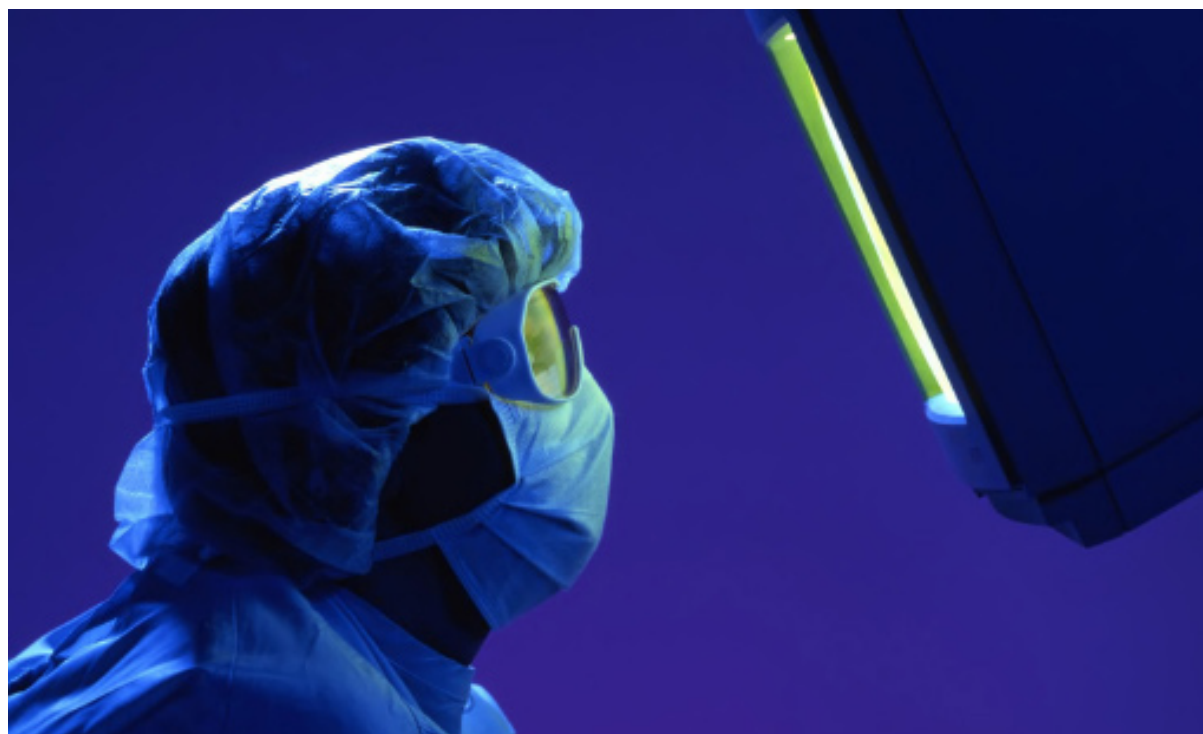


Romanian Taxation  
The X-Ray of an  
Incomplete Reform





# Foreword

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“Taxes, after all, are dues that we pay for the privileges of membership in an organized society.”

Franklin D. Roosevelt

Taxation is a crucial factor of the investment decision-making process, as it represents a business cost, regardless the type, size or geographical location of the business. A survey conducted in 2005 by the World Bank outlined the 14 top concerns of the business environment when making the decision of investing in emerging markets. The level of taxation was ranked the third, while tax regulations the seventh.

This underlines the need for a straightforward, transparent and stable tax system which enables businesses and investors to develop long-term strategies and ensure a coherent day-to-day management. This is all the more important during difficult times when financial constraints affect businesses. In such times, the state economic structures should intervene in order to lift the tax burden and help the business environment get out of the crisis.

As an international tax consultant, Deloitte considers that a viable business environment can be improved through transparent communication between legislators and taxpayers. We thus assumed the responsibility of actively contributing to the improvement of the tax system, so as to ensure a balance of benefits both for companies, and for the state and, implicitly, for the overall economy.

The current survey includes opinions issued by the most important investors in Romania; some 130 Chief Financial Officers and tax directors have expressed their view on the way the tax system works, with pros and cons from their own industry perspective, alongside suggestions on the necessary changes and measures the state should implement.

We hope that this survey will equally serve companies and authorities in their efforts to build up a balanced fiscal regimen, capable of strengthening the economy and ensuring sustainable growth.



**Rodica Segărcăeanu**  
Partner, Deloitte Tax



**Pieter Wessel**  
Partner, Deloitte Tax



# Taxation, from theory to economic reality

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## The limited administrative capacity remains a weak link for the Romanian fiscal system.

Taxation is one of the chapters that have undergone some of the most important changes, over the past ten years; unfortunately the changes have occurred either too slow or too sudden, which resulted into the tax payers' perception that the fiscal environment is an instability factor in the development of Romanian economy.

The business environment acknowledges the legislative progress, such as the introduction of the flat tax or the harmonization with the European regulatory framework. Still, the limited administrative capacity remains the weak link of the Romanian fiscal system.

Unfortunately, the legislation's remarkable development launched in 2004 through the unification of most tax regulations into one Code has sometimes been shadowed by the state's inability to comply with the fundamental principles it has assumed. The efficiency and certainty of taxation, the stability and predictability of the tax system represent critical principles for a viable economy.

While the participant companies in this survey agree that the fiscal policy needs to be efficient, they stress for a balance between this need and the fiscal burden on companies.

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## The efficiency and certainty of taxation, the stability and predictability of the tax system represent critical principles for a sound economy.

### Optimizing the fiscal environment, the grounds for business development

When asked about the priorities on the Ministry of Finance' agenda, the participants indicated measures aimed at rectifying the current situation rather than fiscal stimulation measures.

The business community outlines the need for tax authorities to follow a medium and long term fiscal strategy and concentrate on reducing the frequency of legislative amendments. As such, some 34% of respondents consider that legislative stability is the main premise for a tax environment favorable to business development. On these grounds, businesses can set-up and follow through coherent strategies and related feasible budgets.

Also, 22% of the participants suggest the set up of clear procedures for tax administration. Although progress has been made in this respect, with the introduction of the sole account for tax payments or the electronic submission of returns, the fiscal mechanism is still not fully operational. As a result, the lack of correlated administrative procedures triggers additional costs for companies and delays in running their day-to-day activities.

Although the situation has somehow improved on a parafiscal level, this is far from being optimal, 16% of respondents considering that reducing the number of taxes, or merging them would be an essential measure to increase the efficiency of the payment, collection and control processes.

Also, some 15% of respondents said that improved know-how for tax clerks represents a priority. The general view is that the shortfalls in tax training and education might be one of the reason causing malfunctions within the system.

### Fiscal uncertainty, the taxpayers' constant concern

Given the current economic crisis and the potential measures authorities may consider to implement in order to increase revenues to the state budget, companies have a clear view on how such measures could significantly impact their businesses.

For example, more than 36% of the survey participants said that an increase in social security contributions would be a negative decision. Considering the current economic downturn and cash constraints in the market, such an increase would only result in higher labor costs, thus forcing companies to speed up restructuring or lay-offs. Moreover, the entire state budget could be

affected on a macroeconomic level, due to increased social costs triggered by lay-offs and a decrease in cash collection. On the other hand, implementing a strategy to gradually reduce social contributions could turn into a fiscal tool to stimulate Romania's competitiveness, encouraging the attractiveness and personnel retention (especially the highly-qualified employees), in view of the European integration and the workforce's freedom of movement on a European level.

The potential increase of the VAT rate is a concern for 25% of the participating companies, since any additional percentage on top of the current level would result in higher prices for products or services, thus directly impacting the spending power of the end consumer.

Also, 22% of the respondents expressed their concern regarding the increase of the flat corporate income tax. The 16% rate has been so far one of the main elements to ensure a certain level of stability and predictability for businesses as well as competitiveness to the region.

### Best practices, the right incentives for economic growth

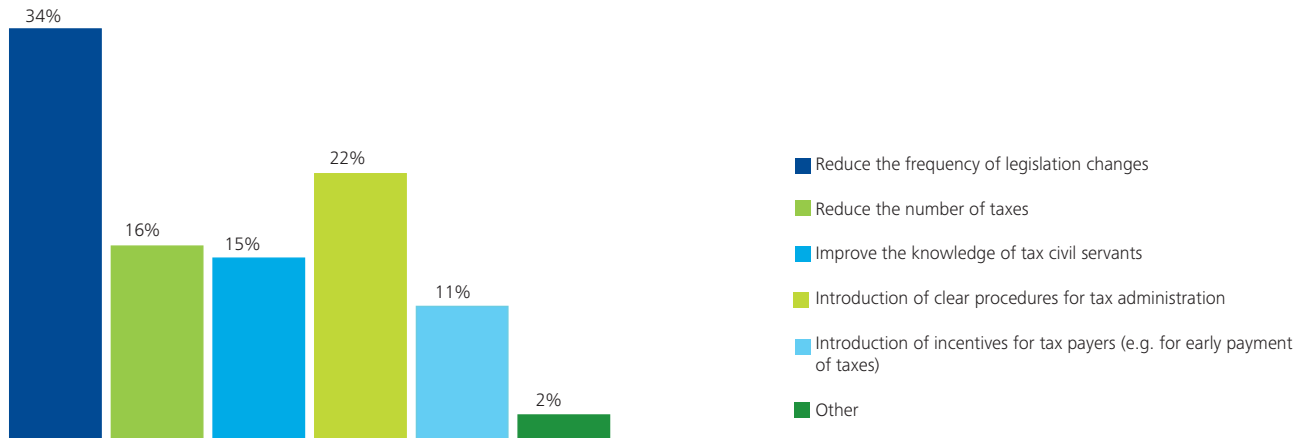
The participants have also suggested a ranking of tax measures which could help the business environment and maintain the strategic goals for development. Three such measures are by far priorities on their agenda.

