The new fiscal measures and the association of small agricultural producers

Has the vicious circle been broken?

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Preamble

Consolidating producers organizations is considered one of the top development priorities of Romanian agriculture. This aspect has been extensively covered in the last reports of the Romanian Center for European Policies, both from the perspective of support measures of the National Rural Development Programme (NRDP), as well as from the sociologic context perspective and the concrete methods that can stimulate the development of such agricultural cooperation entities.

The present study deals with one of the policies that can significantly influence the appetite of the small agriculturists to group in small cooperative farms or agricultural associations – the fiscal policy.

In May 2012, the EU Agriculture Commissioner Dacian Ciolos said: "Farmers sell on the black market, on the roadside, at severely low prices. They cannot produce a balance sheet for the bank if they want to take out a loan, they don't have access to European funds. Taxing agriculture should be addressed in an intelligent way. A progressive taxation, which wouldn’t put intolerable financial pressure on producers, especially those who invest, accompanied by targeted support for different farmers categories, would perhaps have better chances of success".

Indeed, in recent years the so-called "lack of taxation in agriculture" has become a commonplace, still few were those who tried to „unbundle” some actually quite intricate threads, and concrete results were left waiting. The problem was analyzed too much from the state’s point of view, which failed to collect money for the budget, and insufficiently from the small producer’s standing on the issue. From the latter’s perspective, taxation should have come in the same package with formalization, creation of a level playing field for all actors on the agricultural market, which would have been a prerequisite for the development of associative forms.

The plague of Romanian agriculture is undoubtedly tax evasion, and small producers have too often been pointed at in the public space as the main culprits for this phenomenon. In fact, they react absolutely rationally in the given economic, social and fiscal context. One may actually say that, in great proportion, they are even the "victims" of intermediaries’ evasion, who obtain undue rents at their expense.

In January 2013 the government decided to amend the Tax Code which significantly changed the rules of the game, through its new provisions on taxation of incomes from agricultural activities. This report is an overview of the measures taken or discussed in recent years on taxation in the field of agriculture and aims to analyze the direct and indirect effects the new legislative changes will have on farmers and their propension to associate. In the end, the report provides recommendations for setting up a more favorable fiscal climate for the association of small agricultural producers in Romania.
**Self-consumption and subsistence**

The large share of subsistence agriculture in Romania is an economic reality difficult to change, as it is the result of a combination of specific social and economic factors, underdevelopment and transition, including land restitution and limited employment opportunities outside agriculture. Under these conditions, subsistence agriculture makes up for the lack of living resources which should be provided by a social security network.

Therefore, in order to determine what we are actually talking about when we address the issue of taxing agriculture, it is important to bear in mind that a large part of national agricultural production is consumed in households and that a significant proportion of farms in Romania produce mainly for self-consumption: according to the 2007 farm structure survey, 3.1 million of the total 3.9 million farms in Romania matched this description. Moreover, the Household Survey (by the National Statistics Institute) showed that in 2009, farmers’ household income consisted of consumption of agricultural products from own resources in a significant percentage (42.2%), only second being the agricultural income (23.0%).

**The previous agricultural income taxation system. Recent attempts to improve it**

Under the Tax Code in force until 2013, taxable income in agriculture stemmed from cultivation and sale of flowers, vegetables in greenhouses and solariums specially designed for such purposes and / or irrigation system, the cultivation and processing of decorative plants and mushrooms, vine and tree nurseries, as well as the sale of agricultural products to specialized collection or industrial processing units.

Thus, income from livestock, forestry and fisheries were not taxable. Only income earned in production units in which investments had been made and those achieved by selling to designated collection facilities fell under the scope of taxation. Small producers selling products in markets or directly to final consumers were exempt from the tax.

The tax was calculated both based on income quotas, as well as in a simplified version. The latter mostly applied to direct sales: intermediaries who many times came up to the farmer’s house or plot of land kept a purchase register and were obliged, at the end of the month, to calculate the tax by applying a 2% rate on the value of purchased production and remit the tax to the state, together with the 5.5% rate applied to the sum, which represented the contribution to the health fund.

