

# SPECIAL LOCAL TAXES. THEORETICAL AND PRACTICAL ISSUES REGARDING LATE LODGING OF PRELIMINARY COMPLAINTS IN ADMINISTRATIVE COURTS UNDER ARTICLE 30 OF LAW 273/2006 ON LOCAL PUBLIC FINANCES

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## Abstract

*The procedure to challenge decisions imposing the local taxes is a special procedure. Article 30 of Law no. 273/2006 has provided a special procedure for the challenging of special taxes, by derogation from the Law no. 554/2004. Thus, interested persons may challenge the special taxes within 15 days of the posting or publication thereof; in this case, however, the claimant has failed by far to meet this deadline, virtually skipping the appeal stage and going straight and only through the procedure stipulated by Law no. 554/2004. Any contrary approach would amount to a case of disregarding of the legal reasoning introduced by the special law no. 273/2006 under which appeals against special charges should be lodged with the decision-making bodies within 15 days after their passing. In the case that the applicant skips this stage, his action in court will be deemed, for the purpose of the provisions of article 30 of Law no. 273/2006, as a belated application. It was thus found that Article 30 paragraph 6 of the Law no. 273/2006 and article 194 of the Rules for implementation of the Law no. 571/2003 contain rules that are exemptions from the provisions of Law no. 554/200, in terms of the deadline for challenging decisions passed by local governments, establishing special charges. It is therefore normal in fiscal matters that a special and derogatory term for appeal be established, which is shorter and accrues as of the moment in time when the term has been objectively determined, and which applies equally to all applicants, with the need for establishing such a term being called for by the need to avoid levying special taxes for a long period of time and from a significant number of target taxpayers, as well as the subsequent cancellation at some point in time of the administrative act by which such taxes were imposed.*

**Keywords:** *tax, administrative, derogatory, Law no. 273/2006, Law no. 554/2004.*

Under Article 2 section 55 of Law no. 273/2006, and for the purpose of this law, the terms and expressions below have the meaning ascribed to them as follows:

55. tax - the amount paid by a natural or legal person, usually for services rendered to it by an economic operator, a public institution or a public service;

As such, and when it comes to any local public tax, the provisions of article 30

of the Law No. 273/2006 become applicable, according to which:

(1) For the operation of local public services created in the interest of individuals and corporate entities, local councils and the Bucharest General Council, as appropriate, may approve special taxes;

(2) The amount of special fees shall be set annually and the revenues derived there from shall be used entirely to cover the costs

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spent to set up the local public services concerned and to finance current expenditures for the maintenance and operation of such services;

(3) The regulation approved by the decision-making bodies shall establish the fields of activity and the conditions in which special taxes may be charged, as well as the way of organization and functioning of the local public services with respect to which such are proposed;

(4) The decisions taken by decision-making bodies regarding the levying of special taxes from taxpayer individuals and corporate entities shall be displayed at the headquarters of the target taxpayers and published on the website or in the media.

**(5) Appeals against the decisions to charge special taxes may be filed by interested persons within 15 days after the posting or publication thereof. Upon the expiring of the 15 day's term, the decision-making body which has issued the decision shall meet and deliberate on the appeals received.**

(6) Special taxes shall be collected only from individuals and corporate entities that use the local public services for which such fees have been established.

(7) The special taxes imposed under the provisions of this Article shall be collected in a separate account opened outside the local budget and shall be used for the purposes for which they are established. The account for execution of the special taxes shall be subject to approval by the decision-making authorities.

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llenge the special taxes within 15 days of the posting or publication thereof; in this case, however, the claimant has failed by far to meet this deadline, virtually skipping the appeal stage and going straight and only through the procedure stipulated by Law no.554/2004.

**Insofar as free access to justice under Law 554/2004 is restricted, the holder of the right to take legal action may circumvent the specific rules laid down by Law no. 273/2006.**

Any contrary approach would amount to a case of disregarding of the legal reasoning introduced by the special law no. 273/2006 under which appeals against special charges should be lodged with the decision-making bodies within 15 days after their passing.