Since access to investment financing has significantly decreased, the first option for 24% of the respondents is tax exemption for reinvested profits. But such a decision would only work if translated into a real exemption granted to all taxpayers, irrespective of their size and activity. The current legislative proposal supporting this measure does not meet these criteria, as the recent introduction of exemption for reinvested profits operates as a mere deferral of profits taxation.

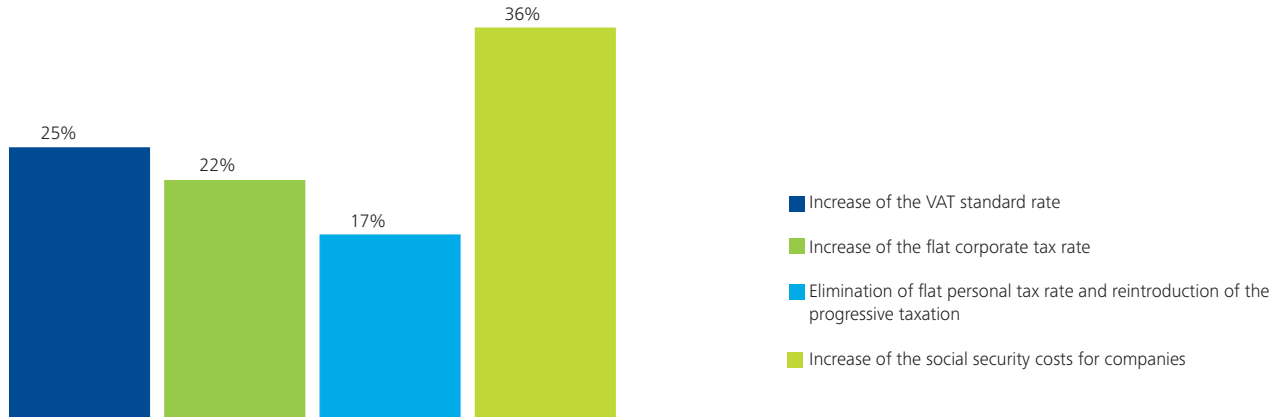
Setting up a threshold for social security contributions is an important measure for more than 23% of participants. Since the current level represents one of the most significant costs for companies, the capping of social security contributions would encourage companies to recruit skilled work force and retain their employees, while also improving competitiveness at European level.

The third measure perceived as extremely important by participants refers to the VAT reimbursement mechanism; 18% of respondents consider that implementing clear and quick procedures for VAT reimbursement would unblock the current crisis of the system.

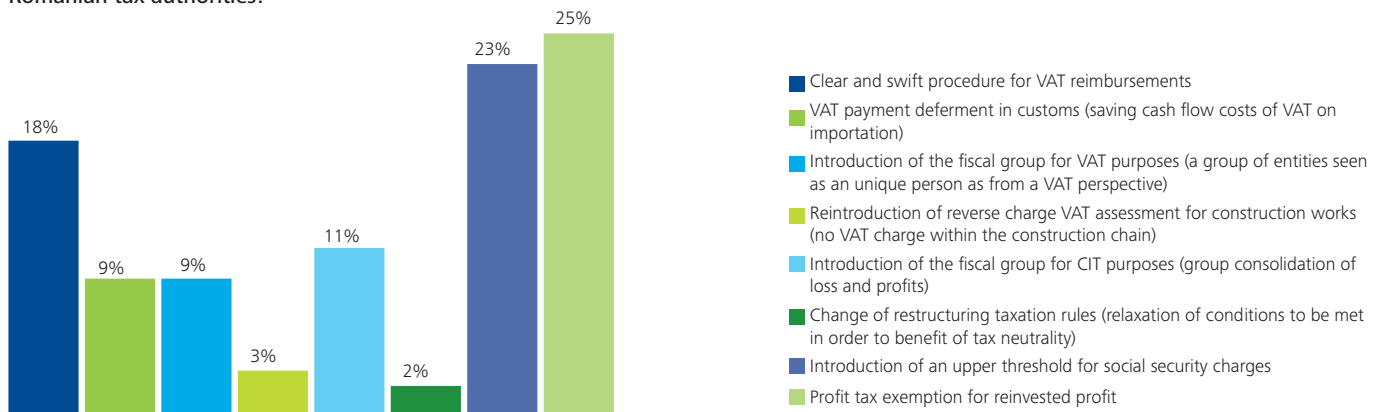
If you would find yourself in a decision making position within the Ministry of Finance, what would be your top agenda priorities?



Given the state budget current constraints, which of the following measures, if implemented, do you think would negatively influence your organization the most?



Which of the following measures do you consider being absolutely most needed to be implemented by the Romanian tax authorities?



# The flat tax, a fiscal benefit shadowed by contradictions

Romania has correctly assessed that, as an emerging market that has to improve its investment attractiveness and further stimulate the development of current businesses, it needs to undertake the turnaround in the direct taxation system.

A first step in the right direction was the introduction of the 16% flat tax rate and its regulation in a consistent manner, together with the other taxes, under one legislative document - the Fiscal Code. Thus, authorities set the basis for a favorable regulatory framework, easy to understand and implement.

The majority of respondents (61%) agrees however that the corporate income tax legislation is complicated, mainly because fiscal provisions are vague and the implementation methodology is not coherent and clear enough.

The experience of recent years refers to the tax treatment of transactions within partnerships, where corporate income tax requirements contradict the VAT requirements. In a similar way, leasing operations need to be carefully examined from a corporate income tax as well as from a VAT perspective, in order to comply with both regulations. Another example, very relevant given the current economic climate, relates to the tax treatment of bad debts' write-off (corporate income tax versus VAT).

Moreover, respondents consider that the tax system's lack of predictability and uncertainty is a very important issue. Changes occurring during the financial year and not prior to its beginning, trigger major distortions in expense budgets and clearly impact the targeted profit margin, as well as potential investment decisions.

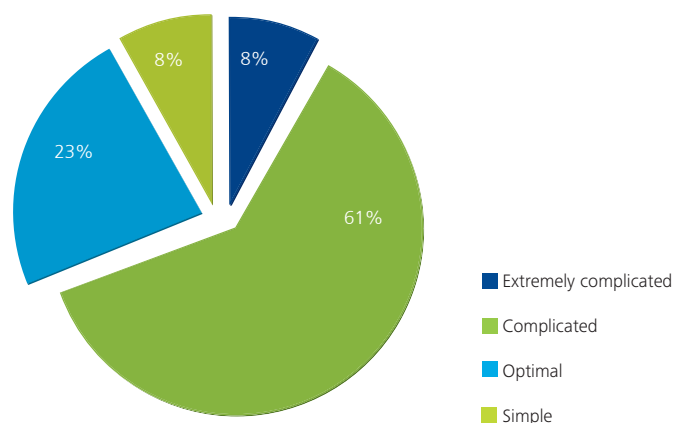
Such an example is seen in the amendments implemented during the first half of 2009, when the taxable base increased due to the elimination of deductibility of fuel expenses for company cars (exceptions being extremely constrictive). Participants have also mentioned the amendment regarding the year-end revaluations which are no longer recognized for fiscal purposes. Such a measure has suddenly triggered an unbudgeted tax burden at the time of revaluation.

It's important to mention that the tax base extension directly triggers the increase of the effective tax rate. A simple calculation shows that the adjustment of accounting profit by not granting full deductibility of a significant number of expenses can change the effective tax rate by approximately 20 - 25%.

Separately, 8% of respondents consider that the regulatory framework for profit tax is extremely complicated, mainly because it is aligned with the international economic condition, where the restructuring operations and complex transactions are increasingly frequent. On this rationale, the tax legislation related to reorganization (mergers, spin-offs, transfer of assets) should be subject to additional clarifications and extended for the purpose of introducing and explaining the concept of tax neutrality. The tax rules on debt restructuring or transfer of receivables are insufficiently developed too.

The set up of transfer pricing rules for affiliated companies has increased the complexity of corporate income tax legislation. More than ever before, companies should pay increased attention to intra-group transactions as failure to justify transfer prices can trigger the adjustment of income and/or expenses in order to correctly reflect the market price. The participants have noticed that there are still unclear aspects in this area, which extend from the application of transfer pricing rules between local affiliated companies to the set up of distinct reorganization rules.

