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Tax Control Between Legality and Motivation: A Case Study on Romanian Legislation

Ioana Maria Costea, Despina-Martha Ilucă * and Maria-Eliza Galan

Faculty of Law, Alexandru Ioan Cuza University of Iasi, 700506 Iasi, Romania; ioana.costea@uaic.ro (I.M.C.); maria.galan@uaic.ro (M.-E.G.)

* Correspondence: despina.iluca@uaic.ro

Abstract: Our study aims to evaluate the current Romanian context for tax control by correlating the legal framework with the administrative model, as derived through empirical analysis. Our hypotheses, confirmed by the observed macro-dynamics of tax control in a period of four years, are as follows: (1) the current legal framework for tax control is heterogeneous, incomplete, and influenced by administrative practices; (2) debt collection is an inconsistent outcome of various forms of tax control, contributing marginally to budget dynamics; and (3) the identification of tax-related illegal activities heavily depends on tax control, while the application of administrative and criminal sanctions varies significantly. The study highlights the need to (re)design the normative framework to enhance coherence and effectiveness; hence, we advanced a model of normative reform based on the three abovementioned conclusion.

Keywords: tax control; debt collection; normative frame; administrative decision

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Academic Editor: Patricia Easteal

Received: 25 March 2025
Revised: 4 May 2025
Accepted: 7 May 2025
Published: 13 May 2025

Citation: Costea, Ioana Maria, Despina-Martha Ilucă, and Maria-Eliza Galan. 2025. Tax Control Between Legality and Motivation: A Case Study on Romanian Legislation. *Laws* 14: 34. https://doi.org/10.3390/laws14030034

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1. Introduction: Legal Framework of Tax Control in Romania

The present study is based on a rather uncommon approach to legal issues through metrical instruments, as it tries to assert the implementation of a group of legal institutions reunited under the concept of 'tax control' on a broad, national scale. The article is structured by alternating a classical legal approach through a normative and doctrinal review with an empirical component targeting collected data on tax control in Romania over a four-year period (2020–2023).

1.1. Concept of Tax Control and Its Relevancy

In the classical dynamic of fiscal debt, the preliminary control is not an actor; the creditor and debtor, both aware of the existence and content of the debt, will voluntarily implement their agreement or, by failing to do so, will move to the judiciary phase. Tax control finds its place as the debt is not generated by an agreement but originates ex lege and is quantified primarily by the debtor. Hence, it is only natural that the public creditor—through the fiscal bodies—exert a control, as a stage in the existence of the legal bound, where multiples scenarios unfold. This control is part of a broader, almost social, collective, cultural concept acknowledged as tax compliance (Andreoni et al. 1998; Marandu et al. 2015) and assessed by tax effectiveness (Dell'Anno 2009). Various studies (Lisi 2015, 2023; Olendiy et al. 2023; McGee 2023; Fuest and Riedel 2009; Noguera et al. 2014) have addressed the motivation behind the taxpayer's behavior, while other scholars (Mendoza et al. 2017; Velasquez and Alva 2020; Yayman 2023) have focused on the balance between tax audit pressure and this behavior, even looking at the effects on business viability (Belnap et al. 2024; Slemrod 2019;

Elgood et al. 2008) through the scope of shaping (Slemrod 1990; Dong 2011) an optimally effective (Dell'Anno 2009) tax system. The legal ground of our study will try to compare an existing normative model—the Romanian tax control legislation—with the administrative enactment of such a model to measure the inherent dependency between them and extract from the empirical data ways to optimize the legal model.

1.2. Forms of Tax Control Under Romanian Legislation

Under Romanian legislation, a tax audit is organized using several legal instruments, is partially transposable in that some are overlapping, and results in a duplication of procedures, which are partially alternative. This plurality is tailored and characterized through the subjects, object, method of control, and consequences. Therefore, in the first part of our study, we will draft an inventory of Romanian tax control forms, with an emphasis on their particularities. Through a normative review, de lege lata, there are five distinctive, independent, and methodologically different forms of tax control (Bostan and Dascălu 2016): fiscal inspection (FI), unforeseen control (UC), antifraud control (AC), personal patrimony audit (PPA), and documentary audit (DA), of which one (namely the unforeseen control) is more likely to be qualified as a method of control and will be excluded from further analysis as it lacks autonomy.

1.2.1. Fiscal Inspection

The fiscal inspection (FI) is a form of tax control regulated by articles 113–135 of the Romanian Fiscal Procedure Code (RFPC). The normative frame for the fiscal inspection is extremely detailed, inclusive, and favors dialog with the taxpayer. There are two normative sorts of fiscal inspection: general fiscal inspection and partial fiscal inspection. The general fiscal inspection is an activity in which the fiscal authority verifies the fulfillment by the taxpayer of all fiscal obligations and other requirements stipulated by the accounting legislation for a particular period. The partial fiscal inspection represents the activity that examines the fulfillment of one or more of the taxpayer's fiscal obligations, as well as the subsequent accounting obligation, for a determined period. The fiscal inspection may concern any person or entity, regardless of their form of organization, if, under tax and accounting legislation, they are forced to conduct the accounting of records. These persons (Mazzolini et al. 2022) or entities must have obligations to establish, retain, and pay taxes provided by law. The selection of taxpayers to be subjected to a fiscal inspection is carried out by the competent fiscal inspection body, depending on the level of risk (Tarasova et al. 2018).

A fiscal inspection is carried out by the competent fiscal body, titled the fiscal inspection body. Based on a risk analysis, as part of an administrative policy (Tan and Yim 2014), the fiscal inspection body chooses between a general fiscal inspection or a partial one. The fiscal inspection authority informs the taxpayer of its control limits through a fiscal inspection notice (Costea 2011, 2017b). Hence, the fiscal inspection is an announced, scheduled, limited-in-time form of tax control, susceptible to be extended from partial to general, and is used to determine the beginning of a criminal procedure (Costea 2011, 2017b).

The main objective of a fiscal inspection is to ensure the legality and compliance of tax statements. The purpose of this procedure is to verify the tax situation declared by the taxpayer and compare it to the factual situation established by the tax authority as it results from the evidence administered (Costea 2011, Costea 2017b). This mechanism confirms the particularity of tax debts, as they are firstly ascertained by the taxpayer, the debtor, in the absence of the creditor. Hence, through a fiscal inspection, the creditor will either confirm or infirm the tax liability established by the debtor. Subsequently, the fiscal inspection evaluates the behavior of the taxpayer regarding all tax and accounting provisions.

Moreover, during the fiscal inspection, tax bases and related factual situations can be confirmed or established as needed, as the tax authority will administer factual evidence. The fiscal inspection body has several working techniques for conducting fiscal inspections (Costea 2017b). Firstly, it examines the documents and the tax file of the taxpayer. Secondly, it may also request information from other parties to establish the fiscal truth. Thirdly, the fiscal inspection body examines the places where taxable goods are located or where activities that generate taxable income are conducted. Finally, during the procedure, the fiscal inspection body may request written explanations from the legal representative of the taxpayer whenever necessary.

The prime attribute of the fiscal inspection lies in establishing the tax base, including differences by reference to what the taxpayer has declared, should that be the case. The result of the fiscal inspection is recorded in a fiscal inspection report, which presents the findings of the fiscal inspection body, from a factual and legal point of view. The fiscal inspection report is the document through which the fiscal inspection is completed and has the role to synthesize the fiscal inspection (Costea 2017b). It includes the findings of the tax authority in relation to all periods and all taxes mentioned in the fiscal inspection notice, as well as the position of the fiscal inspection body regarding the written point of view expressed by the taxpayer.

At the end of a fiscal inspection, several possible scenarios unfold. On one hand, the fiscal inspection may establish additional tax debts. On the other, a fiscal inspection may reveal the existence of irregularities in the accounting procedures of the taxpayer. In addition, the fiscal inspection may reveal irregularities regarding the execution of tax debts (Costea 2017b). The nature of these irregularities is solely fiscal; complementarily, the fiscal inspection body has the power to apply administrative sanctions for violations of tax and accounting legislation. If evidence of criminal activity is identified, the procedure ends, and a criminal referral is submitted.

The fiscal-administrative acts issued at the end of the control can be a tax decision, a decision not to change the taxable base or a decision to change the taxable base. These documents transpose one of the three scenarios possible when comparing two aversive approaches:

- If the fiscal inspection body identifies a completely legal state of facts, as the tax bases and debts were correctly established by the taxpayer, a decision not to change the taxable base is issued;
- If the fiscal inspection reveals an illegal tax situation, but which does not affect the tax result nor generate additional tax claims, a decision to impose non-patrimonial measures is issued;
- If an illegal tax situation that requires the establishment of additional tax debts is found, a tax decision is issued.