In the case that the applicant skips this stage, his action in court will be deemed, for the purpose of the provisions of article 30 of Law no.273/2006, as a belated application.

The argument that the applicant was restricted the free access to justice does not hold, insofar as the applicant has the freedom to file an action for annulment, should an administrative be issued against him, which, in the applicant's opinion, would harm his interests.

We are not dealing in this case with a restriction of free access to justice, but only with a case of failure to follow certain mandatory procedural steps stipulated by the special law.

The procedure in question does not hinder the taking of action in court. It simply defines the deadlines and the conditions by and in which special taxes may be challenged with the decision-making authorities, as mandatory procedural steps to be taken prior to referring the matter further to the administrative courts.

Decisions on special charges should be adopted under Title IX of Law no. 571/2003 – The Tax Code Act, and Title IX of the

Rules to implement the Law no. 571/2003, approved by GD no. 44/2004, as well as pursuant to Articles 20 and 30 of Law no. 273/2006 on local public finances.

According to the regulations specified above, including their subsequent amended and extended versions:

Article 282. - (1) In consideration for the provision of local public services created in the interest of individuals and corporate entities, local councils, county councils and the Bucharest City Council, as the case may be, may decide to charge special taxes.

(2) The sectors with respect to which the local councils, the county councils and the Bucharest City Council, as the case may be, may decide to charge special taxes for the provision of local public services and the amount of such taxes shall be determined in accordance with the provisions of Government Emergency Ordinance no. 45/2003 on local public finances.

Application Rules:

Section 192. Local councils, county councils and the Bucharest City Council, as appropriate, shall, under the regulation approved, establish in accordance with the Government Emergency Ordinance no. 45/2003 on local public finances the conditions and sectors, as well as the organization and functioning of the public services, with respect to which such taxes are proposed, and the manner of consultation with and obtaining the consent of the individual and corporate entities benefiting from such services.

Section 193. The decisions taken by the authorities referred to in Section 192 with respect to the levying of special taxes from taxpayer individuals and corporate entities shall be displayed at the headquarters of the local public authorities concerned and published according to the law.

Section 194. Interested persons may challenge the decision specified above

within 15 days from the posting or publication thereof. After expiry of the 15 days' term, the decision-making authority adopting the decision shall meet and deliberate on the appeals received.

Section 195 (1) The special taxes shall be collected only from individuals and corporate entities that are using the local public services with respect to which the special charges were established.

(2) Deleted.

Section 196. The special charges set according to Article 282 of the Tax Code shall be collected in a separate account opened outside the local budget and shall be used for the purposes for which they were established, and their execution account shall be approved by the local council, the county council or the General Bucharest City Council, as appropriate.

It is true that EGO no. 45/2003 on local public finances was expressly repealed by Article 86 paragraph 2 of Law no. 273/2006 on local public finances, in force as of 01.07.2006, yet considering that, from that date onwards, any reference EGO no. 45/2003 contained by the various legal regulations in force are references to the provisions of Law no. 273/2006.

According to Article 30 of Law no. 273/2006:

Article 30. - (1) For the operation of certain local public services created in the interest of individuals and corporate entities, the local councils, the county councils and the Bucharest City Council, as appropriate, may approve the charging of special taxes.

(2) The amount of the special fees shall be set annually and the revenues derived there from shall be used entirely to cover the costs spent to set up the local public services and to finance the current expenditures for the maintenance and operation of such services;

(3) The regulation approved by the decision-making bodies shall establish the

fields of activity and the conditions in which special taxes may be charged, as well as the way of organization and functioning of the local public services with respect to which such taxes are proposed;

(4) The decisions taken by decision-making bodies regarding the levying of special taxes from taxpayer individuals and corporate entities shall be displayed at the headquarters of the target taxpayers and published on the website or in the media.

(5) Interested persons may challenge the decisions to charge special taxes within 15 days after the posting or publication thereof. Upon the expiring of the 15 day's term, the decision-making body which has issued the decision shall meet and deliberate on the appeals received.