**How do you evaluate the current tax system/legislation corresponding to corporate income tax ?**

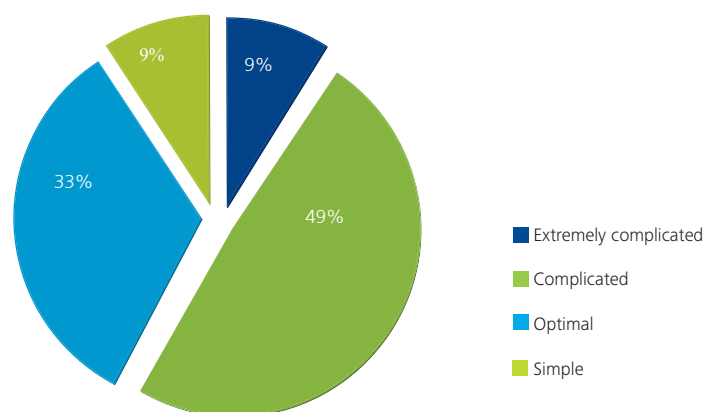


# Non-residents withholding tax, A tax with no user manual

## The most famous cases ruled at the Supreme Court of Justice so far, are related to the non-resident withholding tax.

Romania has seen continuous development in the international taxation field. Throughout the last years, important European tax provisions have been implemented, such as the EC Interest and Royalties Directive, the EC Parent Subsidiary Directive or the EC Merger Directive. Further, the “permanent establishment” matters have been regulated through the implementation of the OECD guidelines.

How do you evaluate the current tax system/legislation corresponding to the withholding tax?



Nevertheless, almost 60% of the participants consider this tax as being complicated or very complicated, since the obligation of computation, payment and declaration of such taxes usually rests with the Romanian taxpayers through the withholding mechanism. The fulfillment of such liabilities should be performed by complying with the domestic legislation corroborated with the European legislation or with the bilateral treaties. In practice, the lack of clear procedures and related application and interpretation norms transform this exercise into a very difficult one.

Under the flat tax rate system, the withholding tax should not have been very difficult to apply but most respondents denounce the lack of relevant methodology for applying and interpreting internal and international regulations in a coordinated manner. Separately, there are uncertainties regarding the classification of certain types of revenues earned by non-residents considering the limited types of income explained by the legislator. Participants indicated difficulties in applying the correct tax treatment, as well as a lack of guidance either from the tax authorities to which they are assigned to, or directly from the legislator. At the same time, the legislation has not been fully aligned to the level of concepts used in other tax jurisdictions (i.e. the concept of “capital gain” which is still not covered by domestic legislation). This again triggers difficulties in correctly applying withholding taxes.

Moreover, Romanian tax jurisprudence shows that there is an urgent need to amend the Fiscal Code with clear provisions on the definition and description of various types of Romanian types of income. As a matter of fact, withholding tax-related cases are the most famous cases ruled so far by the Supreme Court of Justice.

The general view is that various regulatory authorities (the National Bank of Romania, the Romanian National Securities Commission and the Insurance Supervisory Commission) together with the Ministry of Public Finance should take joint responsibility to develop a coherent and consistent fiscal framework regarding the withholding tax.

Participants indicated that computation, payment and compliance liabilities for this tax do not constitute an issue.

# The Value Added Tax, Achilles' heel of the Romanian taxation system

Starting with January 1st, 2007, Romania's EU accession date, the VAT legislation not only regulates the correct application of this tax, but also implements a complex monitoring and reporting system of the transactions of goods and services within the EU territory. Thus, the VAT legislation becomes fundamental for securing a good functioning of the unique market and fair competition within the EU territory.

Therefore, the Romanian VAT legislation complies with the principles of the EU legislation, Romania being bound to implement, starting with 2007, the directives and regulations issued by the European Commission in the VAT field. Moreover, the VAT-related cases ruled at the European Court of Justice became directly applicable to the Romanian legal entities.

Recently, the Ministry of Finance published the normative act for amending the VAT legislation which includes provisions of the new EU directives applicable starting with 2010. This document will outline the most important changes in the VAT system after 2007. The rules on services' taxation are being significantly restructured, as distinct rules are introduced depending on the specifics of the beneficiary ("business to business" versus "business to consumer"). Given the increased complexity of the VAT system, 81% of the respondents said that the VAT legislation is complicated or very complicated. This percentage exceeds significantly the complexity degree indicated by companies for other taxes. Moreover, 35% of the respondents consider that the VAT represents the most controversial aspect when dealing with authorities.

A more detailed analysis reveals that such difficulty in applying the VAT legislation is often determined by the lack of specific norms or official interpretations provided by fiscal authorities on tax treatment in certain situations. Intra-community transactions and related supporting documentation, services rendered to external beneficiaries are among the sensitive issues pointed out by respondents. A concept that must be clarified is the "transfer of assets", deemed as transfer of business, which does not enter the VAT scope. Due to the multitude of practical situations associated with each particular industry, the development of a unified set of criteria for this treatment becomes mandatory.

One of the industries directly affected by the lack of clarifications with respect to the VAT treatment is the financial services industry. Most companies in this industry have shown that the existent VAT legislation is insufficient and sometimes unclear, with a significant impact on the predictability of costs incurred by performed financial operations. One example relates to factoring services and assignment of debts. However, it is important to note that in other EU countries too, the VAT regulations for Financial Services are not entirely adapted to the industry development.

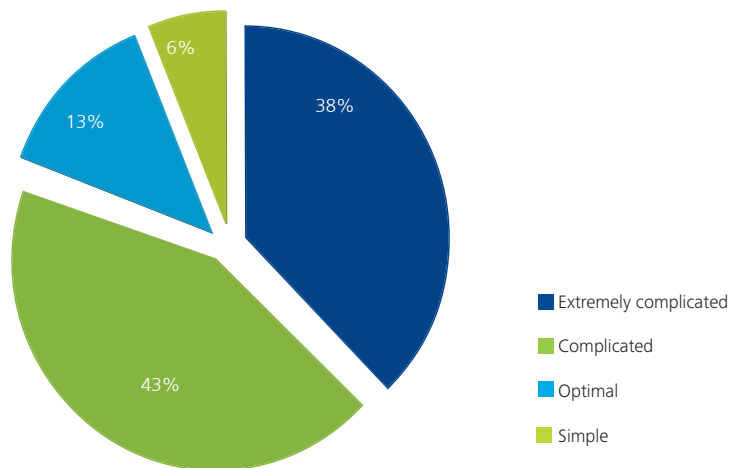
The VAT reporting obligations have become considerably more complex since 2007. Most respondents referred to the 2% penalty on incorrect or delayed reporting of the intra-community transactions as unfair and disproportionate, since potential reporting errors are not intentional and do not affect the state budget in any way.

As for Romania's long-term fiscal strategy, 18% of respondents see the best practice measures implemented by other European countries, such as the deferred payment of VAT on imports or the VAT group, as a priority. The deferred payment of VAT in customs is perceived as an important incentive for importers, thus contributing to Romania's development as a regional logistics centre. Implementing the VAT grouping is a way to improve cash flows within groups of companies, thus contributing to the decongestion of the current VAT reimbursements.

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**The 2% penalty applied to the transactions value for incorrect reporting of intra-community transactions is perceived as unfair and disproportionate.**

How do you evaluate the current tax system/legislation corresponding to the Value Added Tax?



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“Through a formal approach of national legislation, tax authorities are sometimes overlooking the European jurisprudence or the fundamental VAT principles, such as VAT neutrality.”

Pieter Wessel, Partner, Deloitte Tax

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# Late payment interests for VAT reimbursement are the taxpayers' implicit right.

## VAT reimbursement, The controversy of large figures

Over 40% of participants that applied for VAT reimbursement from 2007 to present have requested sums exceeding one million Euro. Also, some 30% companies in this situation have indicated that they requested sums between 500,000 Euro and one million Euro.

It seems that for Romanian companies, the VAT reimbursements are the top challenge posed by the Romanian fiscal system. Delayed refund of the VAT amounts becomes more than a cash-flow issue, as it may also be vital for companies' survival. Deficiencies in the reimbursement system are obvious, given the large number of reimbursement requests that have surpassed 45 days – the legal term provided by the law. As such, 42% of the respondents who had applied for VAT reimbursement said their request have been solved within a 3 to 6 months period. While 25% of respondents faced delays longer than 6 months, 8% were reimbursed after more than a year.

Still, recent initiatives of the fiscal authorities aiming at solving the VAT reimbursement issues are noticeable, for example, by prioritizing reimbursement requests by date of submission, granting the right to assign receivables from the VAT amount to be refunded and the obligation to provide an answer within 45 days in case of a cross-check performed during the reimbursement process.

However, respondents' view is that good intentions within legal provisions are not often correlated to real practice, since fiscal bodies often use various methods to postpone the completion of fiscal control (such as unjustified requests of additional documentation unrelated to the analyzed transactions, for example the request for the transfer pricing file).

The general opinion is that authorities have not addressed significant legislative issues which would have led to a real increase in solved VAT refund requests, such as direct refunds without previous fiscal control. Respondents confirmed the small number of requests solved by means of this method in the past two years.

