer on a monthly basis 30% of this fund into the account of the central public administration authority which acts in this field of land management, urbanism and certification of the execution of construction /demolition works in order to provide the fund required to update/prepare the technical regulations as well as the fund intended for technical documentations on the urban planning of national interest and for staff-related expenses.

The staff-related expenses include expenses with their own staff and settlements of indemnities owed to the experts who are members of committees/commissions/councils in charge of providing technical endorsement.

2. Regulation on the 0.7% quota owed by investors according to article 40 and 0.5% quota owed by investors/owners in accordance with article 43 of Law no. 10/1995 regarding quality in construction

2.1. Debtors of the 0.5% quota of the value exclusive of VAT of construction works

In compliance with article 43 of Law no. 10/1995, the debtors of this 0.5% quota are the investors or the owners who:

- perform works relating to erection of new buildings;
- carry out intervention works on the existing buildings;
- all works requiring building permit in accordance with article 3 of Law 50/1991 and works for which demolition permits were granted are included in these two generic categories of construction works⁷. We have already mentioned that according to article 22 of Law no. 10/1995 the investors are natural persons or companies financing and investing in performance of works relating to existing buildings.

According to article 40 (1) of Law no. 10/1995 regarding quality in construction applicable by 31.01.2014, the investors or the owners may transfer, on a monthly basis, to the State Construction Inspectorate – ISC, an amount equivalent to a quota of 0.70% of the expenses intended for performance of construction works and works of modernization, modification, alteration, consolidation and repairs of such constructions and for which building permits have been issued in compliance with legal requirements. The amounts are calculated and transferred in stages/by installments, as the services provided are also remunerated⁸. The 0.70% quota shall not be owed by owners natural persons performing works of consolidation and repairs in relation to their own property.

The current regulation – article 43 of Law no. 10/1995 is different. The investors or owners shall transfer the State Construction Inspectorate – ISC an amount equivalent to a 0.5% quota (exclusive of VAT) of the value of works performed in relation to erection of new buildings and works of intervention upon existing buildings for which building/demolition permits are issued in compliance with the law in force.

⁷ As per article 8 of Law article 50/1991, (1) Constructions and related installations, technological installations and equipment, including construction elements to support such works, shall be totally or partially demolished, scrapped or dismantled in compliance with demolition permit providing that the authorities stated in article 4 granted permission in this respect. Similarly, quarries as well as surface and underground exploitations shall be shut down based on the same demolition permit. The same applies for all and any planning works. (2) The demolition permit is issued in compliance with the same requirements as the ones applicable for the building permit, in accordance with the provisions of the urban plans and related regulations, according to the law applicable, except for those provided at article 11.

⁸ The judicial practice shows that the obligation to settle the 0.7% quota arises upon reception of construction works, The Court of Sector 1 Bucharest, Civil Sentence no. 2090/02.04.2018, published on www.sintact.ro.

2.2. The creditor of the obligation relating to settlement of 0.5% quota owed by investors/owners and the destination of the amounts collected

The creditor of the financial obligation is the State Construction Inspectorate through the county construction inspectorates and the inspectorate of Bucharest Municipality.

The amount equivalent to the 0.5% quota is calculated and transferred as follows:

a) 50% of the amount equivalent to the 0.5% quota applicable to the value of the certified works is transferred by the investors and owners on the date the notification on the commencement date of the works certified is submitted to the State Construction Inspectorate - I.S.C., as stated in Law no. 50/1991 regarding certification of the performance of construction works, republished, as amended and supplemented;

b) the amount representing the difference between the amount equivalent to the 0.5% quota applied to the final value of the works executed, exclusive of VAT, and the amount transferred in compliance with the provisions of letters a) and all and any other amounts related to legal quotas settled previously is to be transferred by the investors or the owners by the date of signing the reception report upon completion of works.

Late settlement of the amounts calculated in accordance with provisions of par (2) letters a) and b) shall be penalized by 0.15% / late day.

Although the current regulation lowers the quota owed to the State Construction Inspectorate from 0.7% to 0.5%, it entails a better collection of the amounts owed by transfer of the 50% upon commencement of the certified works and not by installments upon the settlement of the services provided. The basis of the quota collection is considerably expanded. Article 40 of the old regulation provided an exemption from payment of such quota for owners natural persons executing works of consolidation and repairs in relation to their own property. The current regulation of the 0.5% quota, exclusive of VAT, is not owed by investors or owners executing intervention works with a view to consolidating dwellings classified as first-degree seismic risk building.