In turn, taxpayers for which the net income was determined based on income quotas were required to fill in a receipts and payments register, but only the receipts column. If, in the
previous year they recorded a gross annual income greater than 100,000 Euros, starting the next fiscal year they were required to determine the net annual income in the real system.

In other words, until now most farmers sold to an intermediary, who was responsible for collecting and transferring the tax to the state. It was quite unclear what exactly would have driven both farmer and buyer to comply with such a permissive exercise, therefore the architects of the mechanism should have expected a low collection rate.

Obviously, the law was not respected. We recall that the situation presented above only applied to those who sold their products to collection companies. Producers selling in markets or directly to end customers were exempted from paying an income tax, and instead paid a tax for obtaining the producer’s certificate and others to gain access to city markets. Had these taxing mechanisms functioned under the rule of law, intermediaries wouldn’t have so easily obtained producer certificates allowing them to sell quantities which they couldn’t justify. There have been initiatives to improve the procedure for issuing the producer certificate by involving farmers’ representative associations in the process, in order to eliminate potential fraud, but it is unclear if once adopted, they will be effective in combating tax evasion.

Starting 2010, authorities have tried to make small adjustments to the agriculture taxation system, some more inspired than others:

- In 2010, the Ministry of Agriculture analyzed APIA (Agency for Payments and Interventions in Agriculture) data, which showed that many unregistered farmers (natural persons) own tens and hundreds of hectares of land. They receive consistent subsidies, but do not pay a dime as tax on agriculture incomes, nor do they issue invoices (some of them would have even had to register as VAT payers, considering their estimated turnover). The Ministry then proposed an interpretation of the legislation on economic activities which rendered the registration as authorized natural persons compulsory for every farmer who received subsidies through APIA. As a consequence, they would have had to secure invoices for every sale and pay a 16% tax on the net income.

The ministry lost the public debate which shortly ensued and had to admit that GEO 44/2008 did not include the farmers who sold their production in markets, fairs or exhibitions, based on the producer’s certificate. With hindsight, it is clear that the measure had been exaggerated, especially since many of them sell only a small part of the production (and not even in peasant’s markets). Nevertheless, the state hit upon a reality - these small amounts sold by a large number of farmers involuntarily fueled a gray market dominated by intermediaries over which various state institutions controls proved ineffective.

During grain harvest in 2010, a national action plan to prevent and combat irregularities in the field of cereals production, storage and marketing was put into place. The main deficiencies identified were: failure to record raw materials and finished products in accounting documents or in documents accompanying consignments. Although warehouse licenses were suspended or
canceled, vehicles were seized, fines were given and large quantities of grain or flour were confiscated, evasion wasn’t significantly reduced until the introduction of VAT reverse taxation.

On the other hand, registering as authorized natural persons beneficiaries of rural development measures (Measure 141 of the National Rural Development Plan is the best example - recipients must demonstrate sales increase by presenting invoices) produced blurry situations in the application of taxation provisions, and not only in this field, as we shall see in the chapter on cooperatives. Finally (March 2012), the Ministry of Finance accepted that authorized natural persons (PFA in Romanian) be treated as simple natural persons when it came to taxes.

- In 2011, there was a project of the Ministry of Finance amending the Tax Code, under which taxation of direct sales (2%) would have been removed. All small vegetables, fruits, flowers, grains and wood producers would have been taxed 16% of net revenues, calculated based on income quotas, with prepayment. Beekeepers, poultry and silkworm breeders who didn’t sell to collectors or processors would have continued to be exempted from the income tax.

The reaction of the Minister of Agriculture at that time was justified and concise:

"How could we take their money from the very beginning, when they must wait a year to cash in? I do not think such a project would increase food prices, but domestic production could be blocked through an inappropriate fiscal system. Farmers’ profits are lower than in other economic sectors, plus the fact that banks hardly give out loans for agriculture."

Basically, early 2013 the government went back to its 2011 proposal and only changed the prepayment provision, which at the time triggered protests from the Ministry of Agriculture and producer associations.

