

LABOUR TAXATION: FORMAL AND INFORMAL SOLUTIONS

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Abstract

The present study aims to create a panorama of doctrinal, legal and jurisprudential solutions, which determine the heterogeneity of labour market's fiscal hypotheses'. The study identifies a progressive series of interactions between economic and social factors, which generate at the juridical level a specific series of fiscal solutions, both traditional and innovating for the qualification and taxation of labour revenues. Heterogeneity of working forms is presently a complex, main direction in business with effects both at economic and legal level. This study provides an overview of statutory and case-law solutions for the legal classification and therefore tax classification of personal income.

Keywords: labour market actors, entrepreneurial activity, employee, dependent activity, independent activity

JEL Classification: K31

I. Interactions and interdependences between labour market and taxation

Interdependence between labour market and taxation ensues, traditionally, from the circular motion of public resources with two particular causes: taxes on individuals' incomes from working activities are an important source of financing OECD² member states' budgets, also state fiscal policies are affecting the labour market: minimum wages, benefits of public insurance systems, optimization of working statute.

Consecrated Factors

The scale of lucrative activities undertaken by individuals, generically named labour market, is shaped by a series of interactions with heterogeneous, spontaneous or controllable factors. These factors show the evolutionary dynamics of more complex contemporary economic space.

The structure of taxation and tax formulas used by the public authority are both a cause and an effect on the labour market. The state's main choice is to impose progressive or unitary taxation. Progressive taxation is a factor balancing low wages, stimulating minimum wages, moderating the need for redistribution of resources³. Studies show that „*pure increase in the tax progression may lead to wage moderation and thereby improve employment*”⁴; progressivity lowers the incentives for high wage claims and „*leads to a downward pressure on non-competitive wages, which in turn reduces involuntary unemployment*”⁵. Unitary taxation, on the other hand, prompts taxation of marginal revenues, consumption and labour market mobility.

Entrepreneurial dynamic is influenced, according to recent studies⁶, by individual incomes tax system, through the autonomy of management decisions, inclusively at fiscal level.

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² Thorsten Upmann, *A positive analysis of labour market institutions and tax reforms*, in “International Tax and Public Finance”, no. 16/2009, p. 622.

³ For details, see: Jon Strand, *Effects of Progressive Taxes under Decentralized Bargaining and Heterogeneous Labour*, in “International Tax and Public Finance”, no. 9/2002, pp. 195–210.

⁴ Pekka Sinko, *Labour taxation, job creation and job destruction—Focusing on the role of wage setting*, in “International Tax and Public Finance”, no. 14/2007, p. 585.

⁵ Stefan Boeters, *Optimal Tax Progressivity in Unionised Labour Markets: Simulation Results for Germany*, in “Computational Economics”, 2012, p. 1.

⁶ For details, see: Donald Bruce, John Deskins, *Can state tax policies be used to promote entrepreneurial activity?*, in “Small Business Economics” no. 38/2012, pp. 375–397.

Entrepreneurship is sharpened by risk behaviour, dynamism, uncertainty, liquidity constraints and market mobility⁷. Subsidiary factors determining entrepreneurship are: general structure of the economy (agrarian states vs. industrialized states), education (higher education favours entrepreneurship) and population density (directly proportional to independent working activities)⁸.

Another significant factor, amplified by the EU framework, is migration's dynamics. Markets' globalization fades away institutional and economic borders; a consequence is that competition between individuals, companies and states intensifies⁹. Guarantying freedom of movement by the Treaty on the Functioning of the European Union produces a number of influences on the labour market¹⁰: immigration induces a competitive effect on labour market¹¹, reducing the benefits reserved to nationals; immigration induces a competitive effect of harmonization on tax systems for certain types of activities¹², immigration leads to additional public expenditure in order to protect the national labour market¹³.

In the context of mobility, European or even international, a significant influence of labour market's flexibility in the decision on locating lucrative activities, especially for multinationals, is undeniable¹⁴. Attractiveness of a market is determined by the flexibility of regulatory framework and legal solutions available to an investor; equally there are constant questions about the size of the labour market, labour market's direct costs (minimum wages, average wages) and fiscal costs of the labour market (direct taxation and marginal costs).

A global factor is the structure of company taxation: profit taxation, dividends taxation, alternative formulas. Economic studies confirm that "*higher corporate tax rates reduce not only the demand for capital, but also the demand for labour due to complementarities between both inputs*"¹⁵. Profit taxation is a factor of state intervention on labour market; avoiding unemployment and extremely low salaries is assured by the government's interventions funded from corporate profit taxation. Thus, resources collected from the taxation of companies are directly proportional to the welfare state¹⁶.

State solutions in terms of taxation and public finances are affected by the professional profile of the taxpayer. Heterogeneity of professional profiles and unique tax system and hence the uniqueness of public services so funded are in constant conflict; proportional taxation causes additional taxation for highly qualified people; these tax resources are used to fund public goods, available, *de plano*, to all taxpayers¹⁷. The result is dilution of consent to taxation within high-income professionals, which is often associated with aggressive tax optimization, including migration to more favourable tax jurisdictions.