With regard to the destination of the amounts transferred to the State Construction Inspectorate, 50% of the fund is used to carry out tasks in accordance with legal provisions and 50% is monthly transferred to the Ministry of Regional Development and Public Administration, representing own revenue used to cover current expenses and capital expenses for:

a) regulation activity in construction encompassing contracting preparation of technical documentations and regulation-specific activities;

b) execution through the National Company for Investments "C.N.I." – Joint Stock of some categories of services and works under the "National Program for Construction of Public or Social Interest";

c) technical and professional habilitation of construction experts;

d) organization and management of specific databases regarding constructions, technical regulations, notified/appointed/accredited/habilitated bodies, products for constructions and specialists who conduct construction activities and are technically and professionally attested.

The remaining amounts of their own revenue available at yearend are carried forward in the following year, for the same use.

3. Legal nature of obligation relating to settlements of 0.1% quota of the value of certified works owed according to article 30 of Law no. 50/1991 and 0.5% quota owed according to article 43 of Law no. 10/1995 regarding the quality in construction

The High Court of Cassation and Justice has been referred to with a view to awarding a preliminary decision regarding the legal nature of the obligation to settle the 0.7 % of the expenses intended to perform constructions and works set forth in article 2 Law no. 10/1995 and for which building permits are issued in compliance with the law⁹.

⁹ The Court of Appeal of Bucharest, 4th Civil Department, in relation to file registered under no. 47842/3/2015, record of proceedings 19 April 2017. With regard to notification of the High Court of Cassation and Justice in order to issue a preliminary award to settle

The award of a preliminary decision has been brought before the High Court of Cassation and Justice by virtue of article 519 Civil Procedure Code after some courts have considered that litigations relating to the petitions filed by the State Construction Inspectorate in connection with forcing some defendants to settle their 0.1% and 0.7% quotas are under the jurisdiction of civil departments and the statute of limitations applicable is 3 years¹⁰. Other courts have considered that the financial obligations with regard to these quotas are fiscal obligations and the statute of limitations is 5 years.

The following arguments have been used to support the first opinion¹¹:

- Claimant State Construction Inspectorate is not a fiscal body and therefore is not entitled to pursue collection of amounts owed by tax payers and to issue administrative and fiscal documents;
- The statute of limitations is 5 years and applies to tax receivables owed by tax payers directly to the state budget;
- The only responsibility of fiscal bodies is to set, collect and pursue how taxes and dues owed by natural persons to the state or administrative-territorial units are used. The scope of the tasks established for fiscal bodies does not encompass revenue obtained from other authorities with legal personality, i.e. State Construction Inspectorate and the institutions to which they report;
- The creditor of the 0.1% and 0.7% is claimant State Construction Inspectorate and not the state budget or the administrative-territorial unit budgets¹²;
- The manner in which some public institutions are organized is not likely to entail the application of the 5-year statute of limitations provided in article 91 of GO no. 92/2003.
- The receivables claimed are not fiscal, as they were not calculated in accordance with provisions of article 85 and following of GO no. 92/2003. The amounts representing the quotas mentioned may be pursued within the general 3-year statute of limitations pertaining to receivables, namely based on tax return forms or taxation notices. The procedure regulated by the Fiscal Procedure Code is mandatory for tax receivables to be owed and settled.

The following arguments have been used to demonstrate that the obligation relating to 0.7% quota settlement is a tax receivable¹³:

- Provisions of article 1 (2) of G.O. no. 92/2003 regarding the applicability of the Fiscal Procedure Code “The present Code also applies to management of customs-related rights and receivables representing contributions, fines and other amounts classified as income to consolidated budgets, in compliance with the law, unless otherwise stated by the law.
- Additionally, one should also consider provisions of article 1 (3) letter b) defining the term of “management” and provisions of article 21 and 22 of GO 92/2003 regarding the term tax receivables. They both refer to collections of “other amounts representing income to the state budget”.
- When their claim for receivables arose, the State Construction Inspectorate acted as a public institution fully financed by the state budget, the income collected was classified as income from the state budget¹⁴.
- The obligation relating to the 0.7% quota settlement is set forth by the law, regardless of whether the State Construction Inspectorate issued or not a certificate of indebtedness in order to collect this amount. In terms of management of this type of tax, the State Construction Inspectorate

some law aspects, see Gabriel Boroi, Mirela Stancu, *Civil Procedural Law*, 5th Edition, revised and supplemented, Hamangiu Publisher, Bucharest, 2020, p. 907-919.

¹⁰ In this respect, the Court of Law of Bucharest, 2nd Contentious Administrative and Fiscal Department issued the exception of functional incompetence and referred the petition to be settled by a civil department. By civil sentence no. 1209/11 of October 2016, the Court of Law of Bucharest, 3rd Civil Department admitted the exception of the statute of limitations and rejected the sue petition filed by claimant ISC on grounds of expiry of the statute of limitations.