In terms of guarantees for the taxpayer, apart from the right to be informed about the procedure, a right which derives from the obligation of the fiscal inspection body to notify the taxpayer, a more general right to be informed is expressly stipulated in favor of the taxpayer in article 130 RFPC. This includes several guarantees, such as the right to be informed throughout the procedure about all findings, the right to express a point of view on the proposed fiscal inspection report, or the right to be heard, which can be waivered. Other guarantees are derived from provisions regarding the place where the inspection takes place, which should provide a minimal activity impairment for the taxpayer, and those regarding the duration of the procedure. To this end, a fiscal inspection cannot exceed 180, 90, or 45 days, depending on the type of taxpayer.

1.2.2. Unforeseen Control

The unforeseen control (UC) is regulated under articles 134–135 RFPC. This form of control is distinct from a fiscal inspection, even if the provisions governing unforeseen control are supplemented by certain express provisions regulating the fiscal inspection. Moreover, although the subject of the unannounced control is similar to the subject of the tax inspection, there are notable differences between the two forms of control. Specifically, the unforeseen control is carried out without prior notice to the taxpayer, while the fiscal inspection is an announced control.

Regarding the verified subject, the unforeseen control is carried out exclusively for persons who have at least partially carried out tax registration procedures. First, the unforeseen control may consist of factual and documentary audit, mainly based on information on possible violations of tax law. Moreover, it may also involve analyzing the factual tax situation, including analyzing and assessing a tax risk, hence involving a factual dimension and a documentary dimension (Costea 2017b) or cross-checking with other taxpayers.

The results of the control are recorded in a report, which is not a fiscal-administrative act and cannot be contested by the taxpayer separately, but only together with the fiscal-administrative acts issued within the ongoing procedure, like, for example, a fiscal inspection. An unforeseen control can have several directions. On one hand, following the unforeseen control, the tax authority may decide to begin a fiscal inspection. On the other, the unforeseen control may have autonomous effects such as applying administrative (contravention) sanctions or proceeding to a criminal referral.

1.2.3. Antifraud Control

Antifraud control (AC) is regulated by articles 136–137[1] RFPC as a non-thematic, unannounced, operative control. The power to carry out this type of tax control currently belongs to the antifraud inspectors from the General Anti-Tax Fraud Direction, a structure without legal personality of the National Agency for Fiscal Administration.

In terms of the verified subject, in the absence of express legal provisions in the RFPC, we conclude from special norms that the antifraud control can be carried out against all types of law subjects, either natural or legal persons, or even entities without legal personality, regardless of them being professionals or not, and irrespective of their prior fiscal behavior. The only relevant criterion is whether the activity could be considered a source of tax debt and consequently tax fraud or tax evasion. This universal addressability is given by the object or, more precisely, the objective of the antifraud control: preventing and combating tax fraud and evasion (Hebous et al. 2023), ensuring a sanctioning premise for a potentially illegal act. However, in practice, the activity of antifraud inspectors is not limited to preventing and combating tax evasion, nor is it solely limited to tax purposes (Costea 2017b). Derived from their broad competences attributed by law, antifraud inspectors are also entitled to verify whether activities are legally conducted; they may also check and establish the identity of the administrators of controlled entities, checking if supporting documents exist and are genuine, etc.

The procedure for antifraud control can be divided into two parts: the precursory stage, when a risk analysis is carried out to identify the potential and eventual subjects to be controlled, and the main phase, when the control activities are followed through. In terms of the included activities, legally referred to as 'methods', inspectors have the right to investigate and evaluate operations in order to establish the fiscal status and ascertain the circumstances in which acts that may have fiscal consequences were occurring, to carry out investigations, surveillances, and other tax verifications necessary to prevent and discover tax evasion and "tax fraud", to retain documents, to request certified copies of the original documents, to take samples and other specimens, and to request the performance

of the technical expertise necessary to complete the control activity. More particularly, they may also carry out cross-checks, ascertain contraventions and apply administrative sanctions, seize assets and sums of money, apply seals in order to ensure the integrity of goods, order insurance measures, order measures to prevent and correct deviations from the provisions of the fiscal and accounting legislation, notify the criminal authorities if they find circumstances regarding the commission of acts provided for by the criminal law in the financial fiscal field, or notify other competent authorities in order to capitalize on the findings.

Considering this, the antifraud control can lead to administrative (contravention) sanctions (the sole outcome of this type of control), suspicion of criminal liability, or even a potential fiscal debt (the last two are to be determined by competent criminal or fiscal bodies). The results of the control are recorded in a report, which is not a fiscal-administrative act, but rather a precursory act, and therefore cannot ensure legal consequences nor be contested by the taxpayer (Costea 2017b). However, apart from other procedural guarantees for the taxpayer, such as the right to specialized assistance, the right to be informed, and the right to a minimal activity impairment, the taxpayer can also express his point of view regarding the findings mentioned in the report. In comparison to the fiscal inspection, a lack of concern from the legislator for the duration of the antifraud control is visible, as there is no maximum duration imposed by law.

1.2.4. Personal Patrimony Audit

Regulated by articles 138–147 RFPC, the personal patrimony audit (PPA) is a form of thematic and announced tax control, categorizable as an indirect form of audit (Zoitsas et al. 2020), as it will ascertain the patrimony of an individual in search of unrevealed revenues. Even though it bares resemblance to the fiscal inspection, the most notable difference is that it is solely aimed at individuals (natural persons) and the income tax owed, as we will further detail.

Considering that income tax is a fiscal debt owed to the state budget and that its collection is monitored by the central tax authority, the power to conduct the personal patrimony audit therefore also belongs to the central tax authority. The audited subject can be a natural person obtaining income from independent activities, intellectual property rights, salaries and income assimilated to salaries, income derived from the transfer of the use of goods, income from investments, pensions, incomes from agricultural activities, forestry, and fish farming, income from prizes and gambling, income from the transfer of real estate, or any other rather similar types of income. However, it is important to note that this type of control does not observe revenues, nor a particular form of taxable base—as in the case of a fiscal inspection—but rather the overall fiscal situation (Costea 2017b).

The object of the personal patrimony audit is the personal fiscal situation of an individual, defined as the entirety of rights and obligations of a patrimonial nature, cash flows, and other elements likely to determine the real fiscal status during the verified period. Thus, this form of tax control aims to identify sources of income and the methods of establishing fiscal debts by analyzing patrimonial elements, both active and passive, including assets, expenses, and bank cash flows, with the objective of determining the relation between taxed income and actual income.

From a procedural standpoint, like other forms of control, the personal patrimony audit has a preliminary stage and a main phase. The preliminary stage consists of a risk analysis to determine a behavior of non-compliance to the fiscal norm, defined as a significant difference between the income declared by the taxpayer and the income estimated by the tax authority during the risk analysis. The procedure is further announced, as a notification is issued to the taxpayers identified as prone to risk, inviting them to reassess their

personal fiscal situation within 30 days, including by means of submitting or correcting already filed tax statements. Finally, based on the risk analysis, a risk level is determined, and the individuals are selected for the main phase of the personal patrimony audit.

Between the two stages, a second notification is issued to the taxpayer containing the legal basis of the verification, the start date of the audit, the audited period in time, the possibility to request a postponement, and, most importantly, the request for information and documents for verification and the request to submit the declaration of assets and income within 60 days. The personal patrimony audit main phase consists of determining the income obtained by a taxpayer during the audited period. To this end, within reason and equity and ensuring a fair proportion between the goal pursued and the means used, the tax authority uses the following indirect methods of income determination: the method of source and use of funds; the cash flow method; and the net worth method.

At the end of the verification—a procedure which can also be suspended under certain criteria—a report is issued by the tax authority, containing factual and legal findings, the taxpayer's point of view, and the standpoint of the auditing bodies regarding the latter.

If the findings are not of a criminal nature, in which case the competent criminal investigation bodies would be notified, the conclusions of a personal patrimony audit are either of tax compliance or of non-compliance. Based on these conclusions, if the taxable base remains unmodified, the tax authority issues a decision to terminate the control procedure; on the contrary, if the taxable base is modified, the tax authority issues a tax decision for fiscal debt, which is a fiscal-administrative act and therefore can be challenged by the taxpayer.

In terms of guarantees for the taxpayer, within the statute of limitations for establishing tax liability, the personal patrimony audit can only be conducted once for each taxable period, except for when additional data that were unknown to the tax authority appear at the time of the prior verification. Other guarantees stipulated by RCFP include the right to receive professional or legal assistance, the right to request a change in the place where the personal patrimony audit takes place (which is typically at the headquarters of the central tax authority), the right to request an extension of the term to present information and documents for verification, the right to collaborate in establishing the factual situation, and the right to name persons to provide information. As for the duration of the procedure, it cannot exceed 270 days from the debut of the personal patrimony audit.