Tax evasion – mechanisms and solutions

Tax evasion in Romania, estimated at 2.5 billion Euros in agriculture alone, fully manifests itself in indirect taxes, namely as the difference between the theoretical VAT sum and the actual amounts collected by the state budget. According to the 2011 Fiscal Council Report, Romania collects only 54% of the VAT it should collect.

The producer sells the crops directly from the field or from the house doorstep to intermediaries and it reaches the final consumer several times more expensive. Amounts undeclared from time 0 to time N enter, through evasion, a black hole. Schemes used by firms to evade taxation in the cereals sector are already well known:

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1 Fiscal Council, ”2011 yearly report. Evolutions, macroeconomic and budgetary perspectives 2012”. 
The wheat connection

Companies registered in other EU countries dealing with import and export of agricultural products open in Romania subsidiaries which buy wheat directly from the legally unregistered producer, and fill in the purchases register (a table comprising the name of the seller, the quantity and price). Wheat is resold to the parent company and the purchase price includes VAT, a tax which the intermediate subsidiary did not pay. The intermediate company is resold, thus leaving it to the Romanian state to recover the VAT collected by the «ghost company ». The concern exports the wheat, a VAT exempt operation and applies for VAT reimbursement.

In the end, the state must reimburse the VAT it hadn’t collected, wheat is exported and then imported to N times higher prices, and consumers are prepped in the media through press statements like "the price of bread could rise by 20% this year because of low production, etc ".

Reverse taxation in the cereals sector

Reverse taxation is apparently one of the means to combat tax evasion by eliminating "ghost companies" that do not pay the value added tax, thus creating a level playing field for all producers. Through this procedure, the recipient of a supply of goods / services is the person liable to pay VAT, as an exception to the general rule that the provider is the one liable for VAT payment.

Producers buy inputs which include VAT. Production is sold without VAT, which the state recovers in about 45 days. The one who pays the VAT is the final consumer. Thus, those who issue invoices can sell at the same price as those who only fill in the sales register, who no longer have a competitive price advantage. Speculation is reduced and prices are stabilized.

In the EU, all countries are subject to a common VAT system, enacted by Directive 2006/112/EC. Romania has requested a derogation from the Directive, in order to introduce reverse taxation. In 2011 the European Commission adopted a Decision authorizing Romania to apply reverse taxation on corn, wheat, rye, sunflower, barley, rapeseed, sugar beet, soybean and barley.

It is estimated that reverse taxation on the above named products generated in Romania a surplus of 50 million Euro in 2011².

Unfortunately, it is to be removed in May 2013. The government requested an extra two years exemption, an initiative supported by employers and professional associations in the cereal sector. Reverse taxation also applies in Bulgaria and Hungary, and if Romania would have discharged it, all tax evasion in these two countries would have moved here.

² idem
Reducing VAT

Of the 27 EU countries, only Romania and Denmark have such a high VAT level on agricultural products, equal to the standard rate (24% in Romania and 25% in Denmark). In most other states, a differentiated rate applies (a reduced VAT rate on food), including in Central and Eastern Europe countries: in Poland - 5%, in Slovenia - 8.5% and in Hungary 18% for dairy and grain products.

In 2012, a study by Ernst & Young Hungary, based on a pre-feasibility analysis in the dairy, pork and poultry sectors showed that the decrease in VAT to 5% for a set of 34 agri-food commodities (which would cost the state 213 million Euros = about 0.2% of the GDP) would reduce incentives for tax evasion, support local producers, as well as reduce inflation.

Measures proposed by the current government in Romania in the field of VAT in agriculture would be very welcomed by target group of this report - small and medium producers, but also in the general context of agriculture taxation – and hopefully they will be carried out. The challenge is to prove that these solutions are sustainable in terms of budget and that they do not contradict the requirements of the EC - IMF - World Bank troika. The new farm income taxation system, which will further be presented is apparently a solution, through which buffer funds will be created to the state budget, in order to further implement the following VAT-related measures:

1. *Introducing a low VAT level for basic foodsstuffs (9%)*

Ever since last spring there have been talks about lowering the VAT rate on basic foodstuffs to 9%, but only at the beginning of 2013 calculations were made for a pilot project to reduce VAT on bread to 9%. At the time of writing this report, discussions are being carried out between the Ministry of Agriculture and Ministry of Finance, and official declarations point at a possible implementation of this pilot project after the signing of a new agreement with the IMF (starting 1 July 2013).