⁷ Magnus Henrekson, Tino Sanandaji, *Entrepreneurship and the theory of taxation*, in "Small Business Economics" no. 37/2011, p. 169.

⁸ Donald Bruce, John Deskins, cited work, p. 387.

⁹ Silke Gottschalk, Wolfgang Peters, *Redistributive Taxation in the Era of Globalization*, "International Tax and Public Finance", no. 10/2003, p. 453.

¹⁰ For details, see: Jonathan Hamilton, Pierre Pestieau, *Optimal Income Taxation and the Ability Distribution: Implications for Migration Equilibria*, "International Tax and Public Finance", no. 12/2005, pp. 29–45.

¹¹ For details, see: Marcel Thum, *Controlling migration in an open labour market*, in "Public Choice", no. 119/2004 pp. 425–443.

¹² Fiscal harmonisation is a direct effect of concurrence between states on the international market to attract material and human capital.

¹³ Marcel Thum, cited work, p. 426.

¹⁴ For details, see: Beata Smarzynska Javorcik, Mariana Spatareanu, *Do Foreign Investors Care about Labour Market Regulations?*, in "Review of World Economics", Vol. 141, no. 2005, pp. 376–403.

¹⁵ Rodrigo A. Cerda, Felipe Larrain, *Corporate taxes and the demand for labour and capital in developing countries*, in "Small Business Economics" no. 34/2010, p. 187

¹⁶ For details, see: Wolfgang Eggert, Laszlo Goerke, *Fiscal Policy, Economic Integration and Unemployment*, in "Journal of Economics", Vol. 82, no. 2/2004, pp. 137–167.

¹⁷ Felix Bierbrauer, *Distortionary taxation and the free-rider problem*, in "International Tax and Public Finance", no. 7/2011, p. 2.

Traditionally, the labour market is determined by “*a function in which labour, education and innate abilities interact*”¹⁸. Education factor is shaping labour market and related taxation due to costs involved¹⁹ and due to professional profile that it generates.

A subsidiary result of the labour market and of tax system is public pension insurance system. At macroeconomic level, long term savings is poor²⁰; states are bound by interventionist policies in order to support public pension systems. These additional costs of labour and of public policies, affect differently individuals’ taxation and how they handle fiscality through their lifetime. In this sense, the individual has not only the concern to maximize short-term taxation, but also to optimize savings and insurance schemes: avoid public sector insurances, aggregation of insurance with private sector.

All the elements interact in a continuous flux, on a cause-effect pattern shaping the labour market and its fiscal solutions. Forms of work are in constant diversification, which shows the concern of business actors for optimizing labor, including taxation.

Formal and informal labour market

In an attempted delimitation we distinguish *de plano*, between formal and informal employment, according to the legal framework and legal form in which lucrative licit activities are provided. The category of formal work includes working activities carried out under an employment contract or an assimilated status; the informal labour²¹ category includes entrepreneurial activities, creative activities, casual and domestic unpaid work activities.

II. Actors in lucrative activities and their fiscal status

Working activities, from mobilization of capital to labour mobilization, are organized in a more or less complex structure, with various actors involved, according to skills and resources held.

Consecrated actors

Mobilizing personal resources in order to generate profits is an activity that involves several categories of actors.

First, the entrepreneurs are actors on the economic market²² - a tradesman or a freelancer, which acts on his behalf and on his concern²³. These have a central role in mobilizing capital and activities likely to generate profit. Entrepreneurs control structural decisions: field and action markets, size of capital involved, size of business and a central control over resources and thus human capital. Entrepreneurs can raise capital on its own, acting as individual or may create legal persons under their control. The action domain is unlimited: from small commerce to industrial activities, from consultancy to gross services, from education to agriculture. In the alternative, an entrepreneur becomes an industrialist, as the original, lucrative idea takes on a large scale. The evolution in size of lucrative activity²⁴ often leads to structural transformation in the sense that the original entrepreneur develops organizational scheme and surrounds himself with personnel having specific skills.

¹⁸ Dario Maldonado, *Education policies and optimal taxation*, in “International Tax and Public Finance” no. 15/2008, p. 131.

¹⁹ For details, see: Panu Poutvaara, *Education, Mobility of Labour and Tax Competition*, in “International Tax and Public Finance”, no. 7/2000, pp. 699–719.

²⁰ For details, see: Matti Tuomala, Sanna Tenhunen, *On the design of an optimal non-linear tax/pension system with habit formation*, in “International Tax and Public Finance”, no. 2/2012.

²¹ Jane Ihrig, Karine S. Moe, *The influence of government policies on informal labour: implications for long-run growth*, in “De Economist”, Vol. 148, no. 3/2000, p. 331.

²² Magnus Henrekson, Dan Johansson, Mikael Stenkula, *Taxation, Labour Market Policy and High-Impact Entrepreneurship*, in “The Journal of Industry, Competition and Trade”, no. 10/2010, p. 277.