1.2.5. Documentary Audit

Briefly regulated by articles 148–149 RFPC, the documentary audit (DA) is a type of 'desk control' that can somewhat mimic the traits of the other forms of control, depending on the authority conducting it. The relevancy of this legal instrument is increasing significantly due to e-taxation, the subsequent (Kacaljak 2020) distribution of efforts, and the benefits of digital tax audit: broad access to information, the use of computational power to compare data (Podik et al. 2019), and promptness in identifying irregularities.

This is the most extended form of control in terms of state agents; the power to carry out documentary audits belongs to the fiscal inspection bodies, the antifraud inspectors, and to the personal patrimony audit authorities.

Considering that the documentary audit can be conducted by these three types of authorities and in the absence of contrary legal provisions, the verified subject can be any taxpayer, natural person, legal person, or entity without legal personality, which makes it a versatile form of control and potentially the future of tax control procedures (Costea 2017b), as will be discussed below, under the condition that this activity is transposed in writing through accounting or other casual records—bank information, platform data, online accounts, etc.

The objective of a documentary audit is to establish the correct fiscal situation of the taxpayer as a general, almost universal objective of all tax control (Kasper and Rablen 2023). Like the previously presented forms of control, the documentary audit is carried out based on risk analysis, which in turn helps determine the periods of time to be audited and the documents and operations to be verified, which can lead to it being either a thematic or, more frequently, a non-thematic form of control. The procedure consists of a coherence analysis of the taxpayer's fiscal situation, based on the existing documents in the tax file of the taxpayer and evidence gathered from external sources (Blaufus et al. 2024), such as information and documents transmitted by third parties or held by the tax authority from public sources. Up to this point, the documentary audit is an unannounced type of control and a mimetic one, as it tends to overwrite a classical face-to-face procedure with desk control, or even e-control.

However, if the tax authority conducting the documentary audit finds differences with respect to fiscal debts, income or taxable assets, or other information, as it was declared by the taxpayer, it notifies the taxpayer of the findings made, thus becoming, from here on, an announced procedure. To clarify the fiscal situation, the tax authority requests documents and written explanations that the taxpayer must present within 30 days, a term susceptible to be extended by the authority for well-founded reasons. The only expressly stipulated guarantees for the taxpayer in this procedure are the right to be heard and the right to present a written point of view within 5 days from the hearing.

In terms of consequences, if the taxpayer fails to present the requested documents or if the presented documents are incorrect, incomplete, or confirm the differences found by the tax authority, then the latter issues a tax decision for fiscal debt or orders the necessary measures to comply with legal provisions, which might not necessarily be of a patrimonial nature. The tax decision issued in this case is not always final, as this procedure can be followed by other forms of control, such as a fiscal inspection or a personal patrimony audit. To reinforce the right to be heard, the RFCP states that a tax decision issued without hearing the taxpayer is null, unless the taxpayer expressly and in writing waives this right. As for the duration of the procedure, even though there is no maximum duration imposed by law, the tax decision must be issued within 25 days from the hearing.

2. Methods

2.1. Methodology

In approaching this legal context, our methodology, based on empirical data collected from Romanian national tax authorities, summarized data for all central tax control activities, extracted from semestrial and annual reports of the NAFA, including 2020, 2021, 2022, and 2023; the data are accessible on their website. This will allow us to identify an implementing model of this legal frame, in which quantitative data and their evolution in time will put to test the legal standard. This overall assessment will determine if the normative model is functional and if adjustments are necessary.

The collected data have been organized in a framework under the following structure: the overall number of fiscal controls was split in legal forms, namely fiscal inspection, antifraud control, personal patrimony audit, and documentary audit. In this framework, we subdivided the data considering the nature of income, whether professional or personal. Thirdly, we organized the data measuring the number of audits in a year in correlation with the identified revenues. A collateral direction of the analysis targeted cases that emerged from a fiscal procedure being addressed in a criminal procedure. Another collateral extract pursued the number and volume of results in administrative liability, measured also in monetary volume as fines or other administrative measures.

2.2. Variables Review

Considering the legal frame, the empirical approach uses a three criteria, namely (1) the type of control, (2) subject of control, and (3) type of sought irregularity in patrimonial and/or sanctioning dimensions, as below:

The collected data have been organized through this matrix. The collected data have been organized into the following categories: type of control; number of controls by form; and total certain or potential identified tax debt. In the second phase, the data were organized and processed to identify answers to the work hypothesis.

2.3. Hypotheses

The aim of our study is to evaluate the efficiency of Romanian tax control legal framework by posing three research problems:

- Are tax control forms legal institutions with precise purpose and well-determined shapes and effects?
- Are tax control forms a substantial contributor to aggregating fiscal revenues as part of tax effectiveness?
- Are tax control forms a substantial source of identifying and sanctioning illegal fiscal behavior as an agent of tax compliance?

Our hypotheses are as follows:

- The current legal frame of tax control is heterogenous, incomplete, and conditioned by administrative practices (Blanc 2012);
- Debt collection is an inconstant effect of tax control forms with a marginal overall input in budget dynamics;
- Identifying illegal fiscal behavior relies on tax control, but administrative sanctions and criminal sanctions have different rates and unpredictable moments of occurrence.

3. Findings and Discussions

3.1. A Map of Tax Control Forms by Legal Content

3.1.1. A Diversity Matrix

Facing a plurality of legal texts, as presented in Section 1, one can only wonder what the cause of such a variety is and try to read the legal norms, presuming diversity is given by the functional hypotheses. Since we have already proposed criteria for reading the legal norms on all forms of control—as explained in Table 1—we decided to extract out of it a diversity score, which would allow us to see all these control forms as distinct paths at a crossroad. A traveler—the taxpayer or the fiscal authority—reading the legal map under these criteria would predict what form of control is used to respond to a factual context.

In our research, we have noted with zero (0) the absence of a criterion and with one (1) the presence of a criterion. For every form of control, we obtained a total score, out of 10 points, such as FI—7 points; UC—7 points; DA—6 points; PPA—6 points; and AC—7 points.

The matrix of tax control forms (Figure 1) organized by their content and result is rather heterogenous, as in the figure, and it is distributed by the nature of the verified subject, by the object of the control, and by potential emerging consequences.

A perfect score of 5/10 would show a clear distribution of action spheres between different forms of control as a maximum diversity score. Every other point shows an overlap, intersection, or commonality that raises a utility question.

Table 1. Control forms by type, subject, and sought irregularity. The criteria used in the matrix above are as follows: (i) whether the control has a theme or has a factual, random approach (column 1/2); (ii) what taxpayer type is targeted by that type of control (legal persons, individual professional activity, or individual personal patrimony) (column 3–5); and (iii) what consequences come as result of the control: a fiscal consequence measured in a clear fiscal debt; a potential fiscal debt to be measured by another form of control in the future; an administrative sanction (a fine); or a potential criminal case (to be redirected towards a criminal authority) (6–9).

	Thematic -1-	Non-Thematic -2-	Legal Person -3-	Individual Professional -4-	Individual Personal -5-	Fiscal Debt -6-	Potential Fiscal Debt -7-	Administrative Sanction -8-	Fraud Suspicion -9-	Consequence -10-
Fiscal inspection (FI)	✓	-	✓	✓	-	✓	-	✓	✓	✓
Unforeseen control (UC)	-	✓	✓	✓	✓	-	✓	✓	✓	-
Personal patrimony audit (PPA)	✓	-	-	-	✓	✓	-	✓	✓	✓
Antifraud control (AC)	-	✓	✓	✓	✓	-	✓	✓	✓	-
Documentary audit (DA)	✓	-	✓	✓	-	✓	-	✓	✓	✓

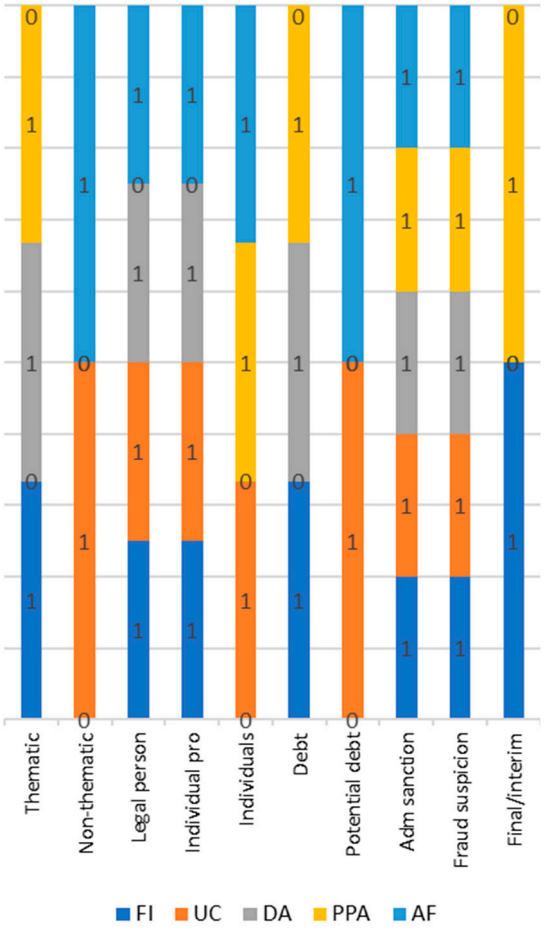


Figure 1. Forms of control by content.