¹¹ Decision no. 8/2018 of the High Court of Cassation and Justice, Panel constituted to settle some law-related issues, published in the Official Gazette, Part I no. 501 of 19 June 2018.

¹² The High Court of Cassation and Justice – Panel constituted to settle some law-related issues ruled with regard to the 0.7% quota set prior to 2014; applicable are provisions of article 40 (currently article 43) of Law no. 10/1995; GO no. 92/2003 regarding Fiscal Procedure Code (repealed); Decree no. 167/1958 regarding extinctive prescription (repealed).

¹³ In this respect, the Court of Sector 1 Bucharest has also issued an award, civil sentence no. 2090/02.04.2018, published on www.sintact.ro.

¹⁴ Law no. 329/2009 regarding reorganization of an authority and public institution, cutting down public costs, supporting the business environment and complying with the framework agreements concluded with European Commission and the International Monetary Fund, published in the Official Gazette no. 761 of 9 November 2009.

is only responsible to the extent a fiscal body would be, i.e. they exercise control in relation to fulfillment of such settlement obligation and have the role of the collector of such tax. They have no powers as to calculating the amount owed and notifying the payer by issuing a certificate of indebtedness.

- The law defines the tax liabilities in line with the destination of the amounts and not in relation to the status of the tax collectors. The relationships with regard to management of the taxes owed to the state budget are legally fiscal relationships, according to provisions of articles 1 and 2 of GO no. 92/2003, and the property rights arising from relationships of material tax law stand for tax liabilities.

- In their conclusion, the High Court of Cassation and Justice states that the payment obligation mentioned above falls under the term of tax liability/tax receivables. It represents a financial resource intended to supply the state budget in consideration of the service provided by the public institution, which is a service intended to control the quality in construction and not an equivalent of such service.

Analysis of the Decision no. 8/2018, sentenced by the High Court of Cassation and Justice – Panel constituted to settle some law-related issues, reveals the following aspects:

a) Notification with regard to settle some law issues was only meant to legally qualify the obligation relating to settlement of the 0.7% quota stated in article 40 of Law no. 10/1995 (applicable in 2010). This obligation was classified as tax liability/tax receivables;

b) The Supreme Court has made no comments on the legal nature of the 0.1% quota set forth in article 30 of Law no. 50/1990 regarding certification of the performance of construction works. The arguments used in classifying the 0.7% tax as tax liability/tax receivables are also fully applicable in relation to the 0.1% quota. Therefore, the 0.1% quota is legally a tax liability/tax receivable.

The regulations that substantiated decision number 8/2018 have mostly been repealed¹⁵. In accordance with article 518 Civil Procedure Code, the decision in the interest of the law ceases to apply when amended or repealed or when the legal provision - subject matter of the interpretation - is stated to be unconstitutional.

In accordance with the current legislation, the State Construction Inspectorate collects from investors and owners of constructions:

a) the 0.1% quota of the value of certified works, in compliance with article 30 (1) of Law no. 50/1991 regarding certification of the performance of construction works, as amended and supplemented.

b) the 0.5% quota of the value exclusive of VAT of the works performed with a view to erecting new buildings and intervention works upon existing buildings, based on article 43 of Law no. 10/1995 regarding quality in construction, as amended and supplemented; the amendments refer to the date as of which the amount is owed; the also refer to the payment terms.¹⁶ Additionally, amendments were brought with regard to the legal status of the State Construction Inspectorate. According to article 1 of GO no. 63/2001, amended by GO no. 24/2014,¹⁷ the State Construction Inspectorate is fully financed from their own revenue. The income and expenditure budget regarding activities fully financed from their own revenue is approved on an annual basis as an appendix to the budget of the Ministry of Regional Development and Public Administration. The legal destinations of the amounts collected are the ones enumerated at point I.

The fiscal procedure code in force – law no. 207/2015 has the same provisions as the previous of regulation GO no. 92/2003 regarding the legal regime of tax receivables. Without providing details that would exceed the topic considered in this paper, the following legal provisions are relevant: article 2 **Subject matter and applicability of the Fiscal Procedure Code** - (1) The fiscal procedure code regulates the rights and obligations of the legally fiscal relationships regarding **management of**

¹⁵ GO no. 92/2003 regarding fiscal procedure code; Decree no. 167/1958 regarding extinctive prescription; Law no. 329/2009 regarding reorganization of an authority and public institution, cutting down public costs, supporting the business environment and complying with the framework agreements concluded with European Commission and the International Monetary Fund.