²³ Raymond Guillien, Jean Vincent, *Lexique des termes juridiques*, 16e Edition, Publishing House Dalloz, Paris, 2007, p. 133.

²⁴ Magnus Henrekson, Dan Johansson, Mikael Stenkula, cited work, p. 277.

Secondly, the inventors are actors on economic markets. In a larger sense than used by the Law no. 64/1991²⁵, the notion includes every innovative solution's creator (inventions, copyrights, royalty) with business potential for technical, economic or organizational problems. Their work included in an original product or service, is likely to capitalize by direct selling or by a joint exploitation together with an entrepreneur.

Thirdly, the skilled employees, who have a consistent professional profile and specific personal capabilities, are key actors to the economic market. They are involved in gainful activity directly, in terms of creating the product or service and indirectly in terms of financial benefits achieved. Skilled employees inflict a range of specific issues: continuous training, loyalty to an entrepreneur, creative and lucrative stimulation.

Fourthly, the investors are actors on the economic market; investors have the necessary capital and a range of skills to identify and evaluate investments. Typically, investors are involved in indirect control of management decisions and structural measures such as divisions, mergers, joint ventures. They supply on the economic market: "*management skills, industry - specific knowledge and access to business networks*"²⁶.

Marginal actors

Besides these main categories of actors that have specific decision-making authority, in the lucrative mechanism are also involved a number of marginal actors.

Firstly, unskilled workers are marginal actors who have a very limited power of decision. They are a determinant factor only at the economic level, acting as cost of production; the limited surplus value which unskilled workers provide gives them a vulnerable position: low wages, low social protection, ease of dismissal or replacement.

In the background, the casual workers (day-labourers) are marginal players, for which legal protection system is essential in ensuring minimum, concrete rights.

Secondly, providers of related service are marginal actors. A gainful activity is influenced by the quality of lucrative related services: carriers, distributors and of public related service: medical care, social services.

Thirdly, the consultants in niche domains are important actors on the market: consultants in consumer preferences²⁷, in marketing strategy or in systems of international optimization.

Cooperation with consultants in certain areas of action on the market is a tool commonly used by small entrepreneurs.

At fiscal level, these categories of actors enjoy heterogeneous legal regimes for different reasons. On the one hand, the state authority is concerned to ensure benefits to privileged categories (investors), to encourage certain categories (small entrepreneurs), to ensure protection of vulnerable categories (day-labourers, unskilled workers). On the other hand, consecrated or marginal actors opt on the role that they wish to assume and thereby affect their legal status: a consultant may choose to be entrepreneurs or to insert an already established organization as qualified employee.

Differences consist not in the tax rate; the unitary system use by the Fiscal Code creates an appearance of equity. Differences result from costs deductibility, accounting system (real or flat taxation) and contributions to public insurances.

III. Legal and jurisprudential solutions

²⁵ Republished in Official Monitor of Romania, Part I, no. 541 from 8 August 2007.

²⁶ Magnus Henrekson, Dan Johansson, Mikael Stenkula, cited work, p. 277

²⁷ Idem, p. 278.

Legal solutions are traditionally formal solutions, as these attached to a pre-existing social relations, a legal norm, generating classification in a hypothesis and a number of standard effects. Beyond qualifying effect, normative solutions are required to regulate a wide variety of social relationships, hence their own variety, plus the integration at normative level of informal solutions.

In the background, application of the legal norm to facts, at jurisprudential level, brings new nuances to the social relations on the labour market. Of the three sources: will of the parties, will the legislature and court's will result a number of specific solutions with a specific dynamic and evolution.

Legal solutions

(1) Imposable revenues²⁸. A subsequent inventory of social and legal solutions for various individuals' business activities identifies a typology of taxable income, in accordance with Fiscal Code.

Classical wages incomes are based on a work individual contract, *stricto sensu*, covered by Labour Code²⁹ or a statute defined by law, legal act of similar force: appointment act of civil servants, according to Law no. 188/1999³⁰ on civil servants' status; appointment act of military personnel, according to Law no. 80/1995³¹ on military status.

Assimilated wages incomes are based on specific relationships of company law: remuneration of directors, managers, associates³² or on other specific legal forms: associations and foundations, associations of owners, unions, employers.

A similar category of imposable income is day-labourers' income³³, who do not act under regular character, but are relevant legally and fiscally through legislature's will, according to Law no. 52/2011³⁴.

Entrepreneurial activities incomes include strictly professionals' revenues, resulting according to article 3 of the Civil Code from the exploitation of an enterprise: a trade, under the regulations of G.E.O. no. 44/2008³⁵; a liberal profession or intellectual property rights. For tradesmen and freelancers, specific is the prior professional conditioning, resulting in authorized and registered activity according to the special law. This category of revenue is also dependent on personal skills innate or acquired through education.