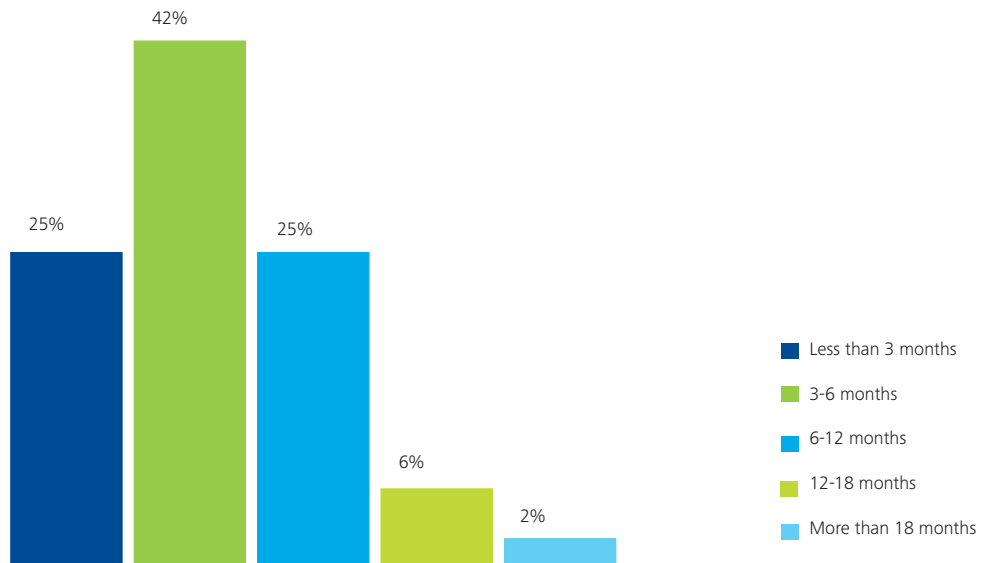
In this context, participants in the survey agree with a potential change in procedure for establishing taxpayers' risk level (scoring), which determine the way VAT reimbursement will be made (with or without anticipated fiscal audit).

The reimbursement process is expected to be simplified by the elimination of certain elements which are currently part of the scoring process. As an example, scoring elements such as repetitive cancelation of VAT refund requests, activities deemed as riskier or the "age" of companies requesting reimbursement should be elapsed.

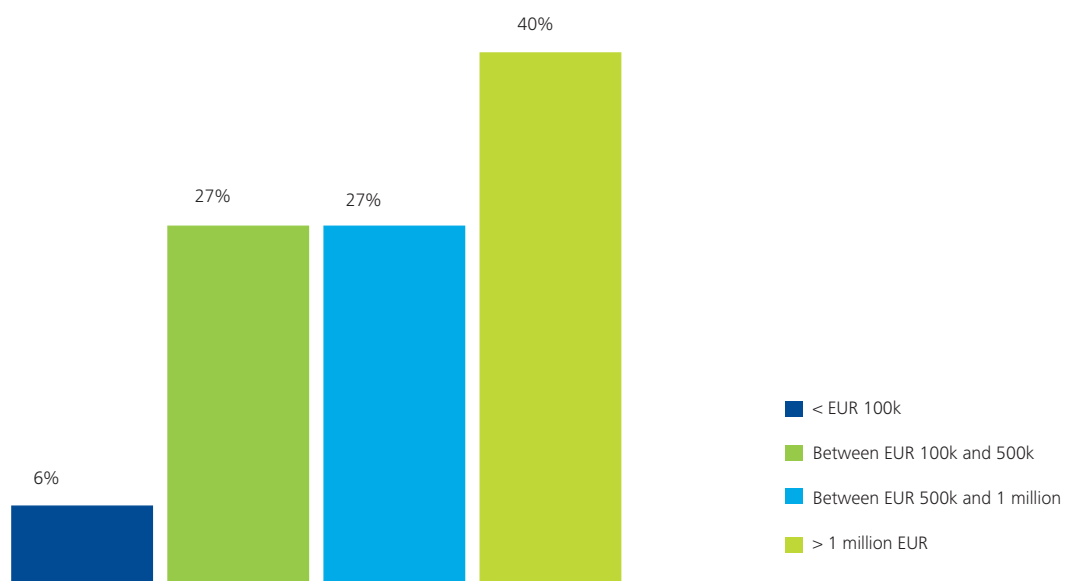
As a positive remark, according to ANAF, the total value of monthly reimbursed amounts has increased since April 2009.

For the time being, only 3% of the companies requesting VAT refund have also asked for the related late payment interest. This is an implicit right of taxpayers, but participant companies have expressed doubt about the immediate benefits of exercising it, expecting possible repercussions from fiscal authorities. A solution could be a legislative provision on default payment of related interests, if fiscal authorities exceed the legal period stipulated for solving this issue.

Have you applied for a VAT refund since 1 January 2007? If yes, what was the average period in which the refund was granted?



What were the VAT amounts requested since 1 January 2007?



# Fiscal autonomy, The controversial privilege of local authorities

At first glance, local taxes seem to cause the greatest controversy out of all the taxes imposed by the state. Respondents' perception is equally split between the assessment that this taxation system is optimal (35%) and complicated (32%).

This view is justified by the business nature of companies participating in the survey. Companies operating branches, subsidiaries or agencies throughout Romania express real discontent with the autonomy of the local system for introduction and collection of taxes, all the more since local tax compliance involves the allocation of significant staff and administrative resources.

Moreover, participants said that certain taxes are "simply absurd". One example could be the "tranquility tax" which is proportional to the used commercial area; in other towns, companies have to pay a "sanitation tax" per number of employees (who have to pay the same tax in their turn).

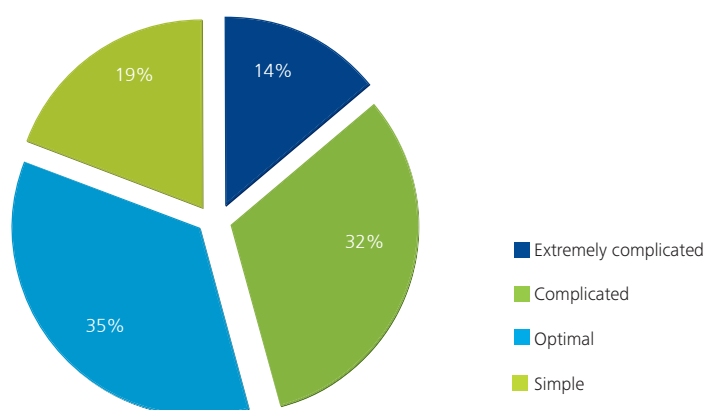
Another sensitive matter refers to companies' obligation to reevaluate real estate assets at least once every three years. In practice, many companies find such a requirement difficult to meet, given the group accounting policy constraints or the need to allocate additional human and financial resources for this purpose alone. However, non compliance with this requirement automatically triggers the payment of a significantly higher tax.

Overall, the general view is that the local taxes system is non-transparent and probably the most difficult one in terms of interpretation, with local and central authorities' opinions often standing in contradiction.

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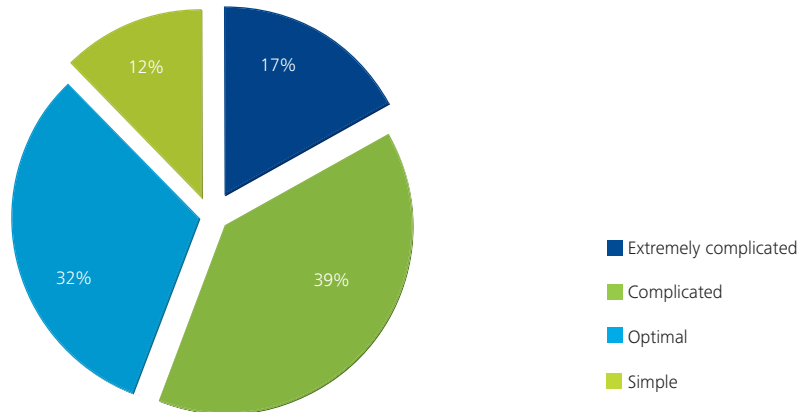
## The tranquility and safety tax, the sanitation tax, the special tax for providing financial support to culture and sport, are some of the controversial taxes imposed at local level.

How do you evaluate the current tax system/legislation corresponding to the local taxes?



# Companies demand a cap for social security contributions

How do you evaluate the current tax system/legislation corresponding to the social contributions?



## The multitude of laws and regulations create the need to unify the social contributions.

The first remark of the companies participating in the survey refers to the multitude of laws and regulations for each category of social security contribution and the need to merge them into one single law. These regulations are frequently changed and companies find hard to keep up with them. On these preliminary grounds, 56% of respondents described the social security system as being complicated and very complicated.

In respect to the contributions due both by the employer and the employees, participants pointed out that their level does not justify the benefits of the system, be it a pension, a health or an unemployment system. From this standpoint, one of the main measures which could ensure a balance between social insurance charges and the services received in return would be the introduction of a cap for certain contributions at a maximum taxable base.