¹⁶ See point 2.2 of this paper

¹⁷ GO no. 24/2014 regarding actions taken by the state in the field of constructions, published in the Official Gazette no. 638 of 29 August 2014

fiscal liabilities owed to the consolidated budget, regardless of the managing authority, unless otherwise provided by the law. (5) The tax receivables shall be managed by public institutions acting as fiscal bodies, other than central fiscal bodies and local fiscal bodies defined in article 1 points 31 and 32, as follows: a) in compliance with the rules provided by the present code for central fiscal bodies providing that the institution is part of the structure of the central public administration;

Relevant in this respect are provisions of **Article 1 Definitions**, mainly: 4. tax payer – all and any natural persons, companies or other entity without legal personality which owe social taxes and contributions, in compliance with the law¹⁸; 10. tax liability – the right to collect all and any **amounts owed to the consolidated state budget**, representing both principal tax liability and ancillary tax liability; 36. tax – mandatory source of income, irrespective of its denomination, carried out in compliance with the law, in exchange for some services provided by public institutions and authorities, with no equivalent between the quantum of the tax and the value of the service;

By virtue of legal provisions in force, the 0.1% and 0.5% quotas are tax liabilities, part of the consolidated budget. The obligation to settle such taxes arises from the law in force. These taxes fall under non-fiscal budget income, monetary obligations set universally, by normative acts¹⁹. The State

Construction Inspectorate is an institution under the public administration appointed by the lawmaker to collect such taxes²⁰ in exchange for provision of public services, with no equivalent between the quantum of the tax and the value of the service. In order to support the classification of these taxes in terms of their legal nature as tax liabilities, the arguments in the Decision no. 8/2018 of the High Court of Cassation and Justice – Panel constituted to settle some law-related issues – are fully valid.

4. Aspects on extinctive prescription

The prescription timeframe is set in close connection with the nature of the legal relationship. The supporters of the thesis according to which the obligation to settle the 0.1% and 0,5% quotas arises from a legal relationship of civil law endorse the applicability of the general three-year statute of limitations stated in Decree no. 167/1958 regarding extinctive prescription, as well as article 2517 Civil Code, in relation to the date on which the tax liability arises²¹.

In our opinion, the 0.1% and 0.5% quota are tax liabilities with a 5-year statute of limitations as per the Fiscal Procedure Code. However, we have to make some observations in reference to the fiscal procedure law applicable by virtue of the *tempus regit actum* rule and the date as of which the statute of limitations takes effect. Therefore:

A. GO no. 92/2003 regarding the Fiscal Procedure Code was applicable by 31 December 2015.²² According to article 89 of GO no. 92/2003:

(1) The right of the fiscal body to set tax liabilities shall lapse within 5 years, unless otherwise provided by the law.

(2) The statute of limitations applicable to the right provided in (1) takes effect as of 1 January of the year following the year when the tax liability arises, according to article 23, unless otherwise

¹⁸ With regard to taxpayers, see Cosmin Flavius Costaş, *Tax Law*, 2nd edition, revised and supplemented, Universul Juridic Publisher, Bucharest, 2019, p. 81-89, Cosmin Flavius Costaş (coordinator), *Fiscal Procedure Code. Comments on articles*, Solomon Publisher, Bucharest, 2016, p. 56-58, Daniel Dascălu, Cătălin Alexandru, *Theoretical and Practical Explanations on the Fiscal Procedure Code*, Rosetti Publisher, Bucharest, 2005, p. 46-47.

¹⁹ With regard to the public income system, Cosmin Flavius Costaş, *op. cit.*, 2019, p. 87-95.

²⁰ In doctrine, taxes are defined as follows: „amounts of money owed and settled by natural persons and/or companies for certain acts and services carried out/provided upon request and to their benefit by some state bodies, public institutions and other such entities”, Cosmin Flavius Costaş, *op. cit.*, 2019, p. 208.

²¹ With regard to extinctive prescription, see Gabriel Boroi, Carla Alexandra Angheliescu, *Course on Civil Law. General Part*, 2nd edition, revised and supplemented, Hamangiu Publisher, 2012, p. 289-256, Săche Neculaescu, Livia Mocanu, Gheorghe Gheorghiu, Iliora Genoiu, Adrian Țuțuianu, *Civil Law Institutions. Selective Course for Undergraduate Thesis*, Universul Juridic Publisher, Bucharest, 2013, p. 176-196, Marin Nicolae, *Treatise on Extinctive Prescription*, Universul Juridic Publisher, Bucharest, 2010, Titus Prescure, Roxana Matei, *Civil Law. General Part. Persons*, Hamangiu Publisher, 2012, p. 232-258

²² According to article 353 of Law no. 207/2015 regarding fiscal procedure code, coming into force: the present code comes into force on 1 January 2016; Article 354. Repeals: Upon coming into force, the present code is repealed: a) GO no. 92/2003 regarding Fiscal Procedure Code, republished in the Official Gazette, Part I, no. 513 of 31 July 2007, as amended and supplemented.

provided by the law.