Incomes from agricultural activities are a *sui generis* category of professional incomes, meaning that through legislature's will, these are fiscally relevant only if they verify in subsidiary a commercial purpose. In terms of articles 71-74 of Fiscal Code, individuals making this type of taxable income, have a similar profile to professionals.

Capital incomes are the incomes resulting from operations within personal patrimony by investing (investment income, according to article 65 Fiscal Code), or by acts of transfer of usage (pursuant articles 61-64 of Fiscal Code) or transfer of property (according to articles 77¹-77⁴ of Fiscal Code). Imposing individual for these revenues is on the one hand, due equity process, ensuring taxation of capital income in symmetry with personal income; on the other hand, capital investments and assets' operations are the attribute of significant income individuals, so this taxation has protective effects.

²⁸ For details, see: Lucian Țătu, Mihai Brăgaru, Horațiu Sasu, *Impozite, taxe, contribuții: termene, documente, proceduri*, Publishing House C.H. Beck, București, 2011.

²⁹ Law no. 53/2003 regarding Labour Code updated and republished.

³⁰ Republished in Official Monitor of Romania, Part I, no. 365 from 29 May 2007.

³¹ Published in Official Monitor of Romania, Part I, no. 155 from 20 July 1995.

³² For details, see: Patrick Serloteen, *Droit fiscal des affaires*, 4th Edition, Publishing House Dalloz, Paris, 2005, pp. 343-371.

³³ For details, see: Lucian Țătu, *Impozitarea activităților realizate de zilieri*, in "Curierul Fiscal", no. 5/2011.

³⁴ Published in Official Monitor of Romania, Part I, no. 276 from 20 April 2011.

³⁵ Published in Official Monitor of Romania, Part I, no. 328 from 25 April 2008.

Exceptional taxable incomes are incomes from niche sources: prizes and gambling, pensions and other sources.

(2) Dependent activity vs. independent activity. In order to optimize personnel costs, entrepreneurial practice sought solutions to fit the lucrative revenues in classes other than wages. This concern's reason, within the Romanian tax system, is the economy resulting from social contributions, which have alleviated regime for non-wage income. Avoid contributions from special budgets is completed by replacing labour contracts (and employee status) with other types of contracts. There are usually used two solutions: enterprise contracts (with subspecies: consulting contract, service contract, civil agreements) and contracts for the transfer of intellectual property rights.

Beyond purely formal definitions, limitatively applicable, accompanied by preconditions and form conditions, at strict fiscal level, the legislature intends to establish two legal generic categories, mutually exclusive: dependent activity and independent activity. Fiscal Code distinguishes between (a) independent activity: specific to commercial relationships, liberal professions and intellectual property; the taxpayer assumes the risk of their businesses and (b) dependent activity: specific to employment relationship; the taxpayer is acting under the direction of the recipient.

Dependent activity is defined by article 7 (1) section 2 Fiscal Code as *any activity effectuated by an individual in an employment relationship*. The concept of *employment relationship* extrapolates the specific treatment of labour relationship (including similar reports: administrative act of appointment, agency contracts, company statute etc.)³⁶ by borrowing the criteria of dependence.

Criteria qualifying an activity as dependent, therefore as employment relationship by nature are alternatively: a) a relationship of functional subordination to the hierarchical structure (from the payer or his management) and to working conditions (tasks, place, time); b) a relationship of material subordination: the payer proving physical support (areas with facilities, working or protection equipment, tools); c) a relationship of emphasized even solely substantive dependency, by insuring auxiliary costs (travel expenses, safety insurances), d) a relationship of risk transfer for the recipient's recovery (compensation leave, compensation for temporary disability).

Independent activity is negatively defined by article 7 (1) section 4 Fiscal Code as *any activity carried out regularly by an individual other than a dependent activity*.

According to article 46 section 19 of the Fiscal Code's Methodological Norms³⁷: *the criteria that largely define the existence of an independent activity are: free choice of activity, working hours and place of business; the risk assumed by the developer; the activity place for many customers; the activity may take place not only directly, but also with staff employed by the entrepreneur under the law*. Independence means: own funds, own working program, a personal clientele (even low in volume) and most importantly own arrangements for spending exclusively from the professional patrimony. Real, substantial criterion for qualifying an independent activity is burden of the risk from personal capital.

Fiscal consequences of qualifying an activity as dependent are: (a) taxation similar to wages revenues; (b) imposing social security contributions³⁸; (c) exclusion from the VAT taxable transactions, (d) joint liability of the payer of income and beneficiary for tax obligations.

³⁶ For details, see: Pătroi Dragoș, Biriș Gabriel, *Controverse actuale in fiscalitate: comentarii și soluții*, Publishing House C.H. Beck, Bucharest, 2011, p. 8-26.

³⁷ Government's Decision (G.D.) no. 44/2004 for the approval of Methodological Norms for application of Law no. 571/2003 regarding Fiscal Code, modified.

³⁸ For details, see: Luisiana Dobrinescu, *Cum stăm cu recalificările activităților (in)dependente?*, in "Curierul Fiscal", no. 2/2011.