We can observe some tactical, calculated common points: thematic, professional-oriented, debt-angled, and administrative sanction generators. The only real exception from this path is the antifraud control: non-thematic, general population-oriented, legality-angled, and administrative sanction generator.

One function of tax control, varying within this matrix, is to assure the collection of "evaded" tax revenues; hence. the finality of tax control can include establishing a tax debt and issuing a debt title. Under Romanian legislation, not all forms of control tend to achieve this finality, as not all forms of control are concluded with the issuance of a such title; in some cases, the tax authority pursues a preventive or repressive role, as the control is finalized with static considerations and is followed either by a tax control or by the emergence of a criminal procedure.

The only commonality, as a limit, is the existence of criminal suspicions where all fiscal procedures have proclivity towards criminal procedures. The criterion of thematic orientation seems as a significant differentiator, stated by law, but it is a rather distorted one, as it does not affect the consequences of the control. The criterion of the passive subject is a good practical tool as it allows an internal specialism of fiscal functionaries' skills.

This frame (Figure 1) allows a generic conclusion in which, normatively, the forms of control are not significantly different, and, only in a procedural context, they are differentiated and certain options are embedded for the tax authority within the legal scaffolding. The only noticeable exception is the antifraud control that stands out as a general, non-debt, interim control and might respond to more administrative repressive purposes.

3.1.2. The Internal Equilibrium

At an annual level, by determining the total number controls and organizing them by form, the collected data reveals the following (Figure 2):

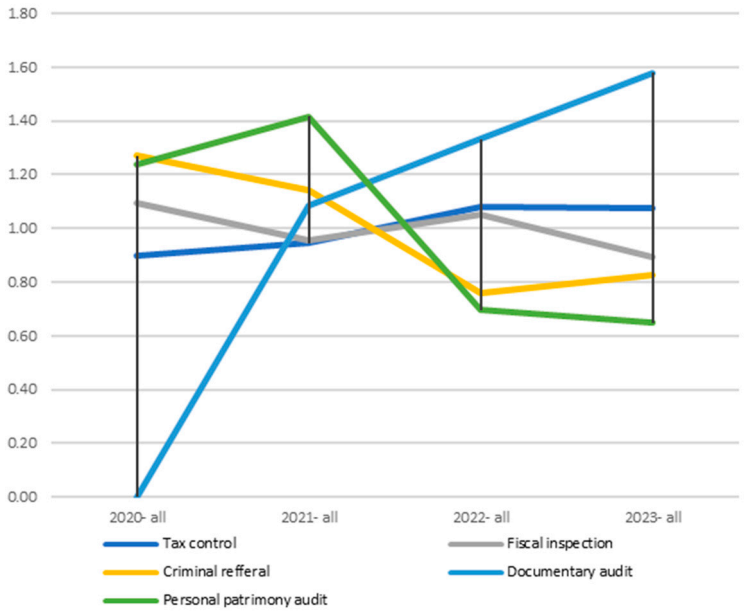


Figure 2. Evolution of tax control frequency: an increase in the total number of controls (by 15% from 2020 to 2024) with irregular values, thus not confirming a consistent trend.

A spree of DAs and a decline in FI, which confirms our prediction of an implicit repositioning at the administrative level from one procedure to another;

A division of tax control into two main forms, FI and DA, while CR and PPA remain rather rare procedures and atypical forms of control, one by consequence (CR—criminal referral) and one by subject/object (individual with significant fortune).

Subsequently, we can state that two of the preexisting legal backgrounds generate effects in time conditioned by an administrative decision within the fiscal body. DAs have been regulated since 2013 and PPAs since 2011; yet, the data show that they were effectively

implemented with a delay of almost ten years, as the analyzed statistics show a spur from almost 0 to 21.000 in DAs over the last four years.

We can also underline that this timeframe was under a supplementary external conditionality, namely the limitations imposed during the COVID pandemic, which favored documentary audits against delocalized fiscal inspections. Hence, we can formulate a partial conclusion that a legal framework, extremely vast and mixt, tells us nothing on the content and effectiveness of the implemented policy nor on the success of the normative solution.

A secondary conditionality seems to be proven by the study, in that a public policy has a third very relevant stage of implementing the establishment of an administrative doctrine and culture, consisting pf an internal routine, habit, or pattern that could be labeled as an administrative practice. As to the antagonism between FIs, in decline, and DAs, in surge, we underline that due to the same purpose and effect (fiscal debt-oriented) and shared subjects and objects, cannibalization was predictable (Costea 2017b).

Our concern was not in this shift in implementing the control policy, but rather in the incongruity between the legal framework and the administrative practice. In this case, the incongruity is significant as the legal frame for FIs is detailed (under more than 20 article in the tax procedure code), tailored, and updated constantly (Costea 2011), but the legal frame for DAs is extremely frail, limited, and lacking in consistency, especially in taxpayers' rights.

The only guarantee for the taxpayer within a documentary audit procedure is the right to be heard. Even more, the tax debt resulting from a DA is established through a debt decision subject to further verification; thus, a DA could be followed by an FI, and this double verification could be both an opportunity (to be submitted to a second, extended factual and documentary audit where, in practice, only 0.05% of DAs are doubled by FIs, as NAFA informed us upon request) and a nuisance for the taxpayer (to be submitted to a bis in idem analysis).

This shift in the administrative practice must be mirrored in a new normative model, as the lawmaker is obliged to intervene and regulate the DA with matching assurances for the taxpayer, such as a prior notification on the procedure, a limited duration of the procedure, access to the administrative file, or even a more consistent right to present evidence and right to defense. De lege ferenda, as we stated prior (Costea 2017a), even before this spur in administrative practice, the documentary audit needs a more thorough regulation, with a focus on the rights of the taxpayer in symmetry with the fiscal inspection and the personal patrimony audit.

3.1.3. A Shared Task in an Autophagic System

An additional step in our analysis was to also approach the data by the annual number of the given procedures (Figure 3). The collected data are presented annually.

For the 2020–2023 timeframe, a general increase in the total number of controls is noticeable, with differentiated evolution for each type: a significant rise in documentary audits in correlation with the COVID pandemic, beginning 2021, an irregular pattern of fiscal inspections, and even a decrease in the case of personal patrimony audits.

Secondly, we can observe a significant diversification of administrative practices in choosing and implementing a type of control.

A generic observation is that the variety and diversification of these forms is not mathematically correlated with an increase in the total number of verifications and that the increase in using documentary audits is correlated with a decline in the number of fiscal inspections (by 30% from 2020 to 2023). The significant presence of cases with potential revenues—antifraud control and overall criminal referrals, with an increase from 19% in 2022 to 23% in 2023—allows us to assert debt-generating forms of control as ineffective in

preventing tax evasion. As to the identified fluctuation of potential revenues derived from criminal referrals, we label it as irrelevant as it is based on a subjective cause—the assertion of criminal liability completed by tax bodies—and provisory, as the criminal relevancy is to be confirmed exclusively by judiciary rulings.