B. At present, applicable are the provisions of article 110 (1) and (2) of Law no. 207/2015 regarding the Fiscal Procedure Code.

Article 110 - Subject matter, timeframe and the date as of which the statute of limitations applies to the right of setting the tax liability:

(1) The right of the fiscal body to set tax liability lapses within 5 years, unless otherwise provided by the law.

(2) The statute of limitations of the right provided in (1) takes effect as of 1 July of the year following the year for which the tax receivable is owed, unless otherwise provided by the law.

(3) In case tax liabilities relate to criminal actions, the right to set such liabilities lapses within 10 years.

(4) The period provided in (3) lapses as of the date a court of law ruled in relation to an offense sanctioned based on a final court decision.

Therefore, for all monetary obligations relating to 0.1% and 0.7% quotas before 01.02.2014, respectively 0.5% in current regulation arisen by 31 December 2015, applicable are provisions of article 89 of GO no. 92/2003 regarding the Fiscal Procedure Code, in consideration of *tempus regit actum* rule. According to article 15 (2) of the Constitution of Romania (2) the Law acts only in reference to the future, except the criminal law and the more favorable contraventional law. Additionally, applicable are provisions of article 6 of Romanian Civil Code²³ regarding application of the civil law within the legal timeframe. In reference to the statute of limitations, applicable are provisions of article 6 (4) Civil Code „the statute of limitations, revocations and acquisitive prescriptions commenced and still pending on the date of the new law coming into force shall be fully subjected to the legal provisions under which they were instituted”.²⁴

The statute of limitations applies effective 1 January of the year following the year on which the tax liability arises. There are no apparent difficulties of interpretation. Nevertheless, in practice, the State Construction Inspectorate claimed under the influence of the old regulation that the statute of limitations starts to apply in case the investor failed to notify on the completion of the works. They stated that the reference date is the date on which the holder of the building permit settled the regulation tax intended to have such permit issued and the date on which the investor/owner of the building acted upon the institution's request and submitted the summary report on the receptions conducted²⁵.

The following aspects are relevant for the extinctive prescription to start lapsing:

- The construction works commence only after the building permit has been issued. The investor submits the notification on the commencement of the works with the State Construction Inspectorate and the issuer of the permit.

²³ Law no. 287/2009 regarding Civil Code (applicable effective 1 September 2011), published in the Official Gazette of Romania, no. 511/24 July 2009 was amended by Law no. 71/2011 and rectified in the Official Gazette of Romania no. 427/17 June 2011 and the Official Gazette of Romania no. 489/8 July 2011, republished in the Official Gazette of Romania no. 505/12 July 2011, in accordance with article 218 of Law no. 71/2011 regarding application of Law no. 287/2009 regarding Civil Code, rectified in the Official Gazette of Romania no. 246/29 April 2013. After publication, Law no. 287/2009 regarding civil code was amended by: EO no. 79/2011 to regulate some measures relating to coming into force of the New Civil Code (Official Gazette of Romania no. 696/30 September 2011); Law no. 60/2012 regarding approval of the EO of Government no. 79/2011 to regulate some measures relating to coming into force of Law no. 287/2009 regarding Civil Code, published in the Official Gazette of Romania no.255 of 17 April 2012, Law no. 138/2014 to amend and supplement the New Civil Procedure Code, and to amend and supplement some related normative acts, published in the Official Gazette no 753/16 October 2014, EO of Government no. 1/2016 to amend the New Civil Procedure Code, and to amend some related normative acts, published in the Official Gazette no. 85/ 4 February 2016, Law no. 17/2017 regarding approval of EO of Government no. 1/2016, published in the Official Gazette no. 196 of 21 March 2017, DCC no. 534/2018 published in the Official Gazette no. 842 of 3 October 2018.

²⁴ In reference to the extinctive prescription and application of the civil law within legal timeframe, also see Decision no. 287/2009. 1/2014 of the High Court of Cassation and Justice, in the Official Gazette of Romania no. 283/17.04.2014, in connection with an appeal in the interest of the law which provides: "In interpretation and application of provisions of articles 5 and 6 (1), article 2512, article 2513 of Law no. 287/2009 regarding Civil Code, article 201, article 223 of Law no. 71/2011 to enforce law no. 287/2009 regarding Civil Code sets forth that the extinctive prescriptions started prior to 1 October 2011, completed or not completed by this date, shall further be subjected to provisions of article 18 of Decree no. 167/1958 regarding extinctive prescription, irrespective of the procedural stage of the action, including litigations started after 1 October 2011.