Some activities will be more difficult to qualify, for example, service contracts with client's material. In particular, are likely to re-qualify consultancy contracts, research contracts, advertising contracts. As an exception, they cannot be reconsidered, according to article 7 section 1 of the Fiscal Code's Methodological Norms: activities resulting from the exercise of liberal professions and copyrights including connected rights, according to Law no. 8/1996³⁹.

The tax law provisions are in conflict with the provisions of civil law: which admit service contracts with own material as an independent contract distinct from the labour contract; with provisions of commercial law which guarantee the independence of trade, prohibiting the activity to be classified as dependent⁴⁰.

(3) Option and optimization. Taxation of personal income (wages, pensions, self-employment) and taxation of capital income (investments, dividends, lease) receive different legislative solutions⁴¹. Entrepreneurs (traders and self-employed) are intermediate categories: "*their income represents partly a return on capital invested and partly a compensation for labour, entrepreneurial effort and ability*"⁴².

Different taxation is a determinant reason for optimization through option, in the purpose of giving to incomes the less taxed form. So, the model of taxation can be used to decide the activity form: dependent or independent activity. The tax system treats differently⁴³ entrepreneurs, investors, employees and marginal categories of the labour market, not through the actual tax (being incident the flat taxation), but through the adjacent costs (accounting cost, social contributions, training costs).

Studies identify several channels of action for the taxation of professional revenues: a stimulating effect - the entrepreneur is highly involved in the economy; a tax evasion effect - the entrepreneur pursues opportunities to reduce the tax burden; an effect of the risk game - the entrepreneur is required to take risk of their own work⁴⁴.

Thus, entrepreneurship (commerce or free-lancing) involves greater risks (identifying customers, ensuring the flow of capital, credit guarantees, patrimonies confusion) and greater personal and professional efforts (work program, no additional benefits: leaves, raw etc., adjacent costs of training⁴⁵, competition). There are also a number of benefits: increased control over business income and the work program; strong connection between effort and remuneration⁴⁶.

An effect of tax avoid comes from the ease with which, due to the direct control of the source of income, an entrepreneur optimizes lawfully or evades unlawfully. Behaviours such as failure to record professional income, recording personal spending, use of occult operations are accessible and inviting entrepreneurs to unlawfully reduce taxation.

Jurisprudential solutions

Based on legal solutions and the labour market players' will, legal practice reveals a number of hypotheses with specific elements. These jurisprudential solutions have a direct impact on business decision, as they correct certain practices.

³⁹ Published in Official Monitor of Romania, Part I, no. 60 from 26 March 1996.

⁴⁰ For details, see: Ioana Maria Costea, *Optimizare fiscală: Soluții, doctrină, jurisprudență*, Publishing House C.H. Beck, 2011, pp. 156-168.

⁴¹ For details, see: Vesa Kanninen, Seppo Kari, Jouko Ylä-Liedenpohja, *Nordic dual income taxation of entrepreneurs*, in "International Tax and Public Finance", no. 14/2007, pp. 407-426.

⁴² Vesa Kanninen, Seppo Kari, Jouko Ylä-Liedenpohja, cited work, p. 408.

⁴³ Mikael Stenkula, *Taxation and entrepreneurship in a welfare state*, in "Small Business Economics", no. 39/2012, p. 78.

⁴⁴ *Idem*, p. 80.

⁴⁵ For employees, professional training costs are assured by the employer. For details, see: Jean-François Tremblay, *Taxation and skills investment in frictional labour markets*, in "International Tax and Public Finance", no. 17/2010, pp. 52-66.

⁴⁶ Mikael Stenkula cited work, p. 80.

(1) Dependent activity. Existence of material dependence from the income's payer which provides work or protective equipment or tools is a proof for the dependent nature of the activity. Substantial dependence, proved by lack of own tools and equipment is extended to the entire activity regardless of the formal legal report.

In this regard, see: Ploiești Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 304/2008⁴⁷: *(...) result of the control conducted at the appellant's complaining headquarters, the inspection bodies in the respondent DGFP Dâmbovița found that it used labour under civil convention, for which no payments were made to the state budget as income tax on wages, also social security contribution for employees. Documents filed and expertise report (...) showed that the appellant had signed service contract with SC (...) SA - Târgoviște Branch, for carrying out works and services, under orders, but the appellant could present no document to prove performance of the services using own equipment, the appellant does not have nor leased elsewhere such equipment. In these circumstances, the respondent's inspectors correctly concluded that the works were carried out with employees employed under the civil agreement, without drawing up employment contracts, and have done wisely to further calculate income tax and the social contributions.*

(2) Independent activity. Identity of activity area (insurances) between the beneficiary company and provider of labour is not always an indication of dependence. It is within the nature of the agency contract that the agent performs any act falling within the powers and capacity of the principal. Agent's independence is proven by the remuneration system and the organization of work. Agency contracts require specific dependence proofs, usually related to the remuneration regime and risk of the contract. Independence means remuneration proportionally to the obligation enforcement and subsequently risk borne by the agent.