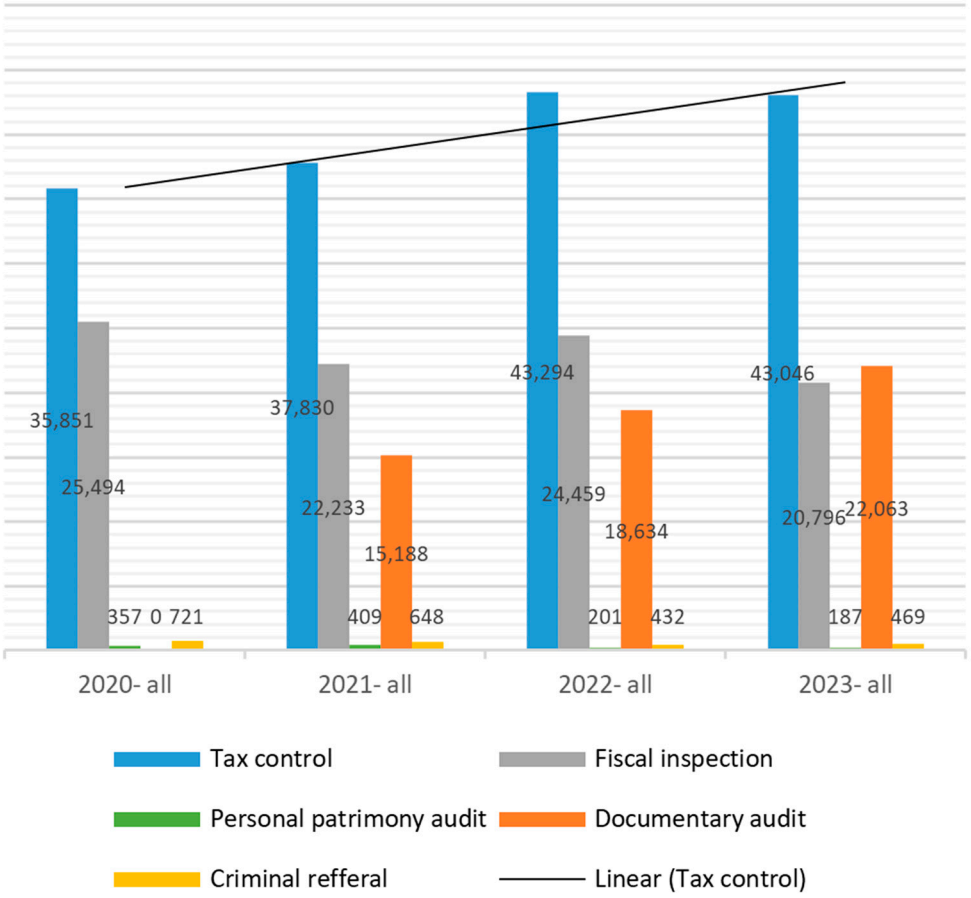


Figure 3. Form of tax control by number.

As every procedure addresses one or more type of subject—by form, type of revenue, or even type of activity—in order to assess the importance and viability of these forms control in numbers, we must correlate it with the number of potentially verifiable subjects (Figure 4), such as the total number of legal persons, the general population, etc.

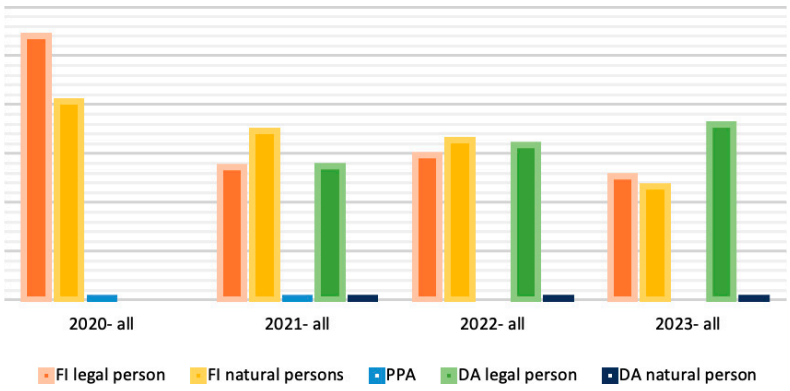


Figure 4. Incidence of tax control by taxpayers.

The data are not very precise, as some categories of taxpayers—non-profit organizations, non-residents, etc.—are not included in the verifiable mass, but give us a certain

confirmation that the administrative capacity of control is directed towards professionals (through a control of documents), whereas the capacity to verify natural persons is minor, underlining the need to have consistent and relevant preliminary data and a reliable preliminary procedure for evaluating tax risk.

3.2. Debt and/or Potential Debt

In a secondary approach, the same elements, all forms of control, were organized by the volume of tax revenue, debt or potential debt (Figure 5), to ensure the conditionality between tax control practices and tax effectiveness (Kasper and Alm 2022). In this four-year setting, we notice a decrease in revenues collected through fiscal inspection and an increase in revenues from documentary audits, confirming our prior hypothesis that the two forms of control are alternative and that the COVID pandemic context oriented the administrative practice towards dematerialized evidence. Hence, the documentary audit is replacing the fiscal inspection in current administrative practices.

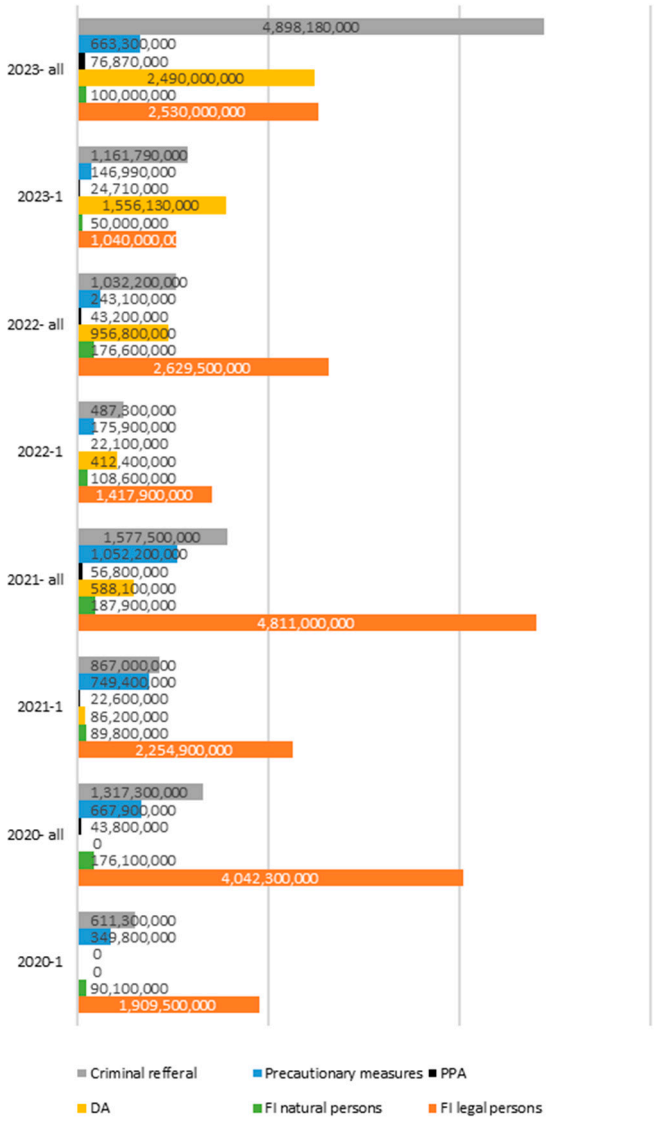


Figure 5. Total patrimonial assessment by form of tax control.

Overall, there is a partial juxtaposition between these legal constructs and procedures. For example, an individual can be subjected to PPAs, FIs, and DAs, both alternatively or simultaneously, with all of these having certain qualities: PPAs and DAs are universally

applicable to all individual taxpayers, while FIs and DAs are simultaneously applicable to all bookkeeping professionals. Hence, an individual, entrepreneur, or professional could be subjected to all forms of control indicated above.

This inescapabilty is not confirmed by the distribution of identified additional fiscal revenues (Figure 3), as a comparative approach within the time frame of our study endorses two developments: (1) a focus on natural persons' patrimony through a generic form of control targeting large fortunes, as PPAs quadrupled the generated revenue since the reinforced implementation in 2020; (2) a correlation between the decrease in revenues from FIs in legal persons (stabilizing around the values of year 2020) and the increase in DAs (which quadrupled its value within a four-year frame (Figures 3 and 5)).

These directions of administrative practices are clear, suggesting a focus on recovering fiscal debt. A comparison between semesters underlines this debt-oriented practice (Figure 5), where, generally, the second semester contributes more than half of the generated revenues as a means of assuring budgetary equilibrium.

We stay true to this correlated approach in a both a specific and general manner; some trends are obvious and are confirmed in our study's time frame, if not in numbers, at least in values of immediate or potential revenue.

With the same landmarks in mind, we changed the criterion in the same timeline analysis, and we organized the data observing the increased tax debt or potential tax debt. An irregular pattern emerges from year to year and from type of control to another (Figure 6). Firstly, we must state that the near doubling in total "revenue" from 2022 to 2023 is not confirmed in a real, measurable input to budgetary funds, as the "increase" comes predominantly from a potential debt form of control, criminal referral (Figure 6).