²⁵ Court of Sector 2 Bucharest, file no. 26173/300/2020, claimant State Construction Inspectorate, defendant Public Institution, file pending.

- Throughout the investment period, the representatives of the State Construction Inspectorate participate to the quality control activities conducted in stages and written down in reports regarding quality control of the works.

The reception report is prepared upon completion of works. Upon completion of works, the beneficiary of the investment appoints the reception commission. The executant shall communicate the investor the date of the completion of all works stated in the contract in a written document acknowledged by the investor (article 5 Government Resolution no. 273/1994). Among other obligations stated in article 25 of Law no. 10/1995, the executant shall have the obligation set forth at letter i) „conducting quality control activities only in relation to the constructions which meet the quality requirements and for which the investor was submitted the documents required for preparation of the technical book of the construction”.

The reception commissions for constructions and related installations will be appointed by the investors and will have 5 to 7 members, of which mainly experts in the field. The representatives of the executant, the designer and the State Construction Inspectorate cannot be members of the reception commissions; they will only act as guests (article 7-8 of Gov. Resolution no. 273/1994).

A certified site manager involved in the project will conduct the secretarial activities of this reception commission. He or she is not a member of the reception commission (article 11 (3) and 4 of Gov. Resolution no. 273/1994).

As author of the construction project, the designer will prepare and present before the reception commission their point of view on the performance of the construction (article 9 of Gov. Resolution no. 273/1994).

The reception of the constructions represents a component of the quality system. It is a complex process by which the works executed to erect a new building or to intervene upon existing constructions are legally certified, in compliance with the fundamental requirements in force and the provisions of the building/demolition permit and the documents specified in the technical book of the construction (article 1 of Gov Resolution no. 273/1994).

In reference to these observations, the data on which the tax liability arises is different, as follows.

4.1. With regard to 0.1% quota of the value of certified works, owed in accordance with the article 30 of law no 50/1991

According to article 30 of Law no 50/1991, the 0.1% quota of the value of the certified works is transferred to the account of the territorial construction inspectorates at the same time with the submission of the notification stating the date of the commencement of works. The 0.1% quota also applies to the differences arising from the update of the value of the certified works. In addition, the beneficiaries of the building permits shall settle the regularization tax applicable to their permit, upon the completion of the works, as well as all and any other quotas provided by the law.

In this case, the tax liability arises on the date the State Construction Inspectorate receives the notification on the date of the works commencement, date on which the investor has to transfer the 1% quota. The statute of limitations takes effect on the date of 1 January of the year following the year when the tax liability arises, for the liabilities arisen before 31.12.2015, according to article 89 of GO no. 92/2003 regarding the Fiscal Code. For the tax liabilities arisen after 1 January 2016, applicable will be the provisions of article 110 (1) and (2) of Law no. 207/2015 regarding the Fiscal Procedure Code in force, the statute of limitations starts to lapse on 1 July of the year following the year for which the tax is owed.

In reference to the 0.1% quota applied to the differences arising from updating the value of the certified works, we consider that the tax liability arises upon completion of works and preparation of the reception report and not at later dates, i.e. the date of the regularization of the building permit tax/the date on which the Hall issuing the permit has communicated the State Construction

Inspectorate the updated value of the investments.²⁶

By virtue of article 2523 of the Civil Code applicable as common law in this matter, the statute of limitations starts to lapse as of the date when the holder of the action right acknowledged or, after certain circumstances, should have acknowledged the emergence of such right. Based on the provisions of article 89 of GO no. 92/2003, respectively article 110 of Law no. 207/20156 related to article 2523, the tax arises on the date the reception report is prepared and signed before the representative of the State Construction Inspectorate who participates as a guest.

4.2. With regard to the 0.7% quota owed in accordance with provisions of article 40 of Law 10/1995 regarding quality in constructions, owed by 01.02.2014

According to article 40 of Law 10/1995, the 0.7% quota from the expenses intended to perform the construction works is transferred on a monthly basis. These amounts are calculated and transferred by installments upon settlement of the amounts owed for the services provided. The tax is subjected to regularization upon reception carried out upon the completion of the works.

Therefore, when the investor/owner settles each invoice issued by the executant of the works, the 0.7% quota is also to be calculated and transferred. According to article 2526 Civil Code „for successive service provisions, the statute of limitations of the right to action starts to lapse on the date of each service provision becoming chargeable. Should the service provisions form an integrated whole, the period starts to lapse from the date of the last service provision becoming chargeable.” In our opinion, for each payment made there arises a tax liability in favor of the State Construction Inspectorate, liability for which the statute of limitations applies in accordance with provisions of article 89 of GO no. 92/2003, respectively article 110 of Law no. 207/2015 regarding the Fiscal Procedure Code.