In this regard, see: Cluj Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 319/2010⁴⁸: *From the entire economy of the text quoted above (article 55 (1) Fiscal Code) results that are considered salary income, incomes derived by an individual under an individual labour contract or a statute specifically provided by law. But, the revenue that it forcibly assimilated to wages have not been obtained under an individual employment contract or under a special status provided by law, but on a commercial contact, the commission contract. Methodological Norms for the application of the Fiscal Code, (...), clarifies the issue under consideration and gives a coherent explanation of the provisions of article 55 in that it can be treated as salary income all income from dependent activities, if several criteria are met. Therefore relevant to defining the nature of income as salary or not, is that the activity of the individual must be a dependent one for the income obtained to be qualified as a salary. Specifically, article 67 of G.D. no. 44/2004 defines dependent activities, which means among others that: parties establish working time and place of work; the party that beneficiates for the work assured by the other party, provides the means of work and covers their travel and other expenses such; the person providing work is acting under the authority of another person and is bound by conditions imposed by it. None of the above conditions is fulfilled in the commissioners' activity within the commission contracts. Specifically, through the commission contract no working program has been imposed to the commissioner contract fee was not imposed, not even a minimum time determined that it would have to be devoted to this activity, there were not provided by the applicant recurrent means of labour, each commissioner is free to organize at their discretion using their own resources and the applicant failed to pay their expenses for that activity. All these elements come off the idea that the work done by the commission was not a*

⁴⁷ Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

⁴⁸ Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

dependent and as a consequence of their income from this activity cannot be considered income or wages to which the provisions of article 55 Fiscal Code.

(3) Independent commercial activity. The professional profile of a business (rental property) does not arise from a single legal act's qualification but from the qualification of all acts and deeds made by a taxpayer, which confirm him as a contractor-retailer. Entrepreneurial nature of an income is given by the cause of legal act or acts, which have generated it, requiring the recipient to intend for commercial profit.

In this regard, see: Timișoara Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 99/2008⁴⁹: *Revenues from rental property (...) are defined as cash income and / or in kind, resulting from the transfer of the use of movable or immovable good, other than those resulting from self-employment. In the category of self-employment income, according to article 46 (1) Fiscal Code, are included commercial revenues and those from the liberal professions, etc. and paragraph (2) of that article states that are considered business income the taxpayers' incomes from trade facts. Trade facts mean, according to article 2 section 2 Commercial Code, also rental of goods, when they were purchased for rental. So, the notion of commercial revenues dedicated by law article 46 (2) Fiscal Code includes the revenues resulting from acts of trade, which can be represented by the activity of renting of goods when their purchase was made to hiring, according to the rules of the Commercial Code. The provisions of section 232 of G.D. no. 44/2004 as amended, here in dispute, defined that is income from activities and, therefore, subject to rules determining net income for this category, income derived by individuals from rents, when running a number of 5 or more leases, so those conducting trade facts in the definition's sense of that term contained in the provisions cited above. That is, section 232 of G.D. no. 44/2004, as amended, did not added to Fiscal Code and this legal text is not discriminatory taxation to the way the people who run less than 5 leases, because the latter do not realize trade facts.*

(4) Dependent activity. Nature of benefits. The existence of an original dependency relation, under labour contractual report, determines the nature of all income as wage income, as long as no other contractual relationship proved otherwise. Formal title given by parties to the income (salary, allowance or price) or form of the income (in money or in kind) does not affect the tax treatment; decisive is the substance of the legal status, dependent or independent relationship.

In this regard, see: Brașov Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 90/2009⁵⁰: *Also, regarding the tax inspection authorities observation that the applicant association's payments to physical persons who were not identified as having contractual work with the sports association⁵¹ (...) the court finds that legally and thoroughly the tax inspectors defendant calculated for the amounts of allowances, allowances for effort, awards, contract rates paid to athletes and other staff, contributions to social security (...). Thus, in relation to the sum (...) determined as the difference in salary paid to staff employment contract, the court finds that defendants have established legally and duly charged to applicant differences in social contributions (...).*

(5) Dependent activity. Fiscal regime. The classification of a certain income in a particular legal category is a first qualifying operation; subsequently will be determined also the tax treatment applicable and other legal effects, as a second qualifying operation.

⁴⁹ Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

⁵⁰ Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

⁵¹ For details, see: Sorin Biban, *Despre impozitarea sportivilor profesioniști – sau unde poate duce lipsa de corelare a prevederilor legislative*, in "Curierul Fiscal", no. 9/2010.

In this regard, see: Bucharest Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 1212/2009⁵²: *From the analysis of these legal provisions, results unambiguously that the income referred to article 55 (2) section b) of Law no. 571/2003 (version in force during the reference period), in which's category falls applicant's income as the Chairman of the Audit Committee of the Association of owners (revenue under discussion), are treated as wages only to enforce taxation as expressly provided in article 55 (2) of Fiscal Code, and not for granting personal deductions.*

(6) Independent activity. Special status regulated by law. General or special nature of qualification rules in terms of income tax is a specific issue. The provision *special status provided by law* must be interpreted strictly, requiring that the taxable income results from a legal relation governed by a special, derogatory rule; or the civil agreement (generic name for the occasional service contract) is not a special rule to the provisions of Labour Code, the service contract, regulated by the Civil Code having, in our view, an expanded level of generality.

