



# **FISCAL POLICY IN ROMANIA, BETWEEN LEGALITY AND SOCIAL RESPONSABILITY. ON THE NON-RETROACTIVITY OF FISCAL MEASURES/LAWS AND THE IMAGE OF THE GOVERNMENT**

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**Abstract:** *Laws "function" on the territory of Romania and must be known and observed by individuals or organizations operating on the Romanian market. The "life" of normative acts lasts, in time, from the moment they come into force until the moment they cease to be in force. The only ones that are established in the Romanian legal mechanism, through Romanian legislation, and are also stated in the Romanian Constitution, are the immediate effects of the normative act, i.e. a normative act produces effects from the moment of its entry into force. The provisions of the normative act must not and cannot be known and observed by citizens and organizations before the entry into force of this act, i.e. the respective normative act does not retroactively apply in time, before its entry into force. The provisions of the normative act must not and cannot be respected by citizens and organizations after the expiry of the respective normative act, i.e. the normative act in question does not have ultra-active effects in time, after its expiry. In Romania, one notes an implementation of the requirements of social responsibility also in the management strategies of business operators. The next step in the evolution of social responsibility is currently finding these requirements in the activity of public institutions in Romania, in a socially responsible management. A socially responsible management at the level of the highest public institutions in Romania, would have created trust in the image of the Romanian Government and would have had a positive impact, both regarding the stakeholder citizens, and before the European/international stakeholder forums, in order to obtain various financing/support.*

**JEL classification:** H11, H24, K10, K34.



**Key words:** immediate effects of the law, retroactivity, ultra-activity, social responsibility.

## **1. CONCEPTUAL ASPECTS IN THE ROMANIAN LITERATURE, REGARDING THE LAW ENFORCEMENT IN TIME, AND PUBLIC FINANCES**

The law (a normative act) including the business law or financial law, is applied under the three aspects as long as it is in force. In time, the laws have a life of their own, between the moment they are enforced and the moment they are exempted (Ungureanu O. 2000, pp. 30-25). Next, we will focus on the enforcement of law (normative act) over time, from the perspective of the Romanian specialized literature, as these theoretical aspects have been transmitted, throughout the evolution of the Romanian law. These aspects have not undergone changes over time (Poțincu L., Foris T. 2021, pp. 277-280), the legal mechanism being generally the same.

In the Romanian specialized literature (Popa V.V. 2005, p. 91), law is defined as the entirety of the rules provided and guaranteed by the state, whose purpose is to organize and discipline the human behavior in their main social relations, in an environment allowing the liberties to coexist, and defending the essential human rights and social justice. This definition belongs to the term "law", in general, and more precisely concerns the "normative act", the act that is of a general nature, applies to the citizens of a state, and is issued by various public institutions that have powers expressly established by law to issue various "normative acts". For example, the Romanian Parliament has the power to issue laws. Laws "function" on the territory of Romania and must be known and observed by individuals or organizations operating on the Romanian market.

The "life" of normative acts lasts, in time, from the moment they come into force until the moment they cease to be in force. The enforcement of a normative act, occurs either on the date of its publication (in the Official Monitor) – More precisely, 3 days from publishing it (Romanian Constitution 1991, art. 78) -, or at the date mentioned in its content (if the law precisely mentions a certain date) or at a later date dependent on a future event, such as, for example, the adoption of an financial law, as was the case of the Civil Code of Romania.

By enforcement, the law becomes mandatory, operating as an absolute presumed knowledge of the normative act, presumption which applies to all persons, irrespective of their citizenship. This absolute presumption comes from Romanian law, specifying ("nemo censetur legem



ingnorare” that is nobody is considered not to know the law. This means that nobody can elude the enforcement of the law/normative act for the reason that it was not known to them. This is because "citizens benefit from the rights and freedoms established by the Constitution and other laws and have the obligations provided for by them" (Romanian Constitution 1991, art. 15 ph. 1). To benefit from legal rights and freedoms or to observe the obligations established by law, both individuals and legal entities must obviously know the respective laws/normative acts. The exemption from the law takes place upon its abrogation, which can be express or implicit. The express abrogation implies the existence within the new law of the specification of the old law which is thus exempted. In exchange, the implicit abrogation is incidental when the new civil law is incompatible with the dispositions of the old law.