Respondents have also highlighted difficulties within the compliance mechanism (i.e. declaration, payment, off-set or reimbursement), due to non-coordination amongst such charges and a lack of communication between various authorities managing social budgets.

On the other hand, 39% of the participant companies consider that the social security system is optimal. This perception resides mainly within companies that outsource their payroll process and thus manage to shift the related administrative burden.

# Reform within the fiscal administration starts with the human factor

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## Two factors significantly influencing the inspectors' attitude during tax audits are the size of the audited company and the designated competent authority.

One of the main drivers in improving the fiscal system is the fiscal administrative component, mainly the procedures taxpayers have to comply with when paying their fiscal dues. From the moment of tax registration up to closing of a business, companies have to comply with a continuous tax cycle structured on various components, out of which the declaration and payment liabilities are the most important ones.

Progress within the fiscal administration was noticeable in 2003 when an independent authority was set-up, the National Agency for Tax Administration - ANAF, which manages all relevant functions for tax income administration. This body operates at central and local level through various institutions which undertake relevant activities on management, collection, fiscal control and taxpayers' assistance.

Some 70% of survey participants stated their relationship with tax authorities was good. However, open discussions revealed that such a response should mostly be perceived as an overall view, in close connection with the companies' status as good taxpayers. This answer should be seen also from another perspective, as 55% of participants have noticed that the quality of their relationship with tax authorities depends on the specific unit/department they relate with. Participants, mostly assigned to the General Department of Large Taxpayers, underlined that there is a major difference in terms of quality when it comes to this specific unit, in a good way, as compared to other tax divisions.

Respondents also indicated positive and negative issues related to practical tax administration. Thus, they have noticed several malfunctions caused by too much bureaucracy in the system, a system which may not always provide an accurate picture on taxpayers' liabilities, in real time. In this respect, companies highlighted difficulties in getting without delays records of their tax status, certificates attesting the payment of tax liabilities, certificates of fiscal residence or certificates for attesting withheld taxes.

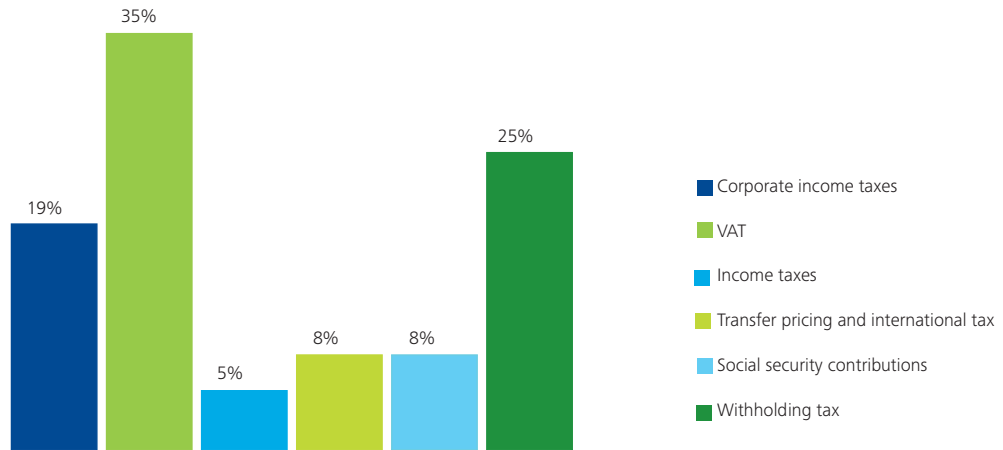
Electronic filing and usage of a sole bank account to pay all due taxes are obvious progress towards improvement of tax compliance. This progress supports the main principle of increasing the voluntary compliance rate: the easier the process of declaration and payment the higher the yield of taxpayers' voluntary compliance. This implies that taxes should be convenient to pay and not expensive to administer.

For companies, penalties for tax delays represent a very sensitive topic. The annual 36.5% percentage is obviously extremely high compared to the current level of interest rates on the financial market. Thus, the tax burden is excessive considering that late penalties applied regardless of the cause of payment delays (e.g. intention versus incapacity to comply).

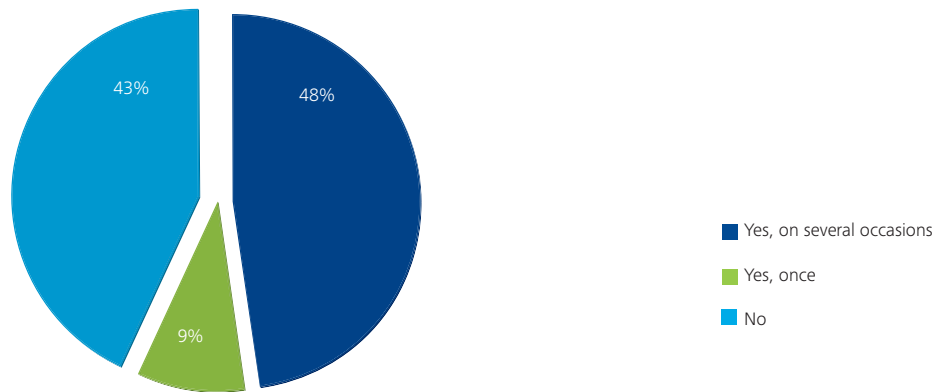
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## The annual 36.5% late payment interest rate is extremely high when compared to the international practice.

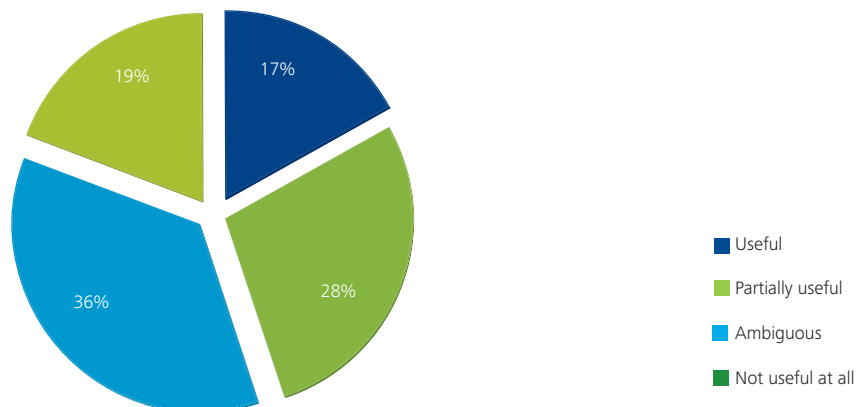
In what areas, if any, has your relationship with the Tax Authorities been particularly difficult?



Have you ever been involved in a situation where there was a difference of opinion between different departments of the Tax Authorities?



Have you applied for obtaining a binding ruling from the tax authorities? If yes, how did you perceive the answer from the tax authorities in terms of quality?



### Tax inspectors, at the border of the letter and the spirit of the law

By definition, the purpose of tax audits is to ensure the correctness and accuracy of taxpayers' fiscal obligations. The reasons for initiating an inspection procedure vary, and the law allows authorities to conduct such actions based on the available information they have (submitted tax returns, data gathered from other taxpayers, information on specific practices).

One of the questions in the survey referred to the purpose of recent tax inspections conducted by authorities. According to participants, the most frequent inspections were of general purpose (broad-spectrum audits carried out with a view to investigate the compliance with legal provisions related to all types of applicable taxes).

Transfer pricing inspections are rare for the moment (only 1% of respondents were subject to such an audit), it is however very likely that their frequency will increase in the future. The reason for such a small number may be the lack of experts in this field on a local level. Signals in this respect have been noted by companies carrying out transactions with affiliated entities. Most CFOs anticipate an increase in tax inspectors' activity in the area of reviewing transfer pricing documentation.

The respondents pointed out to tax inspectors' preference for specific tax areas that can easily generate additional assessments, given their restrictive and, often, abusive approaches. Few examples in this respect are the substantiation of VAT exemption for intra-community supplies and exports, the VAT treatment in real estate transactions, the VAT simplifications, justifying intra-group services related costs for profit tax deductibility purposes and tax losses substantiation.

According to the survey, the main deficiencies in tax inspection procedures are the extensive time-span and the prevalence of formal approach over economic substance. Thus, 57% of participants reported the considerable length of tax inspections, while 43% believed that tax inspectors tend to have a formal approach in checking records.

According to the survey, two factors that decisively influence the inspectors' attitude during an audit are the size of the audited company (based on the turnover) and the competent authority they are part of.

Between these two factors one can observe a cause-and-effect relation, with large taxpayers being managed by the general directorate especially established for this purpose. Tax inspections carried out by this structure were described as less focused on form-related aspects, while inspectors' attitude and knowledge were described as superior to those seen on a local level. The main advantages consist in the awareness of activities performed by the audited companies and the transparency in communication.

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## Formalizing direct negotiations between tax payers and the State would increase the efficiency and fairness of tax audits.

The lowest scores for the inspectors' attitude were given by companies administrated by tax authorities at a local level. Among other issues, respondents criticized the inspectors' tendency to ask for information on the spot and ignore on purpose some relevant arguments.

The Financial Guard's actions have been described as intimidating, as its employees are too zealous and affect the taxpayers' current activity.