In the contrary, see: Oradea Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 230/2008⁵³: *The conclusion that can be drawn from these provisions is that there cannot be confusion between an activity liberal and services under a civil agreement. Civil convention involves a legal relationship between the employer and the activities provider that is subject to the convention so it can be concluded that in this case it is a special status provided by law.*

(7) Independent activity. VAT. According to article 127 (3) Fiscal Code, do not act independently, employees or any other person related to an employer by an individual contract or any other legal instruments that create an employer-employee relation in terms of working conditions, remuneration or other obligations of the employer (in full, any activity based on a dependent employment relationship - under section 71 of the Methodological Norms of Fiscal Code).

In this regard, see: Bacău Appeal Court, Commercial, administrative and fiscal contentious Section, Decision no. 153/2010⁵⁴: *(...) the applicant has recorded revenue (...), resulting from the performance of the commercial mandate no. (...). These revenues were not made by the individual (civil law) N.E., but by the physical person carrying out independent activities individually – P.P.⁵⁵. N.E., relevant aspect retained in taxation acts (in which tax obligations are established to legal entity charged P.P. N.E., duly represented by Mrs N.E.). As authorised physical person, P.P. N.E. paid, (...) the income tax of 10% (...). However, in the same quality, P.F. N.E. could become subject to VAT, depending on annual turnover (...). At the time P.P. N.E. exceeded the threshold provided in article 152 (1) Fiscal Code, P.P. N.E. had the obligation to request, in accordance with article 152 (6) registration for VAT purposes (...) The definition of dependent activity is useful for identifying salary income, all activities which are not characterized by dependency relationships leading to obtain incomes that have not salary nature. Negative definition of independent activity was necessary because self-employment forms are unlimited and cannot be exhaustively listed, so everything is not dependent activity leads to self-employment income. (...)*

(8) Independent activity. VAT. The concept *in an independent manner* excludes activities of salary nature (as opposed to the concept of *employment relationship*). Legal signs of dependency are the subordination bound regarding: working conditions, pay conditions and liability conditions. A certain functional dependence is inherent even for self-employment, as an

⁵² Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

⁵³ Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

⁵⁴ Jurindex, the document is available on-line at <http://www.jurisprudenta.org/> (reference from 1.08.2012)

⁵⁵ P.P is short for Physical Person, as in Authorized Physical Person.

expression of the control, that beneficiary of a good or a service has over the provider traditional contractual arrangements.

In this regard, see: ECJ, C-202/90 - Ayuntamiento de Sevilla vs Recaudadores de Tributos de las Zonas primera y segunda: *pct. 9-15 (9) The use of the word 'independently' in paragraph 1 shall exclude employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.*" (10) *The documents before the Court show that tax collectors do not receive a salary and are not bound to the Commune by a contract of employment. It must therefore be considered whether their legal relationship with the Commune nevertheless creates the relationship of employer and employee referred to in Article 4(4) of the directive.* (11) *With regard, firstly, to working conditions, there is no relationship of employer and employee since the tax collectors themselves procure and organize independently, within the limits laid down by the law, the staff and the equipment and materials necessary for them to carry out their activities.* (12) *That being so, the fact that in the performance of their functions tax collectors are tied to the local authority, which can give them instructions, and the fact that they are subject to disciplinary control by that authority are not decisive for the purpose of defining their legal relationship with the Commune for the purposes of Article 4(4) of the directive (see, with regard to disciplinary control, the judgment of the Court in Case 235/85 Commission v Netherlands [1987] ECR 1471, paragraph 14).* (13) *With regard, secondly, to remuneration, there is no relationship of employer and employee since tax collectors bear the economic risk entailed in their activity in so far as their profit depends not only on the amount of taxes collected but also on the expenses incurred on staff and equipment in connection with their activity.* (14) *With regard, finally, to employer's liability, the fact that the Commune can be held liable for the conduct of tax collectors when they act as representatives of the public authority is not sufficient to establish the existence of a relationship of employer and employee.* (15) *The decisive criterion for this purpose is the liability arising from the contractual relationships entered into by tax collectors in the course of their activity and their liability for any damage caused to third parties when they are not acting as representatives of the public authority.*

IV. Conclusions

The relationship between taxation and labour market involves several levels of analysis.

Firstly, a series of causes for interaction is identifiable, which allow modelling the two entities through fiscal and social policies.

Secondly, a series of actors is identifiable with heterogeneous profiles and specific objectives, which operate in their own interest both on the labour market and within the fiscal framework.

Thirdly, a series of legal solutions, traditional or innovative, are identifiable, through which interaction relationships are qualified and receive a number of legal effects.