(6) Special taxes shall be collected only from individuals and corporate entities that are using the local public services for which such fees have been established.

(7) The special taxes imposed under the provisions of this Article shall be collected in a separate account opened outside the local budget and shall be used for the purposes for which they are established. The account for execution of the special taxes shall be subject to approval by the decision-making authorities.

**In fact, the content of Article 30 paragraph 6 of the Law no. 273/2006 is identical with that of Article 194 of the Implementing Regulations of the Law no. 571/2003, approved by GD no. 44/2004, as well with the content of Article 25 paragraph 6 of the former GEO no. 54/2003, to the effect that interested persons may challenge decisions taken by the local authorities to charge special fees within 15 days of publication of such decisions. Moreover, it follows from the interpretation of Article 30 paragraph 6 of the Law no. 273/2006 and of Article 194 of the Rules on implementation of the Law no. 571/2003, approved by GD no. 44/2004,**

**that we are dealing with a challenge to be addressed to and filed with the issuing authority.**

Article 7 paragraph 1 of Law no.554/2004 says that "Before taking the matter to the competent administrative court, the person who considers that any of his or her rights or legitimate interests has been infringed by an individual administrative order shall ask the issuing body or the higher body, if any, within 30 days from the date of the serving of the order, cancellation thereof in whole or in part."

According to paragraph 11 paragraph 4.1 of the same law, the orders or the provisions therein that are deemed unconstitutional, as well as any administrative acts of a normative force that are deemed illegal may be appealed against at any time.

However, Article 14 – "Special and Derogatory Regulations" of the Law no. 24/2000 on law-making technique for the drafting of laws, republished, with subsequent amendments and additions, stipulates that:

(1) A regulation in the same matter and of the same level may be included in another law, provided that the former has a special nature compared to the law containing that general regulation on the matter concerned.

(2) The special nature of a regulation shall be determined depending on its object, in relation to certain categories of circumstances, and on the specificity of the legislative solutions it sets in place.

(3) The regulation is deemed to be derogatory, where the legislative solutions relating to a particular case include rules that differ from the rules of the framework regulation in the field, with the latter retaining its general mandatory nature with respect to all the other cases.

### Conclusions

*It was thus found that Article 30 paragraph 6 of the Law no. 273/2006 and article 194 of the Rules for implementation of the Law no. 571/2003 contain rules that are exemptions from the provisions of Law no. 554/2004, in terms of the deadline for challenging decisions passed by local governments, establishing special charges.*

The decisions of the local council laying down special taxes are normative administrative acts with a fiscal content and are subject, in terms of the right to challenge them, to the special and derogatory provisions of article 30 paragraph 6 of the Law no. 273/2006 and article 194 of the Rules on implementation of the Law no. 571/2003, approved by the GD no. 44/2004, meaning that any appeal against decisions with a fiscal content had to be lodged within 15 days of publication, before the issuing body. Regarding the significance of the appeal, the courts have consistently attached

to it the legal significance of the preliminary complaint referred to in article 7 paragraph 1 of Law no. 554/2004, such complaint being nevertheless governed by the special term of 15 days from the date of publication of the decision, as set by a special provision, by derogation from the general term of 30 days established under article 7 paragraph 1 of Law no. 554/2004.

*It is therefore normal in fiscal matters that a special and derogatory term for appeal be established, which is shorter and accrues as of the moment in time when the term has been objectively determined, and which applies equally to all applicants, with the need for establishing such a term being called for by the need to avoid levying special taxes for a long period of time and from a significant number of target taxpayers, as well as the subsequent cancellation at some point in time of the administrative act by which such taxes were imposed.*

### References

- Law 273/2006 on local public finances.
- Government Emergency Ordinance no. 45/2003 on local public finances.
- Law no. 571/2003 regarding the Fiscal Code.
- Decision no. 44/2004 approving the Methodological Norms for the application of Law no. 571/2003 regarding the Fiscal Code.
- Law nr. 554/2004 Administrative Litigation Law.