In view of further improving the quality of fiscal inspections and ensure the audits' efficiency and equity, respondents stressed the need to officialise the concept of direct "negotiation" between authorities and taxpayers. This step should also be supported by a continuous investment in professional training (including a specialization by area of activity) of tax specialists dealing with tax inspections and letters of appeal.

Also, participants have unanimously agreed that the establishment of tax courts would increase the expertise and accountability of judicial decisions in tax matters.

### Communication without a common language

Another important aspect of the taxpayers' relationship with tax authorities is the correspondence in matters. The need to clarify the tax treatment of particular transactions determines taxpayers to ask local or central authorities for clarifications. According to the survey, the most frequently used method by the companies is to address letters directly to the authorities in which issues and concerns are brought to their attention. As per the fiscal procedures, authorities should provide an answer in a 45 day-period. It's worth mentioning that the answers provided by tax authorities are perceived as opinions, and thus are not binding against third parties (e.g. courts, tax inspectors, etc).

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## The faulty communication causes further distrust in the fiscal system, thus affecting even more the authorities – taxpayers' relationship.

Another way to get official clarification is to ask for the issuance of an individual binding ruling, applicable since the second half of 2007. The procedure ends when an administrative document is issued by ANAF. Its purpose is to rule on a future state of facts under the circumstances described by the taxpayer. The entire process is normalized by the Fiscal Procedure Code.

The official document has the advantage of being binding against tax authorities. However, most respondents seem to be unaware of or do not use such a procedure. Only few taxpayers (2%) have applied this method which alleviates the risk of tax authorities reconsidering a particular tax treatment.

The purpose of the survey was also to measure the usefulness and clarity of answers provided by the tax authorities to the taxpayers. Most respondents (55 %) said these answers were ambiguous or simply useless. The most frequently mentioned reason was that such answers are merely excerpts from the law and do not provide an interpretation of the described situation. This shows that authorities do not provide solutions for the most difficult business cases, and thus avoid assuming responsibility. Of course, the degree of knowledge or lack of reside with the authority the taxpayers is addressing the issues. While answers issued by directorates within the Ministry of Finance are sometimes detailed and relevant, at a local level significant interpretation errors can be noticed.

Respondents have also pointed to the delay in delivering answers, situations when the legal deadline has been respected being more of an exception rather than a rule. In 20% of the cases, authorities answered to the taxpayers' letters after more than 90 days – a time delay which can have serious consequences on the correct reporting of tax liabilities.

A surprising 32% of survey participants have signaled the non-cooperative attitude of tax authorities. Respondents complained about the increased number of meetings and additional information requests from the tax authorities, resulting in an extension of legal timeframes. This problem has also been noticed by the taxpayers that initiated procedures to obtain individual binding rulings.

As a conclusion, the faulty communication causes further distrust in the fiscal system, thus affecting even more the fiscal authorities – taxpayers' relationship.

# Conclusions and recommendations

At first glance, Romania has a competitive tax system in the region, the flat income tax of 16% and the VAT standard rate of 19% suggesting the favorable environment for existing companies or new investors. However, the Romanian fiscal system is losing in competitiveness because of the high frequency of legislative changes, the unclear, contradictory or poorly regulated areas and the inefficiency of legal and administrative authorities.

Over the past ten years, the tax system has undergone numerous, unpredictable and sometimes controversial changes, that influenced the business environment and neutralized financial forecasts or business plans. The study shows also that lack of sophistication of the tax regulatory framework in certain key areas cannot meet the needs of today's complex business environment within the European and the international context, often causing uncertainty of the fiscal impact on the performed transactions.

Nevertheless, businesses have noticed the positive evolution of the regulatory framework over the past five years, from the unification of all tax regulations into a single Code to the introduction of European jurisprudence provisions.

The main platforms in need for a reform are the administrative capacity and the fiscal procedure. The reform of a slow tedious bureaucratic system and the improvement of authorities' transparency are imperative conditions for the normal functioning of the economy.

Companies pointed out the length of tax litigations and often the lack of accountability of the administrative or judicial authorities. These issues, such as time consuming procedures or unclear responses are also valid for the day-to-day relationship or correspondence between authorities and companies. In close connection, the lack of expertise of various authorities on complex or specific tax issues makes collaboration with the business environment difficult or even non-existent.

Of course, the various perceptions on the relationship with the authorities depend on the level of tax authorities (central versus local), the bodies to which they belong to (ANAF, municipalities, ANV), types of taxes involved or the area of respondents' activity.

Most companies agree that improving legislation and tax administration are goals that need to be pursued while the State assumes a long-term fiscal strategy.

As a result, the study reveals some general recommendations provided by businesses. Firstly, companies consider that maintaining the flat tax rate is a necessity in preserving Romania's fiscal stability, as a counterbalance to the current economic turbulences. Also, changes in the legal framework need to happen in a normal way, to meet the needs imposed by the current economic complexity, without turning into an uncertain or destabilizing factor for taxpayers.

Improving the relationship between authorities and taxpayers should be based on a continuous attitude - changing process on the authorities' side, as well as the development of their expertise and specialization by industries. Flexibility and transparency of such relationship requires a better legislative formalization of rights and obligations between the parties and the possibility of direct negotiation and mediation between taxpayers and tax authorities.

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“A fiscal system favorable to the business environment can only be developed through a transparent and efficient dialogue between the legislator and the contributors.”

Rodica Segărceanu, Partner, Deloitte Tax

# Methodology

The survey reflects the opinions of 130 CFOs, CEOs and heads of internal tax teams from top Romanian companies. Participants represent the most important industries in Romania: Consumer Business (24%), Financial Services (22%), Manufacturing (19%), Technology, Media and Telecommunications (16%), Business Services (6%), Life Sciences and Healthcare (5%), Real Estate and Construction (5%), Energy & Resources (2%), Aviation and Transport (1%).

The results of this tax survey exclusively reflect the opinion of participating companies, and Deloitte Tax S.R.L. has only assumed the objective role of presenting them in a centralized manner. The selected group of companies is not supposed to be an exhaustive sample for the entire Romanian economy.

Although, overall, the fiscal system applies to all companies, regardless of industry, some provisions may have a stronger impact in certain areas. The survey tried to cover all relevant Romanian industries and various financial sizes in a unified manner.

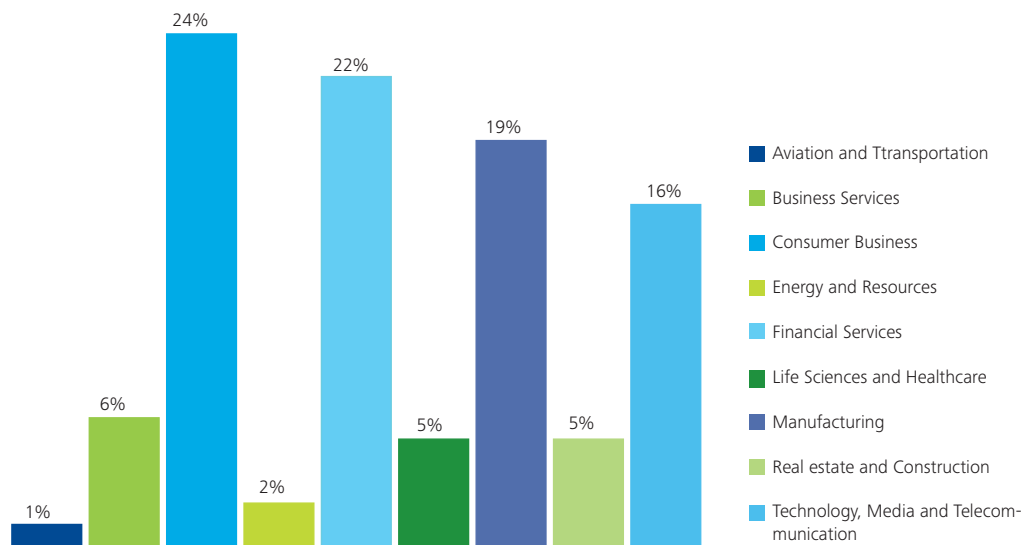
The questionnaire primarily comprised of closed, single and multiple-choice questions. Respondents also had the opportunity to add their comments where the provided answers did not fully represent their views. The figures for multiple-choice questions reflect the percentage of all answers provided to those questions.

Additionally, over 60% of the overall responses were the direct result of face-to-face interviews conducted by Deloitte Tax Partners and senior fiscal consultants, thus allowing respondents to further elaborate their view on the Romanian fiscal regime and the problems they are facing.