4.3. With regard to the 0.5% quota owed in accordance with provisions of article 43 of Law 10/1995 regarding quality in constructions (applicable effective 31 January 2014)

We have already shown that according to article 43 (2) the investors or the owners have to transfer a 0.5% quota of the value exclusive of VAT of the works performed in order to erect new buildings or intervention works performed on the existing buildings, in two installments:

a) 50% of the amount equivalent to the 0.5% quota applicable to the value of the certified works upon submission with the State construction Inspectorate – ISC of the notification regarding the date of the commencement of the certified works.

In this case, the tax liability arises on the date of submitting the notification on the commencement of the works, whereas the statute of limitations starts to lapse in accordance with article 110 of Law no. 207/2015 regarding the Fiscal Procedure Code on 1 July of the year following the year for which the tax liability is owed.

b) The amount resulting as difference between the amount equivalent to the 0.5% quota applied to the final amount, exclusive of VAT, of the works performed and the amount transferred in compliance with provisions of letter a) as well as all and any other amounts representing legal quotas already settled previously²⁷ is transferred prior to the date scheduled for signing the reception report upon completion of works.

In line with this hypothesis, the tax liability arises upon signature of the reception report upon

²⁶ The reception of the construction works and the works on the related installations will be conducted in accordance with provisions of Law no. 10/1995 regarding quality in construction, republished, as amended and supplemented and Regulation regarding reception of works and Regulation regarding reception of works approved by Gov Resolution no. 273/1994, published in the Official Gazette no. 193/28 July 1994. In accordance with article 10 (1) letter c) of the Regulation, the Investor is to submit the State Construction Inspectorate - I.S.C. the notification received from the executant stated in article 9, the reports prepared by specialties by the designer and the site manager(s) with regard to how the works were performed and the value, exclusive of VAT, of the works performed and subjected to reception with a view to having the certificate attesting the payments made to the State Construction Inspectorate - I.S.C. issued.

²⁷ By way of example – the amount settled in exchange for the building permit (article of Law no. 50/1991) or the tax settled to have the validity of the building permit extended (article 6¹ point 19 of Law no. 50/1991).

completion of works whereas the statute of limitations starts to lapse in compliance with the provisions of article 110 of Law no. 207/2015 regarding Fiscal Code on 1 July of the year following the year for which the tax liability is owed.

5. Considerations on the date of which the investor/owner owes late penalties

The judicial practice has also met with the issue concerning the date as of which the investor/owner owes late penalties for failure to transfer the amounts representing the 0.1% and 0.7% quotas on the times set forth by Law no. 50/1991 and Law no. 10/1995, as well as the issue relating to the 0.5% quota owed in accordance with Law no. 10/1995.

Pursuant to article 30 (2) of Law no. 50/1991 „Late payment of the quota set forth in par (1) is penalized by 0.15%/late day, without exceeding the amount already owed”. Law no. 10/1995 sets in article 40 (2) that „Late payments of the quotas by the investor/owner, stated in (1), are penalized by 0.15%/late day, without exceeding the amount already owed”, and the text applicable - article 43 (3) - provides „Late payments of the amounts set according to provisions of par (2) letter a) and b) are penalized by 0.15%/late day”.

In our view, late penalties should be calculated as follows:

- as of the date of submitting the notification on the commencement of the works, for the 0.1% quota stated in article 30 (2) of Law no. 50/1991.

- as of the date of the reception report signed in relation to the works completed with regard to the 0.1% quota regularized for the value of the works, in accordance of article 30 (3) of Law no. 50/1991.

- as of the date of the tax liability arising in accordance with differences outlined in point 2 for the 0.7% quota set forth in previous article 40 (2) of Law no. 10/1995.

- as of the date of submitting the notification on the commencement of the works, respectively the date of the reception report signed upon completion of works for the 0.5% quota stated in article 43 of Law no. 10/1995.

The opinions laid down by the judicial practice are similar to our opinions, i.e. the date as of which late penalties are to be calculated is the date of the reception report and not the date when the State Construction Inspectorate – ISC has notified the investor.²⁸

6. Jurisdiction of the courts on settlement of disputes of which subject matter is failure to transfer the quotas by investors, as provided in the Law no. 50/1991 and Law no. 10/1995

In judicial practice, there are two orientations:

A. Jurisdiction to settle disputes falls under courts of common law; the State Construction Inspectorate brings before the courts various claims to force the taxpayers - natural persons and companies -, which owe the 0.1%, respectively 0.7% quotas, to pay such amounts owed and legal interests calculated. In this respect, in such cases the court of which jurisdiction applies is the court situated in the area of the debtor's head office, pursuant to provisions of articles 94 letter k) Civil Procedure Code. These are the courts with jurisdiction in settling “all and any claims assessable in money in a value of up to 200,000 lei inclusively, irrespective of the legal standing of the parties, professionals or non-professionals”.²⁹

B. According to a second minority orientation, the jurisdiction to settle such disputes falls under contentious administrative and fiscal courts.