The exemption can also be performed, in Romania, by means of the proceeding called obsolescence. The obsolescence implies the prolonged failure to apply the law or the change of the circumstances which have motivated the respective law. However, the juridical literature in Romania (Ungureanu O. 2000, pp. 33-37), does not acknowledge obsolescence, or rational abrogation, as a new way of an exemption from the law/normative act, and currently, even if there are situations that disappear from the social or business life in Romania, they are not very numerous. This type of repeal has its own specifics, which resides in the fact that, in that particular situation, a new law will not be adopted to replace the provisions of the old law, through the mechanisms of express repeal or implicit repeal.

As for its enforcement in time, the new law/normative act can produce:

- a) immediate effects, thus operating at present,
- b) retroactive effects, also applying on the past, or
- c) ultra-active effects, also applying on the future, on certain facts or juridical situations occurring after the abrogation of the law.

The only ones that are established in the Romanian legal mechanism, through Romanian legislation, and are also stated in the Romanian Constitution, are the immediate effects of the normative act, i.e. a normative act produces effects from the moment of its entry into force.

Thus, the provisions of the normative act must not and cannot be known and observed by citizens and organizations before the entry into force of this act, i.e. the respective normative act does not retroactively apply in time, before its entry into force.



Also, the provisions of the normative act must not and cannot be respected by citizens and organizations after the expiry of the respective normative act, i.e. the normative act in question does not have ultra-active effects in time, after its expiry.

In Romania, the Romanian Civil Code, in art. 6 align. (1), establishes that the civil law “does not have a retroactive power”. Starting from the premise that this new normative document aims at the entire private law field, including in the business law does the law – normative document – retroact. Even in the field of public law, where the financial law, which regulates the field of public finances, falls, the same principle operates, by virtue of the constitutional provisions.

Further on, art. 6 align. (2)-(6) Romanian Civil Code develops the principle of non-retroactivity of the law in the private law field. Thus, the juristic acts and/or facts which have been completed, performed or occurring before the enforcement of the new law cannot generate other juridical effects other than those provided by the legislation in force at the date of their completion, performance or occurrence.

Moreover, in the case of the normative acts / law adopted by the public authorities functioning at European Union level, the principle of non-retroactivity of the law applies. This principle is universal in the legal field, because even from a rational point of view, we cannot know and observe, at a certain moment in time, something that may not even have been discussed in the process of documenting for the adoption of a new law.

Let us resume what we have previously stated: if in the field of business law or other branches of law in the field of private law, we refer to the Civil Code, the Constitution (Romanian Constitution 1991, art. 15 ph. 2) of Romania – the fundamental act of Romanian law – develops the same principle: “the law orders only for the future, with the exception of more favorable criminal or contravention law”.

By establishing this principle of the immediate effects of the new law, of its non-retroactivity or ultra-activity, the mechanism of the constitutionality or unconstitutionality of the adopted laws/normative acts is triggered in the Constitution of Romania. That is, if certain normative acts/laws tend to produce retroactive or ultra-active effects in time, compared to the period in which this act is in force, those provisions of the normative act can/will be challenged before the Constitutional Court of Romania for unconstitutionality, i.e. non-compliance with/disregard of the constitutional provisions.

The provisions of the new law are applied to:



1. all the acts and facts which are completed, produced or performed after the law comes in force;
2. the juridical situations occurring after it comes in force;
3. the future effects of the juridical situations occurring before it comes in force, deriving from: the state and capacity of the persons; marriage, filiations, adoption and legal obligation of maintenance; relations of property, including the general regime of goods; relations of vicinity, if these juridical situations subsist after the new law comes in force.

As for the law enforcement in time, the following principles (Popa N. 1994, pp. 40-45) operate:

- A. The principle of non-retroactivity of the law implies that the new law/normative act should only apply to the juridical situations occurring after it comes in force: the new law is not applied to the juridical acts and facts occurring before it comes in force.
- B. The principle of the immediate application of the new law/normative act implies that the new law is immediately applied to all the facts occurring after it comes in force, but also to the future acts: all that occurs under the new law must be subject to it.

If the occurrence of a juridical situation implies that certain conditions or elements which are successively performed in time are met, then the act causing the respective juridical situation would only be considered valid under the conditions of the law in force at the last moment of its successive formation.

Another important aspect to be noted is that of the exception to the principle of non-retroactivity of the new law. The only areas where retroactivity or ultra-activity of the law is allowed are those of the criminal law and contravention law. That is, the retroactivity or ultra-activity of the law more favorable to the perpetrator is allowed, in the event that there is a competition of criminal/contravention laws in time. We are considering a continuing felony or contravention, i.e. made up of different criminal or contravention actions that are committed at different times, moments that belong to different laws that follow each other in time.