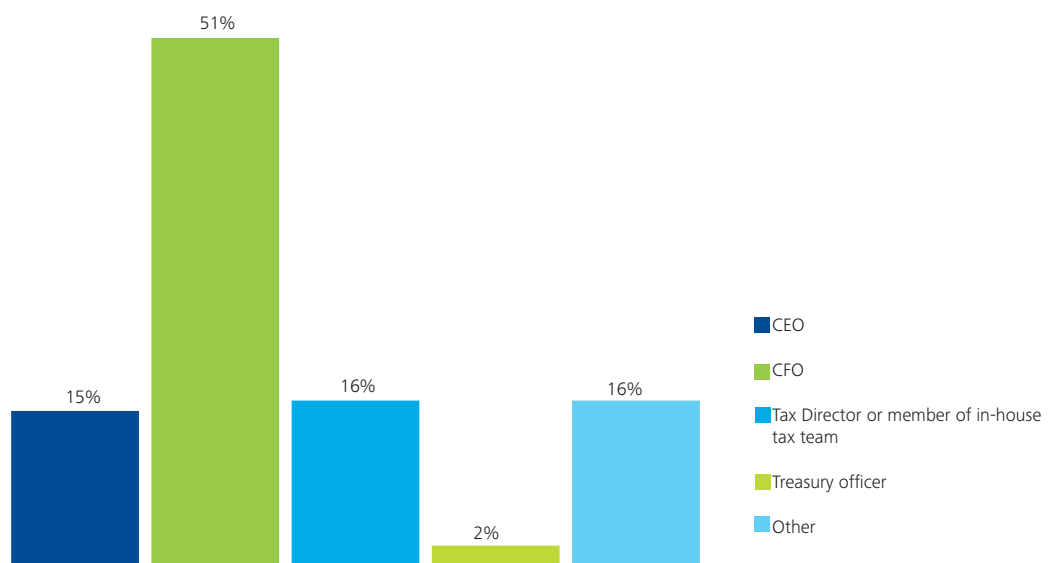


# Appendix

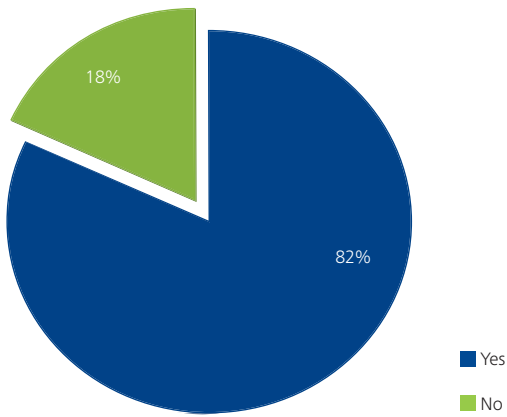
Respondents breakdown by industry



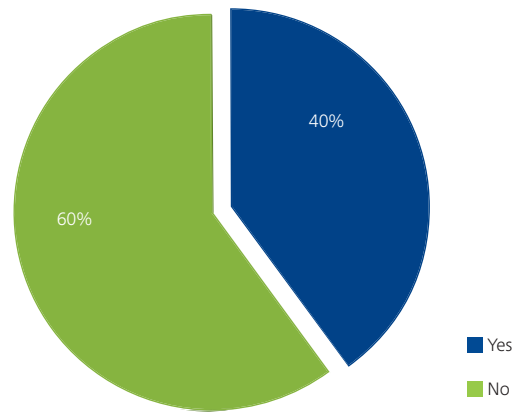
Respondents breakdown by functions occupied within the company.



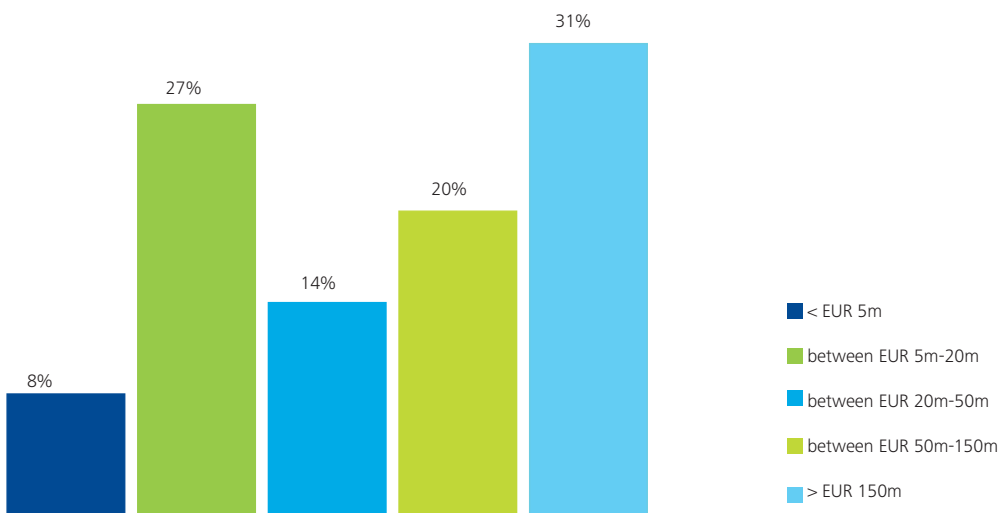
Are you part of a global group?



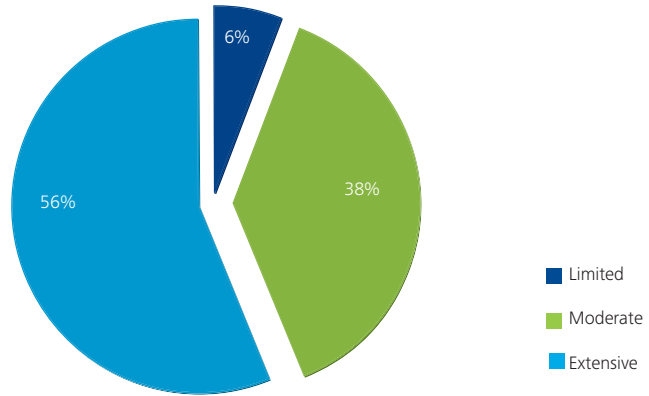
Do you have a dedicated in-house tax group?



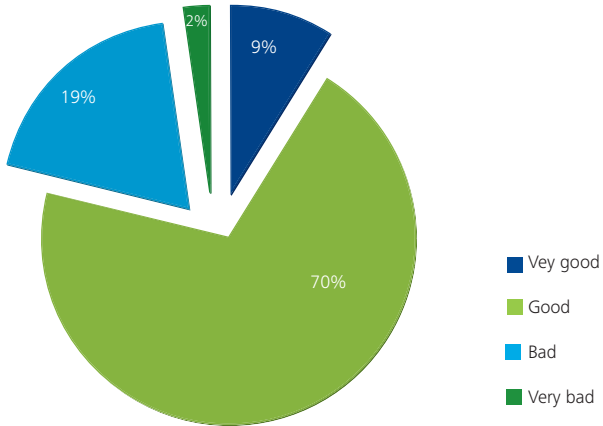
What is your company's turnover?



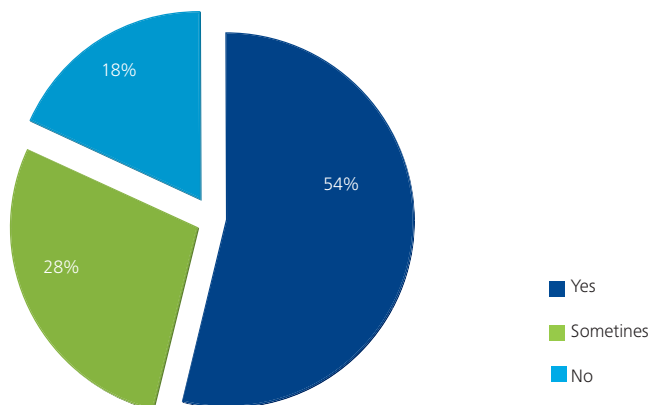
What is your level of involvement in tax matters?



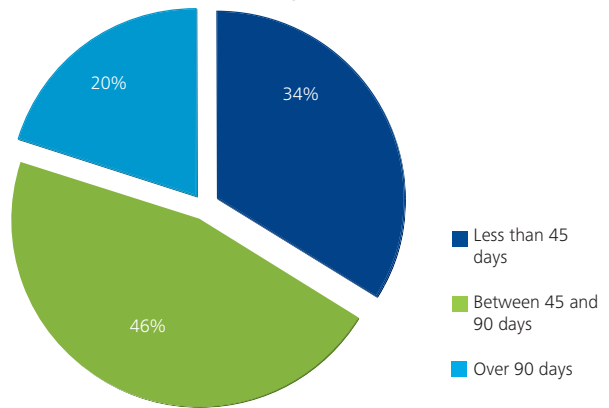
How would you describe in general your relationship with the Tax Authorities?



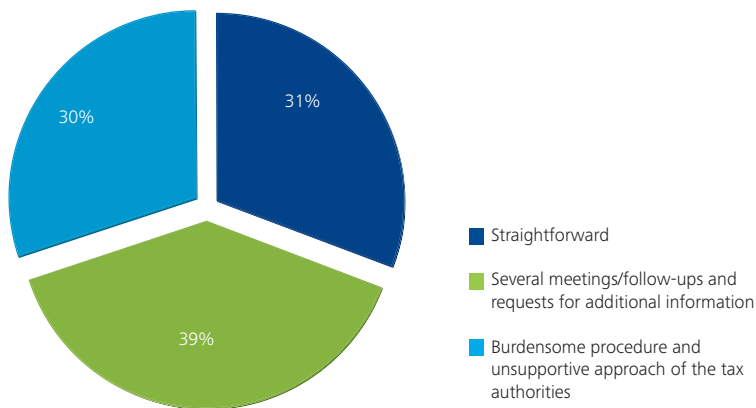
Do you believe that the quality of your relationships depends upon the particular directorate within the Tax Authorities with which you are dealing?