²⁸ In this respect, the Court of Appeal Oradea 1st Civil Department – Decision no. 96/21 May 2020 published in the Bulletin of the Courts of Appeal no. 6-7/2020, C.H. Beck Publisher, p. 11-15 – Decision typed by judge Eugenia Moșincat and summarized by Judge Aurelia Lenuța Stan.

²⁹ In this respect, Court of Sector 2 Bucharest, file no. 26173/300/2020 pending in court. Court of Appeal Oradea, Decision no. 96/2020 published in the Bulletin of the Courts of Appeal no. 6-7/2020, cited works, p. 11-15. The dispute was settled on the main issue of the matter on trial by the Court in Oradea. The High Court of Cassation and Justice, the Panel constituted to settle on some law-related issues, was notified by the Court of Appeal of Bucharest, 2nd Contentious and Administrative and Fiscal Department which admitted the exception of functional incompetence and submitted the petition for settlement with a civil department.

C. We consider that disputes relating to obligations to settle the 0.1% quota owed in accordance with article 30 of Law no. 50/1991, respectively the 0.7% quota owed in accordance with previous article 40, respectively the 0.5% quota owed based on article 43 of Law no. 10/1995, fall under the jurisdiction of the contentious administrative courts, for the following arguments:

a) Classification of the quotas owed by taxpayers – investors/owners as tax liabilities owed to the consolidated state budget in exchange for public services provided, with no equivalent between the quantum of the tax and the value of the service;

b) The State Construction Inspectorate is an authority under the central public administration. In reference to administration of such taxes, they exercise control in relation to fulfillment of such settlement obligation and have the role of collector of such tax, with no powers to decide on the tax liability owed or to issue certificates of indebtedness;

c) Pursuant to article 10 (1) of Law no. 554/2004 regarding contentious administrative³⁰ „Disputes regarding administrative acts issued or concluded by local or county public authorities, as well as acts regarding taxes and dues, contributions, customs taxes and their ancillary of up to 3,000,000 lei, are to be settled on the main issue of the matter on trial by administrative fiscal courts, whereas disputes regarding administrative acts issued or concluded by central public authorities as well as acts regarding taxes and dues, contributions, customs taxes and their ancillary exceeding 3,000,000 lei, are to be settled on the main issue of the matter on trial by contentious administrative and fiscal courts within the courts of appeal, unless an organic law does not stipulate otherwise.”

d) The judicial practice has ruled on the jurisdiction of the contentious administrative courts in similar disputes. Therefore, in relation to a certain dispute, the supreme court decided that the legal acts establishing liabilities owed to the Environment Fund, even in the absence of a taxation notice, legally stand for administrative fiscal acts for which subject matter jurisdiction to settle on the action for annulment is set in accordance with article 10 (1) of Law no. 554/2004.³¹

With regard to the territorial jurisdiction, applicable are provisions of article 10 (3) of contentious administrative Law no. 554/2004 stating “The claimant natural or legal person of private law brings the dispute exclusively before the court in their residing area or head office area. The claimant public authority, public institution or similar entities are to address exclusively the court in the residing area or head office area of the defendant.”³²

With regard to settlement of appeals, applicable are provisions of article 10 (2) of the contentious administrative law „the appeal filed against sentences awarded by administrative fiscal courts are to be settled by contentious administrative and fiscal departments of the courts of appeal, while the recourse against the sentences of the contentious administrative and fiscal departments of the courts of appeal are to be settled by the Contentious administrative and fiscal Department of the High Court of Cassation and Justice, unless an organic law does not stipulate otherwise”.

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³¹ High Court of Cassation and Justice, Contentious, Administrative and Fiscal Department, Decision no. 1607/23 March 2012.

³² Special norms regarding the exclusive territorial jurisdiction introduced by law no. 554/2004 through law 212/2018 exclude the applicability of alternative jurisdiction in relation to contentious administrative and fiscal disputes, set forth by article 111 New Civil Procedure Code ”Petitions against legal entities of public law, petitions against the state, central or local authorities and institutions, as well as against other entities of public law may be filed with the court acting in the residing area or the head office of the claimant or the court acting in the area where the head office of the defendant is”. Also see Gabriela Bogasiu, *op. cit.*, p. 353.

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