No other exception is permitted in the Romanian law, neither in the field of business law nor in that of financial law.

## **2. CASE STUDY: LAW NO. 239 OF 2025**



Law no. 239 of 15 December 2025 on establishing measures to recover and streamline public resources, amending and supplementing certain normative acts, has brought changes to the tax legislation in Romania.

This normative act brings increases in the applicable tax, both for individuals and legal entities in Romania.

In fact, the payment of taxes is made retroactively, in our case for activities carried out throughout 2025, or for real estate owned/acquired in 2025, even if the taxation is carried out in 2026. Thus, in our opinion, the constitutional principle of non-retroactivity of the new law, of the changes in the tax field brought by Law no. 239 of 2025, is broken.

Adopting a new taxation - more unfavorable to the citizen or private organization - in the last month of 2025, should have been applicable no sooner than 2027, in order to target the taxation of activities carried out from the moment of its adoption, i.e. 2026.

This fiscal measure forcibly applied by the Romanian Government to its stakeholders - natural persons and legal entities in Romania - denotes an aggressive public management in relation to the latter. The mere fact of waiting one year for a legal applicability in time of the fiscal legislation, in compliance with the constitutional provisions, would have shown respect for the stakeholders of the Romanian Government. This is especially because the executive power in Romania should be an example of management for its own citizens: natural persons and legal entities in Romania, being a model for the latter.

### **A POSSIBLE SOLUTION: THE STRATEGY OF A SOCIALLY RESPONSIBLE GOVERNANCE**

Society is becoming increasingly aware of the importance of sustainability and the need to effectively manage the finite resources it is endowed with.

Most existing studies (Asimakopoulou S., Wese Simenb C., Vivianc A. 2024, pp. 669-670) in the vastly growing Environmental, Social and Governance (ESG) literature focus on overall ESG performance and its impact. They recognise that Environmental, Social and Governance captures different aspects and dimensions.

Specifically, they examine whether Environmental, Social and Governance are complementary or substitutes.



In Romania, one notes an implementation of the requirements of social responsibility also in the management strategies of business operators (Poțincu L. 2024 p. 8). The next step in the evolution of social responsibility is currently finding these requirements in the activity of public institutions in Romania, in a socially responsible management. By accessing various European funding by public institutions in Romania, specific requirements of social responsibility – such as those related to human resources – are necessary to “modernize” these public institutions.

Interesting, in this sense, is precisely the involvement of the Ministry of Finance in Romania, in a socially responsible action, which is presented on its own website. Thus, the October 2025 Edition, the tenth edition of the “FIDELIS Government Bond Program”.

As a result of this socially responsible action, carried out by the Ministry of Finance together with Rock FM, the solidarity of donors-investors is to be noted, by investing over 2.2 billion RON through 21,067 orders (Ministry of Finance 2025), saving lives and investing in their future.

In the international specialized literature (Liua H., Li Y., Xiaoc Y., Xionga X., W. Zhanga 2025), it is noted that a firm that demonstrates strong corporate social responsibility credentials, by disclosing its commitment to sustainability and ethical governance, enhances transparency. This transparency allows lenders to more accurately evaluate and mitigate the firm's risk before extending a loan.

## CONCLUSIONS

We believe that these aspects, specific to a socially responsible management, can also be considered by the Romanian Government, in a socially responsible action that takes into account categories of its own stakeholders - Romanian citizens -, towards greater transparency and better creditworthiness in accessing their own loans.

Thus, in the previously analyzed case, the fiscal measures forcibly applied by the Romanian Government, the executive power in Romania, are, in fact, a counterexample of management for its own stakeholders.

A normal enforcement over time of the fiscal legislation, in compliance with the Romanian Constitution, by waiting a year, would have shown respect, consideration, transparency towards the governed citizen - natural or legal - by the executive power in Romania. This is especially





since, in fact, the elected - the executive power - are delegated, through the vote obtained in the elections, to represent the will and respect the interests of the governed citizen.

In this context, a socially responsible management at the level of the highest public institutions in Romania, would have created trust in the image of the Romanian Government and would have had a positive impact, both regarding the stakeholder citizens, and before the European/international stakeholder forums, in order to obtain various financing/support.

**CONFLICTS OF INTEREST AND PLAGIARISM:** The authors declare no conflict of interest and plagiarism.

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