2. *A 15% VAT return to the producer for farm development*

This is actually a conditional grant and an incentive for issuing invoices for the sold production: out of the collected 24%, 15% will be reimbursed by the state when the producer presents the invoice. The main beneficiaries will be large farmers, legal entities which pay VAT. Producer groups and cooperatives will also benefit from this measure.
However, this measure could be implemented only for a limited period, as it may be considered a coupled direct payment, which the EU could only approve on a temporary basis. However, the idea deserves consideration because it could provide a strong incentive for producers to enter the formalized economy and issue invoices on sale.

The new taxation system of incomes from agricultural activities

It had become clear that the old taxation system- 7.5% (2% + 5.5% contribution to health) applied to the gross income as depicted by the sales register, did not work. Neither has determining the annual net income in a real system (for farmers registered as PFAs), based on data from the simple entry accounting, been more successful. The reality is that people registered as PFA only in order to access the various measures of the RDP, but the form did not have time to create its content - ie farmers with good accounting statements, as a basis for collecting taxes.

As presented above, the solution that was eventually adopted had been «cooking » in the Ministry of Finance laboratory for several years (the 2011 bill on charging a 16% tax on farmers’ net revenues), but only at the beginning of this year have its initial rough edges been polished - advance payments were eliminated.

Wednesday, January 23 2013, OG 8/2013 on amending the Tax Code was published in the Official Gazette. Among other things, the ordinance introduced new provisions regarding the taxation of incomes from agricultural activities.

Income from livestock, forestry and fisheries have been included in the tax sphere, which is a fair measure. The early payment provision has been removed and the tax will now be paid in two equal installments fall, due after the farmers will have had time to sell their production: 50% of the tax will be paid by 25 October and the remainder by 15 December. Still, this calendar, although improved compared to the previous timetable, does not completely take into account the way subsidies are paid in practice (usually after the end of the agricultural year), nor farmer’s possible option to store and sell the production out of season, factors that may lead to serious cash-flow problems.

In the new system, the Ministry of Finance has practically made an estimate of the revenues which could be obtained on holdings exceeding certain size thresholds, and also of the expenditure level necessary to achieve them. Thus, a net income was calculated, generating income quotas per surface unit / per animal / number of bee families. A 16% tax will be applied on this net income, and also a 5.5% rate as contribution to the health fund.

While right now the 5,5% rate representing the contribution to the health fund applies to income quotas, it is obvious that applying it on revenues (in the Old Tax Code, until 2012) was wrong, which is an extra reason this tax obligation would be eluded.
Everything under the following quotas represents subsistence agriculture, which remains tax-free. The following table expresses the most recent definition of "subsistence farming" in Romania:

<table>
<thead>
<tr>
<th>Vegetals</th>
<th>Surface</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cereals</td>
<td>Up to 2 ha</td>
</tr>
<tr>
<td>Oil plants</td>
<td>up to 2 ha</td>
</tr>
<tr>
<td>Potatoe</td>
<td>up to 2 ha</td>
</tr>
<tr>
<td>Beet</td>
<td>up to 2 ha</td>
</tr>
<tr>
<td>Tobacco</td>
<td>up to 1 ha</td>
</tr>
<tr>
<td>Hop</td>
<td>up to 2 ha</td>
</tr>
<tr>
<td>Field vegetables</td>
<td>up to 0,5 ha</td>
</tr>
<tr>
<td>Vegetables in protected spaces</td>
<td>up to 0,2 ha</td>
</tr>
<tr>
<td>Legumes</td>
<td>up to 1,5 ha</td>
</tr>
<tr>
<td>Bearing trees</td>
<td>up to 1,5 ha</td>
</tr>
<tr>
<td>Vine</td>
<td>up to 0,5 ha</td>
</tr>
<tr>
<td>Flowers and ornamental plants</td>
<td>up to 0,3 ha</td>
</tr>
<tr>
<td><strong>Animals</strong></td>
<td><strong>No. Heads/ No. bee families</strong></td>
</tr>
<tr>
<td>Cows and buffaloes</td>
<td>up to 2</td>
</tr>
<tr>
<td>Sheep and goats</td>
<td>up to 10</td>
</tr>
<tr>
<td>Pigs for fattening</td>
<td>up to 6</td>
</tr>
<tr>
<td>Bees</td>
<td>up to 50 families</td>
</tr>
<tr>
<td>Poultry</td>
<td>up to 100</td>
</tr>
</tbody>
</table>