The common denominator of these plans is heterogeneity. The variety of resources, interests and forms of work supplies a variety of legal solutions in terms of taxation of formal or informal labour.

BIBLIOGRAPHY

1. Stefan Boeters, *Optimal Tax Progressivity in Unionised Labour Markets: Simulation Results for Germany*, in 'Computational Economics', 2012.

2. Donald Bruce, John Deskins, *Can state tax policies be used to promote entrepreneurial activity?*, in „Small Business Economics”, no. 38/2012.
3. Mikael Stenkula, *Taxation and entrepreneurship in a welfare state*, in „Small Business Economics”, no. 39/2012.
4. Matti Tuomala, Sanna Tenhunen, *On the design of an optimal non-linear tax/pension system with habit formation*, in „International Tax and Public Finance” no. 2/2012.
5. Felix Bierbrauer, *Distortionary taxation and the free-rider problem*, in „International Tax and Public Finance”, no. 7/2011.
6. Ioana Maria Costea, *Optimizare fiscală: Soluții, doctrină, jurisprudență*, Publishing House C.H. Beck, 2011.
7. Luisiana Dobrinescu, *Cum stăm cu recalificările activităților (in)dependente?*, in „Curierul Fiscal”, no. 2/2011.
8. Raymond Guillien, Jean Vincent, *Lexique des termes juridiques*, 16e Edition, Publishing House Dalloz, Paris, 2007.
9. Magnus Henrekson, Tino Sanandaji, *Entrepreneurship and the theory of taxation*, in „Small Business Economics”, no. 37/2011.
10. Dragoș Pătroi, Gabriel Biriș, *Controverse actuale în fiscalitate: comentarii și soluții*, Publishing House C.H. Beck, Bucharest, 2011.
11. Lucian Țătu, Mihai Brăgaru, Horațiu Sasu, *Impozite, taxe, contribuții: termene, documente, proceduri*, Publishing House C.H. Beck, Bucharest, 2011.
12. Lucian Țătu, *Impozitarea activităților realizate de zilieri*, in „Curierul Fiscal”, no. 5/2011.
13. Sorin Biban, *Despre impozitarea sportivilor profesioniști – sau unde poate duce lipsa de corelare a prevederilor legislative*, in „Curierul Fiscal”, no. 9/2010.
14. Rodrigo A. Cerda, Felipe Larrain, *Corporate taxes and the demand for labor and capital in developing countries*, in „Small Business Economics”, no. 34/2010.
15. Jean-François Tremblay, *Taxation and skills investment in frictional labor markets*, in „International Tax and Public Finance”, no. 17/2010.
16. Magnus Henrekson, Dan Johansson, Mikael Stenkula, *Taxation, Labor Market Policy and High-Impact Entrepreneurship*, in „The Journal of Industry, Competition and Trade”, no. 10/2010.
17. Thorsten Upmann, *A positive analysis of labor market institutions and tax reforms*, in „International Tax and Public Finance”, no. 16/2009.
18. Vesa Kannianen, Seppo Kari, Jouko Ylä-Liedenpohja, *Nordic dual income taxation of entrepreneurs*, in „International Tax and Public Finance”, no. 14/2007.
19. Pekka Sinko, *Labour taxation, job creation and job destruction—Focusing on the role of wage setting*, in „International Tax and Public Finance”, no. 14/2007.
20. Beata Smarzynska Javorcik, Mariana Spatareanu, *Do Foreign Investors Care about Labor Market Regulations?*, in „Review of World Economics”, Vol. 141, no. 3/2005.
21. Jonathan Hamilton, Pierre Pestieau, *Optimal Income Taxation and the Ability Distribution: Implications for Migration Equilibria*, in „International Tax and Public Finance”, no. 12/2005.
22. Patrick Serloteen, *Droit fiscal des affaires*, 4th Edition, Publishing House Dalloz, Paris, 2005.
23. Wolfgang Eggert, Laszlo Goerke, *Fiscal Policy, Economic Integration and Unemployment*, in „Journal of Economics”, Vol. 82, no. 2/2004.
24. Marcel Thum, *Controlling migration in an open labor market*, in „Public Choice”, no. 119/2004.
25. Silke Gottschalk, Wolfgang Peters, *Redistributive Taxation in the Era of Globalization*, in „International Tax and Public Finance”, no. 10/2003.
26. Jon Strand, *Effects of Progressive Taxes under Decentralized Bargaining and Heterogeneous Labor*, in „International Tax and Public Finance”, no. 9/2002.
27. Dario Maldonado, *Education policies and optimal taxation*, in „International Tax and Public Finance”, no. 15/2008.
28. Panu Poutvaara, *Education, Mobility of Labour and Tax Competition*, in „International Tax and Public Finance”, no. 7/2000.
29. Jane Ihrig, Karine S. Moe, *The influence of government policies on informal labor: implications for long-run growth*, in „De Economist”, Vol. 148, no. 3/2000.