This type of "revenue" is only a preliminary assessment based on a reasonable suspicion of the tax body and is conditioned by a ruling of the criminal court, as well as being modulated in time by the duration of the criminal procedure.

The aptitude of issuing a tax debt title is common in fiscal inspections—in legal persons or natural persons—personal patrimony audits, and documentary audit (Figures 6 and 7), regardless of the authority conducting them. All these forms of control target the recovery of tax revenues and therefore have a fiscal function. In channeling our analysis only towards revenue-generating forms of control, we organized the data into four major categories: personal patrimony audit, fiscal inspection of natural persons, fiscal inspection of legal persons, and documentary audit (Figure 7).

An explanation for the plurality of forms and the diversity in volume can be derived from the observation of the analyzed data (Figure 7), which reveal fluctuations from year to year and from semester to semester in the intensity of debt recovery from control forms. This flexibility incorporates a decision for the administrative authorities, hence a third-stage policy element, to model a debt recovery pattern with administrative variables.

The significance of one of these forms comes from a very mobile administrative decision that allows for shifting in budgetary sources from one form of control to another.

The most constant form of control as to its revenues is the fiscal inspection on natural persons, whereas personal patrimony audits confirm a contributing increasing trend for which it is too recent to confirm a steady, firm, sustainable direction.

We conclude that within the budgetary effect, each form of control has its own symptomatology. FIs and DAs are both complimentary and conflicting in volume as they concern the same taxable mass: business and professional revenues. Comparing 2020 with 2023, the total volume of supplementary tax debt is almost constant (between 4.2 and 5.7 billion lei) and appears to have been halved in 2023 between FIs and DAs. The maximum volume of debt from FIs in 2021 equals the total debt from FIs and DAs in 2023, proving that DAs are replacing, at least partially, FIs. PPAs have their own evolution, more obvious in results

(Figure 5) than in numbers (Figure 4), but the increasing trend appears to be temporary, with a downward curve in 2022. The spectacular increase in potential debt in 2023 through criminal referrals is only an indicator of a 'fight tax fraud' policy and not a measure of real revenues.

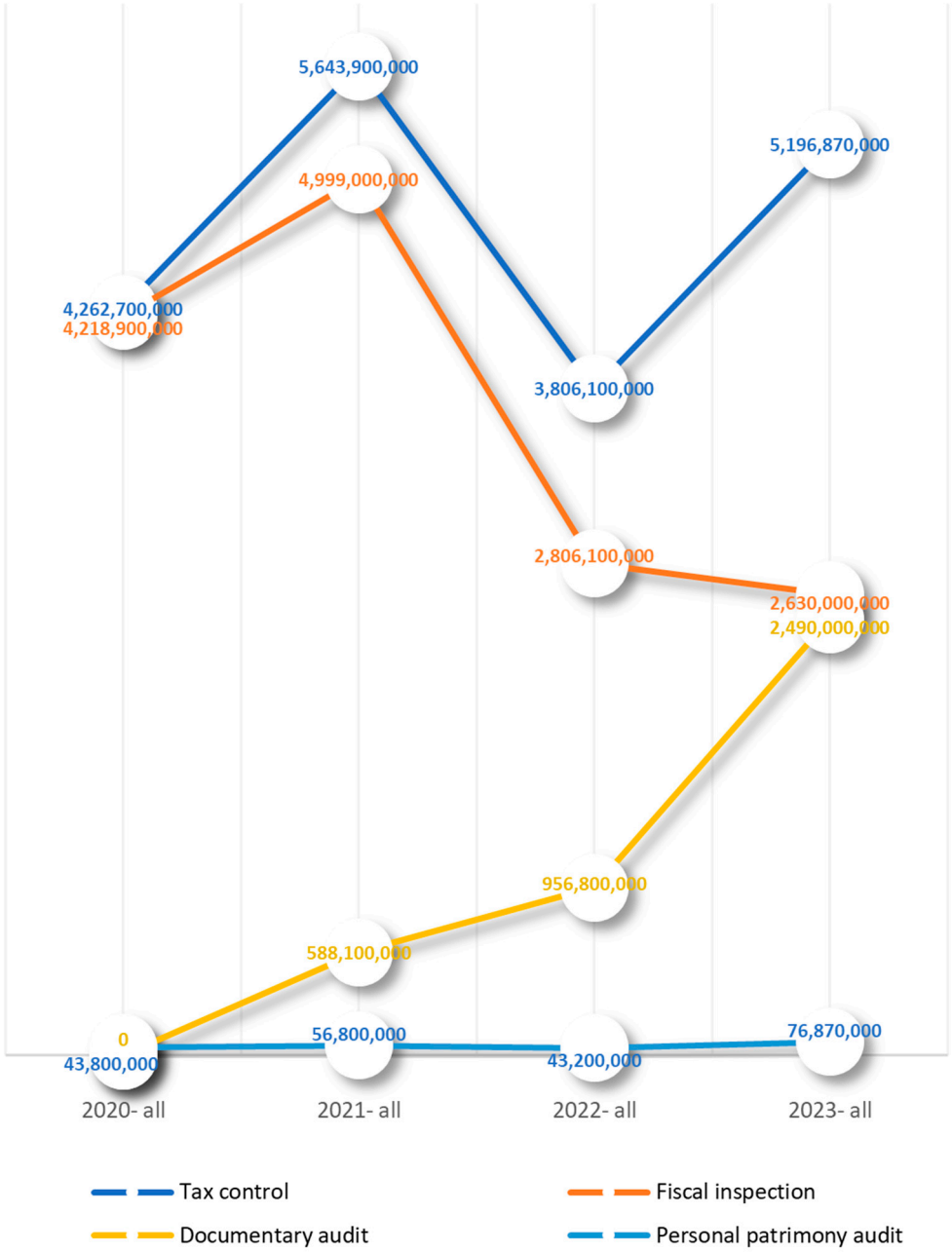


Figure 6. Total debt by form of tax control.

As a source of supplementary tax revenues, tax control is rather unimportant in the grand budgetary scheme, especially if we consider that VAT—a budgetary source contributing almost 50% of national budgetary revenues—registers a compliance gap of 36.7 of total revenue—the largest in EU-27—determining roughly a loss of 20% of national budgetary income.

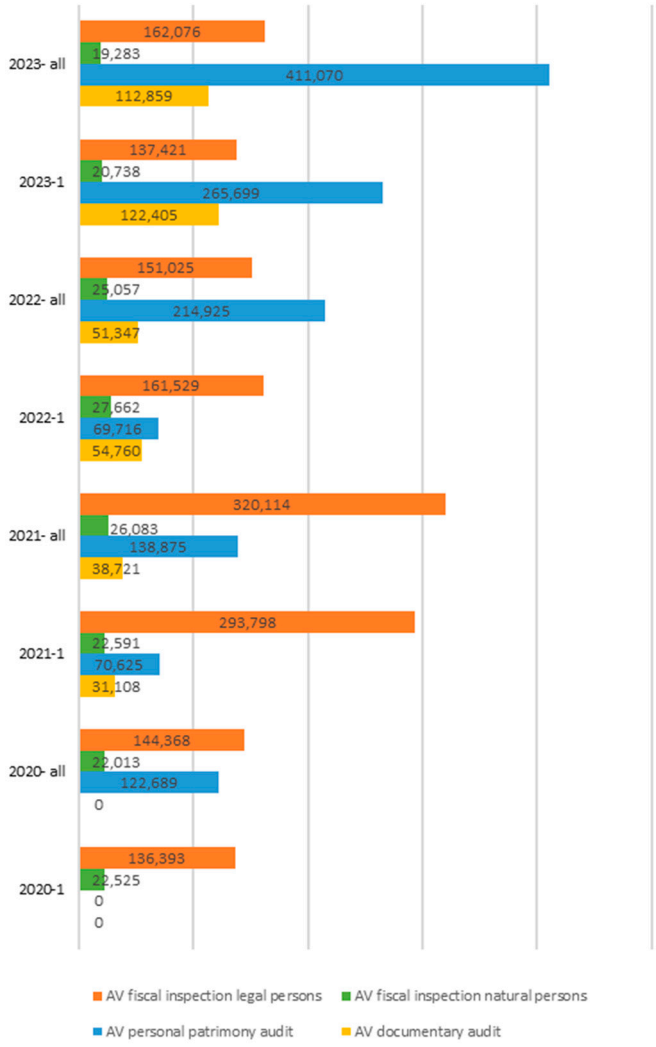


Figure 7. Average debt by unit of control.

Hence, recovering 2,16% of the total revenues through tax control could be considered an insignificant result. In Table 2, the data correlate total revenues with fiscal revenues and control-generated incomes, confirming fluctuations in all dimensions and supporting our statement that tax control is marginal as an effective public fund (expressed in RON millions).