*Source: after GO 8/2013*

However, this method leaves room for creative subterfuges. Thus, while animals are not taxed when they are merged into a holding below the presented levels, for land plots this translates into the fact that, through a good division between cereals, oilseeds and legumes, even a 5 ha farm could elude taxation.

Of the 1.1 million farms eligible for area payments, approximately 670,000 fall within the scope of the new tax measures, as authorities estimated. The table below, based on APIA data from 2009 presents the number of holdings belonging to natural persons on each size category. Thus, the last three positions show that natural persons owned nearly 3,000 farms over 100 hectares, including 20 farms owning more than 1,000 hectares each.

For the first year this flat tax model is applied, it may not be very important to establish a revenue threshold over which determining the net income in real system is compulsory (the old tax code provided a threshold equivalent of 100 000 Euros), but in the future this provision is a
must. Also, there should be a provision (considered by the old code) on income quotas reduction due to losses incurred on account of natural disasters.

<table>
<thead>
<tr>
<th>Eligible surface</th>
<th>No. exploitations natural persons</th>
<th>No. exploitations registered persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2 ha</td>
<td>367 195</td>
<td>351</td>
</tr>
<tr>
<td>2-3 ha</td>
<td>269 371</td>
<td>395</td>
</tr>
<tr>
<td>3-5 ha</td>
<td>258 781</td>
<td>851</td>
</tr>
<tr>
<td>5-10 ha</td>
<td>147 170</td>
<td>1553</td>
</tr>
<tr>
<td>10-20 ha</td>
<td>36072</td>
<td>1396</td>
</tr>
<tr>
<td>20-50 ha</td>
<td>15668</td>
<td>2027</td>
</tr>
<tr>
<td>50-100 ha</td>
<td>4184</td>
<td>2217</td>
</tr>
<tr>
<td>100-500 ha</td>
<td>2746</td>
<td>6586</td>
</tr>
<tr>
<td>500-1000 ha</td>
<td>95</td>
<td>1709</td>
</tr>
<tr>
<td>Peste 1000 ha</td>
<td>20</td>
<td>885</td>
</tr>
</tbody>
</table>

Source: CRPE after GO 8/2013

How will the new tax system work in practice?

According to the Minister of Finance, the farmer will go to the Agency for Payments and Intervention in Agriculture (APIA) to collect the surface subsidy, and a fiscal agent will calculate the due tax according to the above parameters. Finance Minister Daniel Chitoiu stated explicitly that "declaration and payment will be made by a tax agent at the APIA office, where declarations are made and the tax will be withheld from the subsidy the farmer is entitled to”

This means that APIA would retain the tax from the subsidy, thus becoming a fiscal body in practice.

Still, the Ordinance provides for payments on account of the new tax to be made in October and December, while the subsidy is usually paid between March and May in the following year. Under these circumstances, how will APIA withhold in December the tax from a subsidy that has not yet been paid? This would be possible only if a downpayment is paid before the end of the year. The idea of linking the tax to the subsidy is good - farmers will not feel that they lose something, they would perceive it as the state retaining some money from what it gave them.

"Those who have more than two hectares, while until now they paid 214 lei per hectare, now they pay only 96 lei per hectare. For potatoes, until now the 2% amounted to 1266 lei, the proposal for the new tax is 750 lei, much lower. "(Ministrer of Agriculture, Daniel Constantin )

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The government must decide on how the tax will be applied in practice, and it would be preferable that people should not be set on the road twice. In any case, the calculations show that in the new configuration, the farmer pays less than before - assuming that the intermediary kept the sale register and the 7.5% tax was actually transferred. But the reality is that few buyers recorded sales in the register, and even of those who used it, few actually paid the tax to the state. In addition, government estimates are that it will collect an extra 578 million lei, which helps us get an idea on the inefficiencies of the old system.