Table 2. Evolution of tax control revenues as a percentage of fiscal revenues.

	2020 All	2021 All	2022 All	2023 All
Revenues general budget	322,520	379,610	460,090	386,880
Fiscal revenues	263,600	311,100	372,600	240,740
Tax control revenues	4262.7	5643.9	3806.1	5196.9
Percentage of total revenue	1.62%	1.81%	1.02%	2.16%

3.3. Tax Control as Tool for Fighting Fiscal Non-Complaince and Fiscal Fraud

Traditionally, tax control has two functions: to collect tax debt (as shown above) and subsequently to fight taxpayers' non-compliant behavior (Vossler et al. 2021), achieved by identifying it, sanctioning it, and consolidating compliance, as customarily, audit probability, and penalty rates are correlated to tax effectiveness and compliance (Allingham and Sandmo 1972; Bergolo et al. 2018). Under the Romanian legislation, illegal

conduct may be qualified through several liability dimensions: civil versus administrative versus criminal liability; patrimonial or personal liability; and contractual or delicta liability. Liability in tax matters combines these dimensions in a particular manner, as it tends to address tax obligations to several extents: (1) patrimonial ones, by evoking patrimonial liability in the form of establishing a tax debt as a consequence of an illegal tax behavior from the taxpayer with the consequence of owning the principal debt and accessories (fiscal interest, delay penalty, or non-compliance penalty owed per day from eligibility to payment) or by establishing damages (identical with the fiscal debt, but different by means of establishing) as an effect of a criminally relevant behavior from the taxpayer, or (2) non-patrimonial ones, by evoking a specter of measures and sanctions to stop that behavior, such as procedural measures—modifying accounting, modifying tax statements, or taking precautionary measures—and administrative (contravention fines) or criminal sanctions (imprisonment in the case of individuals and dissolution in the case of legal persons) (Figure 8).

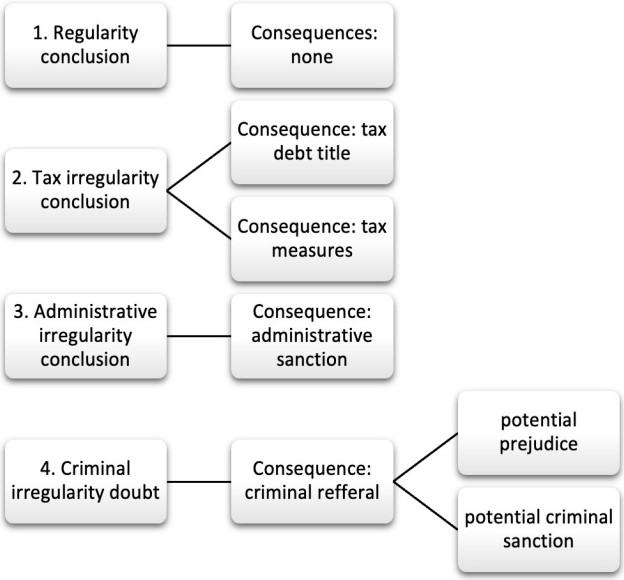


Figure 8. Tax control conclusions.

In a combinatory matrix, conclusion 1 excludes all other three; conclusion 2 is compatible with conclusion 3 and could be generated by the same control; and conclusion 4 is also solitary and excludes the prior ones.

Therefore, tax control functions as a means to assess the legality of one's tax behavior and to derive legal significances, if illegal elements are identified. The main legal conundrum in the matter of effects of tax control derives from the coexistence of patrimonial and non-patrimonial effects and from the arrangement of these effects on a scale of relevancy from administrative to criminal.

For example, conclusion 4 will end the tax control until the criminal doubt is confirmed by a final court decision; if the criminal doubt is infirmed, the tax control acts as a subsidiary means and will resume in order to draw conclusions no. 1, 2, or 3. Hence, any form of tax control might reveal a type of non-compliance and raise concerns regarding qualifying a certain behavior and applying the best consequence combo.

The polarity between fiscal conclusions and criminal conclusions (Figure 8) regarding debt versus potential debt as prejudice determines the alternance in procedures but has no effect on current budgetary revenues.

Additionally, comparing by size, the patrimonial effect from a tax control procedure and the one from a criminal referral (Figure 9) in our study's timeline, shown as average

values, shows no predictability whatsoever of criminal process results at this procedural stage as fluctuations are overwhelming. Further analysis is required, considering the results of criminal procedures.

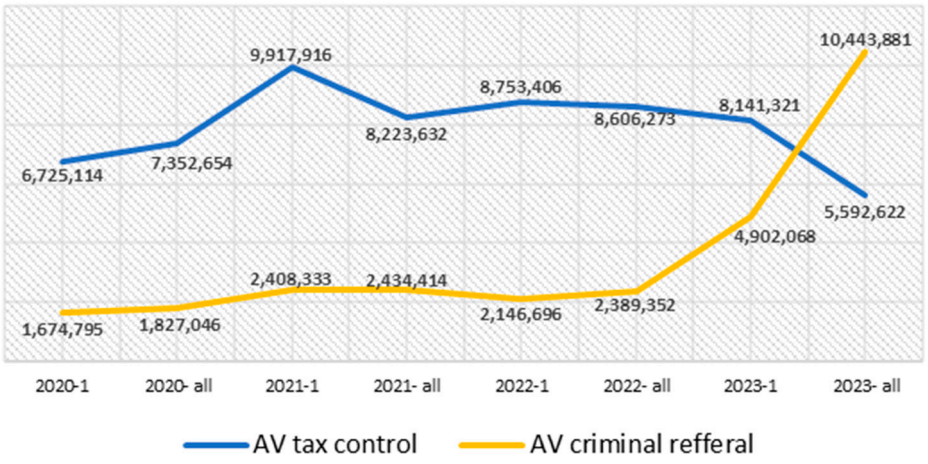


Figure 9. Fiscal debt and criminal potential debt.

The main sources for criminal referrals are fiscal inspections and antifraud controls. In the case of antifraud criminal referrals, we had access to data from a broader period, which correlates with the reform of the NAFA in 2013 and the autonomation of the Antifraud unit. Although the administrative measures taken in 2013 have interpreted an increase in criminal referrals as potential value, this phenomenon cannot be seen as a causality but rather as a correlation, as the increase was temporary and was also doubled by an increase in criminal referrals from fiscal inspections (Figure 10).

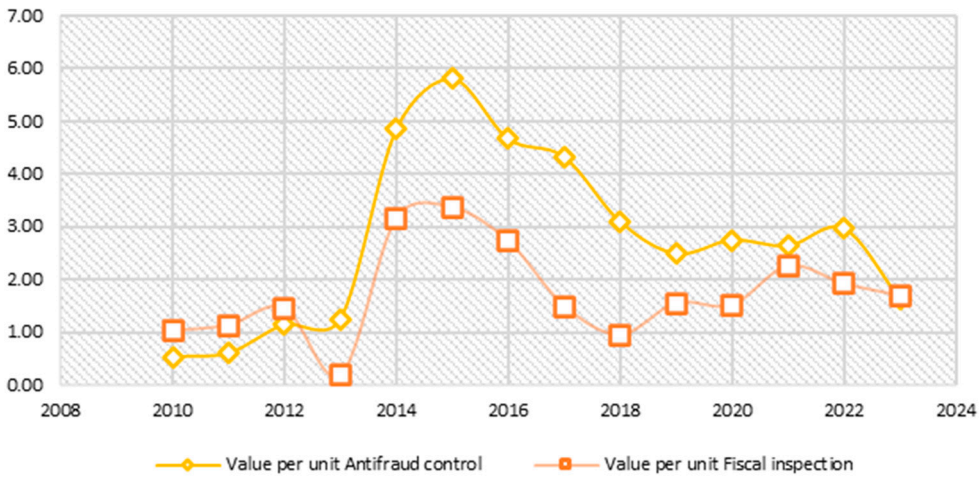


Figure 10. Comparison of value for criminal referral per unit of control.

In terms of the efficiency of tax recovery, controls ending with a tax debt title are more efficient, as the duration of a fiscal inspection is legally determined to a maximum of six months; a criminal procedure in the stage of criminal prosecution has a duration of under 6 months in only 29% of cases, whereas a criminal case in court has the duration of 4.2 months (Ene 2024).

The same two forms of control are also the sources of administrative effects, materialized in the most common form of sanction, a fine (Figure 11). Fines, like all forms of sanctions, have a scope of preventing further illegal conduct (Polinsky and Steven 1979) by educating the taxpayer and the public on the nature and effects of a certain type of behavior.

Fines also generate supplementary revenue to public authorities—in our case the central authority—thus potentially explaining the tripling in antifraud fines within a four-year time span (Figure 11).

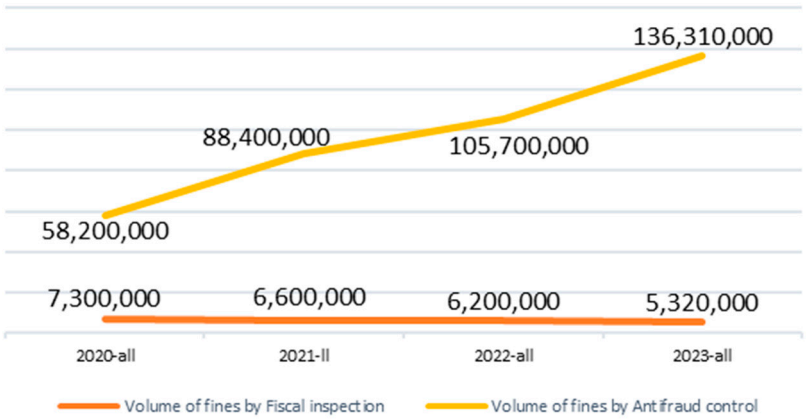


Figure 11. Volume of fines by form of control.

Even if in number, these consequences seem convincing, by correlation to the total population of professional taxpayers (about 1.7 million), their importance pales as the maximal incidence of tax control is 2.57%, out of which 1.20% represent administrative sanctions and 0.028% represents criminal referrals.

We can conclude that in 50% of cases, a tax (Figure 12) control identifies an administrative irregularity and imposes a fine; hence, administrative liability is a significant part of the interaction between taxpayers and tax control authorities.

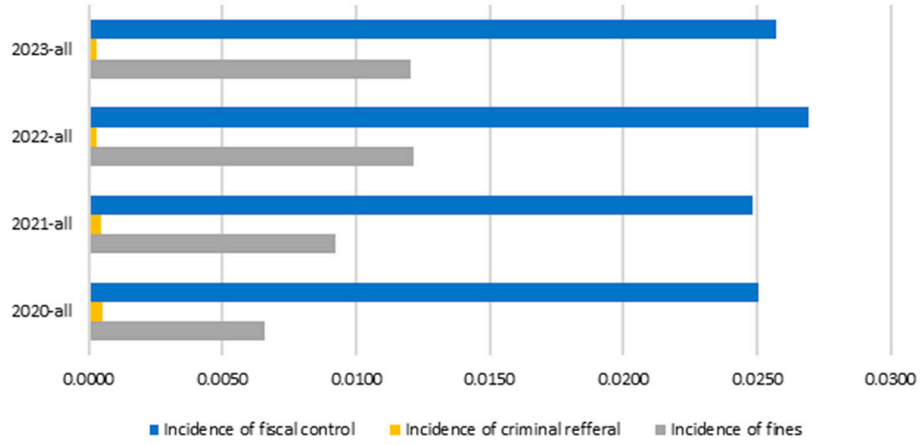


Figure 12. Incidence of tax control and tax consequences for professional taxpayers.

4. Limitations

It is clear from the first three sections that, in Romania, we are in the presence of a normative model that is specific to continental law legal systems, where a determined and omnipresent Sovereign (Codrea 2023) generates prototypes of behaviors expected from legal subjects.

This strong legal positivism is seductive and misleading; it offers the illusions of an optimal legal framework, crafted as such, that is able to address all life hypotheses and ensure solutions for compliant scenarios and non-compliant scenarios. But life, encompassing environment variables and human actions, delivers a variety of scenarios beyond the initial normative visions.

This state of facts is encountered even in public law regulations, where the Sovereign is not only source of legal text but is also part of the implementing process. This double role might predispose the texts to a more careful process of editing, embedded with predictability.

Nevertheless, the formalism specific to continental law beyond this declaration of omniscience brings forward, as we have shown above, not only a rigidity in addressing new working hypotheses where the law is silent, but also the temporization of implementing certain norms.

A newly created form of control, including the verification of personal fiscal situations; an expansion of the regulations on documentary verification; a significant lapse in time between the enactment of the text and its practical use; stating rights and limitations for both the taxpayer and the tax authority only in two procedures out of five; and ascribing a variety of consequences to a variety of forms of tax control, proves that the initial legal mold was insufficient and therefore needed reform.

Reform in tax law is a contradictory occurrence; firstly, because tax law is the purest form of power, an emanation of absolute sovereignty, it ought to be, by the embedded force, a field of law where stability measures the unilateral position of the legislator, and secondly, because tax law includes normative guarantees of legality and predictability. From this perspective, the Romanian present legal frame on tax control appears opportunistic and chaotic, proving that the legislator is hesitant, is uncapable of foreseeing socio-economic dynamics, was rushed to patch a leaking structure of norms, and is focused mainly on collecting tax revenues.

Under a utilitarian lens, all the above forms seem useful for the public power; their usage is not derived from the normative frame, but mostly from administrative practices, as a response to a constant need to counteract taxpayers' behaviors or to supplement revenues as an urgent matter. Regarding this counteraction of the legal system to the socio-economic entropy, we are surprised to see that empirical proof from our study shows a lack of efficiency, even from the criminal law field, in addressing tax non-compliance.

Regulations expand, harden, and diversify, but a four-year empirical radiography did not reveal the much-wanted repair of the system. The data show that a multiple restorative legal frame is in fact incapable of repairing harm and restoring public revenues.

Within these limitations, the only feasible option, ironically, is a new reform of the legal framework by incorporating the vulnerabilities underlined in our study.

5. Conclusions

The results of our empirical analysis confirm our working hypotheses:

(1) The current legal frame of tax control is heterogenous, incomplete, and conditioned by administrative practices; (2) debt collection is an inconsistent effect of tax control forms, with a marginal overall input in budgetary dynamics; and (3) identifying illegal fiscal behavior relies on tax control, but administrative sanctions and criminal sanctions have different rates and unpredictable moments of occurrence.

Based on our results and the following discussions, overall, we can assert that the current Romanian tax control matrix is significantly flexible, even often overlapping with a focus on sanctioning. These elements motivate us to state that a radical reform of the legal frame is due, a reform targeting at least symmetry in the regulatory framework, reducing the overall number of control forms, and amending the bias towards criminal procedures.

The timely regulatory changes that we would propose might be formulated as in Table 3.

Table 3. De lege ferenda proposals for each research hypothesis.

Research Hypothesis	Legal Intervention	Scope
(1) The current legal frame of tax control is heterogenous, incomplete, and conditioned by administrative practices	- Limiting the number of forms of control to three: one for professionals; one for individuals; and an operative one for identifying non-compliance; - Regulating a common corpus of rules for tax control: notification at least during the process; right of the taxpayer to be heard and assisted by a legal councilor; and right of access to the control file and collected evidence.	- To simplify the regulatory framework to improve predictability; - To protect the taxpayer, as the weaker party in the procedure; - To ensure transparency of the procedures and a basis for the right to a fair trial.
(2) Debt collection is an inconsistent effect of tax control forms, with a marginal overall input in budgetary dynamics	- Granting the effect of establishing fiscal debt to all three forms of control, doubled by the possibility to appeal the tax authorities' solutions in court.	- To maximize the collection of budgetary revenues; - To ensure immediate reactions to a non-compliant act.
(3) Identifying illegal fiscal behavior relies on tax control, but administrative sanctions and criminal sanctions have different rates and unpredictable moments of occurrence.	- Regulating an order of priority for tax procedures even against criminal procedures in evaluating compliance and establishing fiscal debt.	- To respect the tax exceptionalism doctrine and have fiscal debts evaluated only by fiscal authorities.

Author Contributions: Conceptualization, I.M.C., D.-M.I. and M.-E.G.; methodology, I.M.C.; validation, D.-M.I.; formal analysis, I.M.C.; investigation, I.M.C. and D.-M.I.; resources, D.-M.I.; writing—original draft preparation, I.M.C., D.-M.I. and M.-E.G.; writing—review and editing, I.M.C., D.-M.I. and M.-E.G.; visualization, I.M.C. and D.-M.I.; supervision, I.M.C. All authors have read and agreed to the published version of the manuscript.

Funding: The APC was funded by the Faculty of Law of Alexandru Ioan Cuza University of Iasi, Romania.

Data Availability Statement: The original data presented in the study are openly available in the National Agency for Fiscal Administration (NAFA) Reports and Studies at https://static.anaf.ro/static/10/Anaf/Informatii_R/rapoarte_activitate.htm.

Conflicts of Interest: The authors declare no conflicts of interest.

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