Returning to the main objective of curbing tax evasion, these new measures to broaden the tax base in agriculture seem to be designed, at least at the declarative level, more far reaching. Official declarations point to the fact that these additional revenues to the state budget will be destined to support the abrupt reduction of VAT on the cereals chain, as the first substantial attack on tax evasion. This view is reinforced by provisions in the new draft law under which the tax is remitted to the state budget, and will not be distributed to local budgets in shares as before.

Indeed, this should be the future steps in reforming the taxation system, so that the objective of a fair agricultural market for all producers to be less distant, and association to be a more obvious choice by the economic benefits it brings about.

How the new tax measures influence association of small producers

Legislative corrections

Before addressing the issue of the tax incentives the state should provide to associative forms, in the first phases it is extremely important to emphasize a current legislation mismatch which prevents formalized farmers (registered as authorized natural persons) from becoming members of Ist grade cooperatives.

Agricultural cooperative law no. 566/2004 defines the cooperative member as a "natural person". Therefore, only a natural person (as defined by decree no. 31/1954) may be a member of a 1st degree cooperative. Authorized natural persons, individual enterprises and family businesses - entities without legal personality according to GEO 44/2008 – are out of the „natural person” definition. There have been cases in which the Trade Register Office rejected the application of such entities without legal personality to join 1st degree cooperatives. Thus, amending and supplementing Law no. 566/2004 is an emergency, so that farmers formalized as PFA, individual enterprises and family businesses can associate into cooperatives. In fact, they are the most dynamic and willing to develop category, who usually got registered in order to access
various measures of the National Rural Development Programme - and they are precisely the ones the state impedes to associate, due to the mismatch between various laws.

**Tax incentives**

Currently, according to the agricultural cooperative law (L. 566/2004), this form of association benefits from the following tax incentives:

- exemption from paying the agricultural tax for cooperatives in the first five years of their existence;
- access to grants and public funds, as well as to foreign funds provided in Romania's agriculture support program;
- exemption from customs duties on imports of tractors, agricultural machinery, irrigation equipment and other similar equipment used by agricultural cooperatives;
- recognition and uptake of agricultural cooperatives by the Ministry of Agriculture and Rural Development as producer groups, in order to benefit from all the rights provided by law.

It is unclear what is this "tax farming" – is it the tax on land owned by the cooperative or tax on income from members’ trade relations with the cooperative? The term itself should be modified according to the definitions in the current tax code.

In addition, an important incentive for the development of this association form would be relief from tax on dividends received by members from redistribution of the cooperative’s profit which was not reinvested, in order to avoid double taxation.

**The potential impact of the new measures**

Looking at the overall situation, while greenhouse vegetables producers were taxed even before on income quotas (so they know the procedures), the challenge for the tax administration will be introducing this regime for a large number of farmers who have no experience of tax declarations and payments. APIA involvement can bring about some simplification, but can also be seen as too big an outstretch from this institution’s role.

From the perspective of the interaction between taxation and producers propensity to associate, the fact that a potential member of an association is already subjected to some kind of taxation (based on income norms) could represent an incentive for association, as compared to the situation before this generalized taxation.

Due to the fact that PFAs maintain their tax regime so far (under art. 82, GO 8/2013), it is expected that more dynamic and market driven farmers to be encouraged to register as PFA, thus formalizing their activity in order to improve their development prospects (the "real" taxation system allows for "tax optimization" – registering costs, thus lowering profits).
On the other hand, if there is no association opportunity for them, paying the same flat tax will stimulate the farmer to sell without restriction to the same intermediaries that maintain evasion. Hence the need to intensify the fight against tax evasion and to adapt various countermeasures to the specifics of each subsidiary. It is necessary to create a level playing field for all producers, so that association becomes an obvious option, through the economic benefits it brings. It is advisable to implement the VAT reduction pilot project in the bakery field. VAT reduction on food is also a necessity.
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