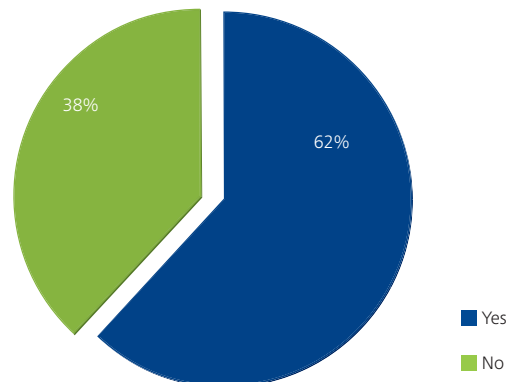
Have you applied for obtaining a binding ruling from the tax authorities? If yes, how did you perceive the answer from the tax authorities in terms of timing?



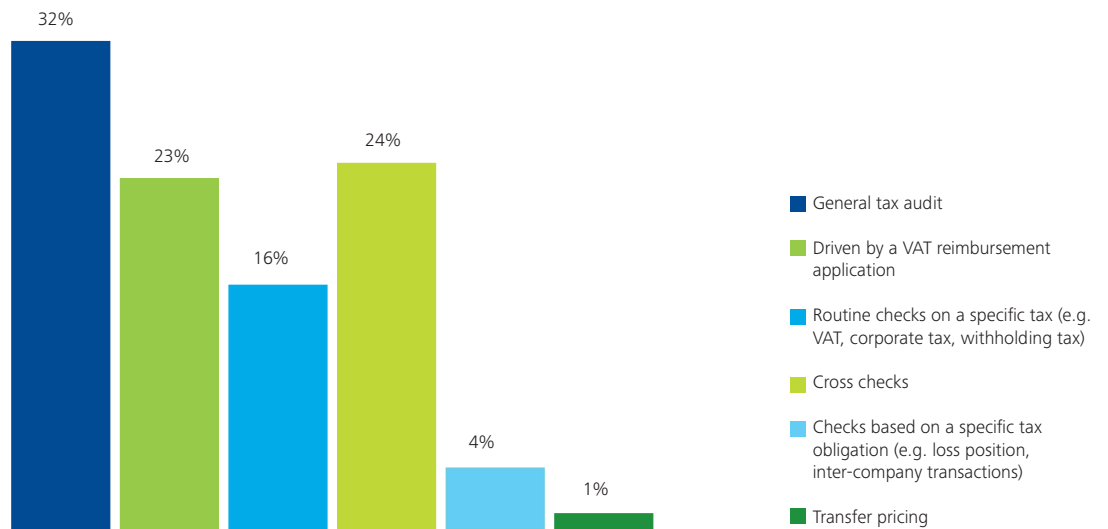
Have you applied for obtaining a binding ruling from the tax authorities? If yes, how did you perceive the answer from the tax authorities in terms of procedure?



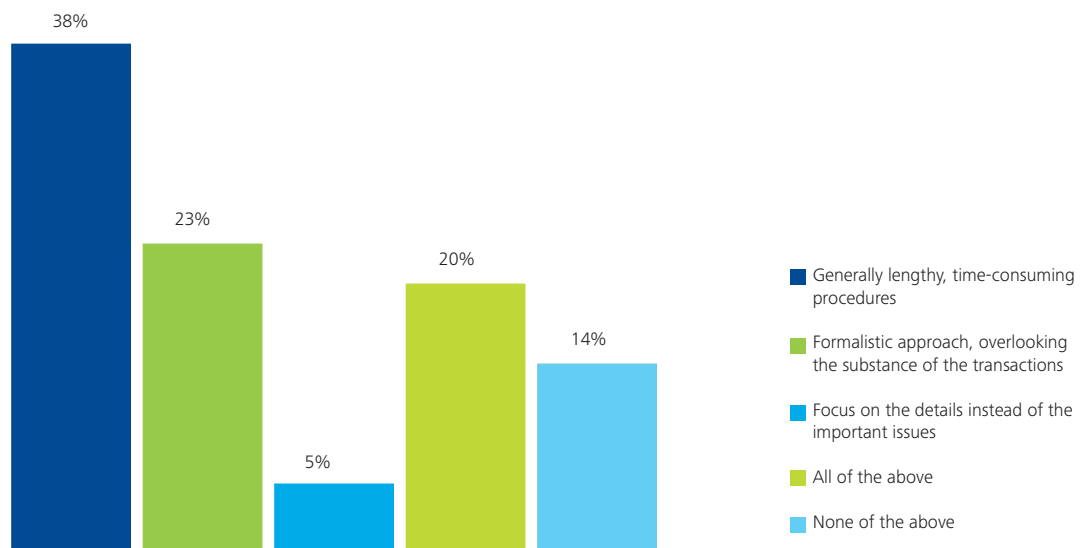
Has your company been the subject of a tax audit since 1 January 2007?



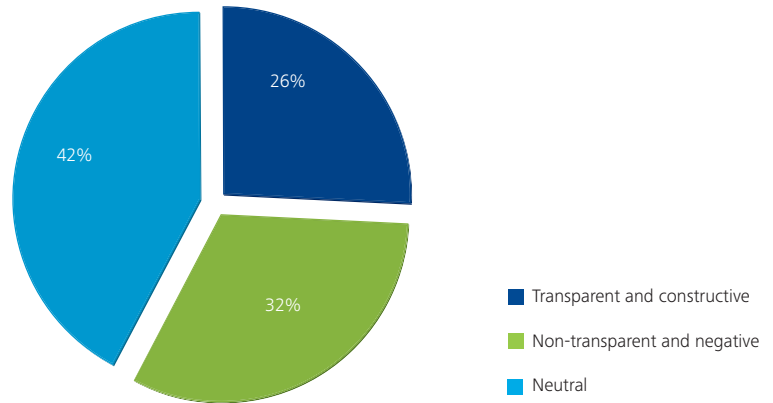
What was the nature of the last tax audit performed by the tax authorities?



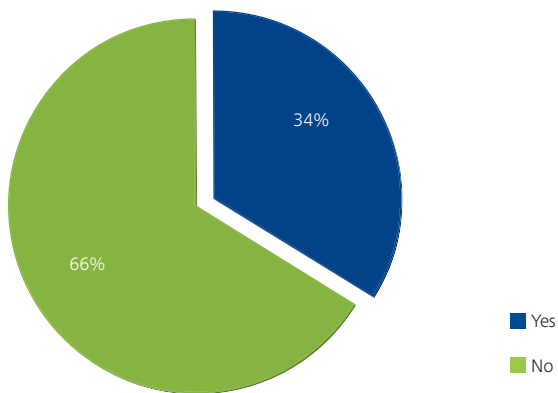
Which do you think are the weak points of the tax inspection procedures?



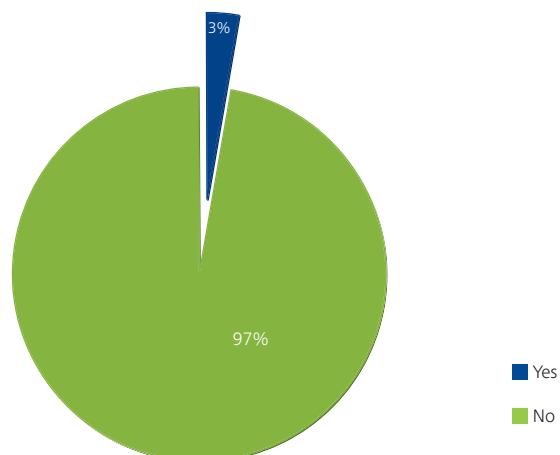
How would you describe the tax inspector's conduct during the inspection?



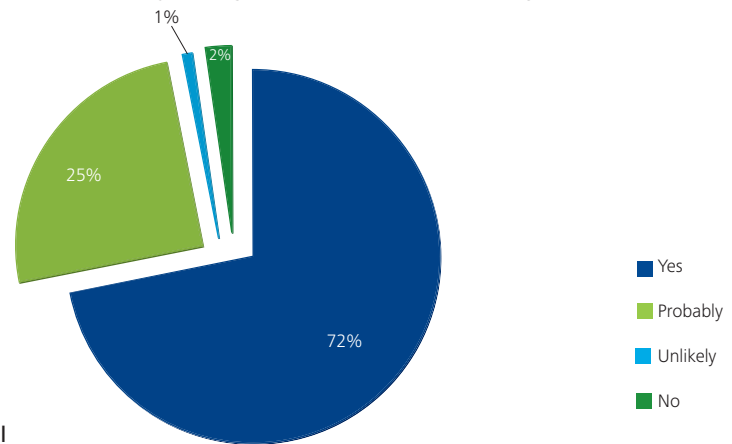
Did you benefit from a fast reimbursement (granted without prior tax inspection) since 1 January 2007?



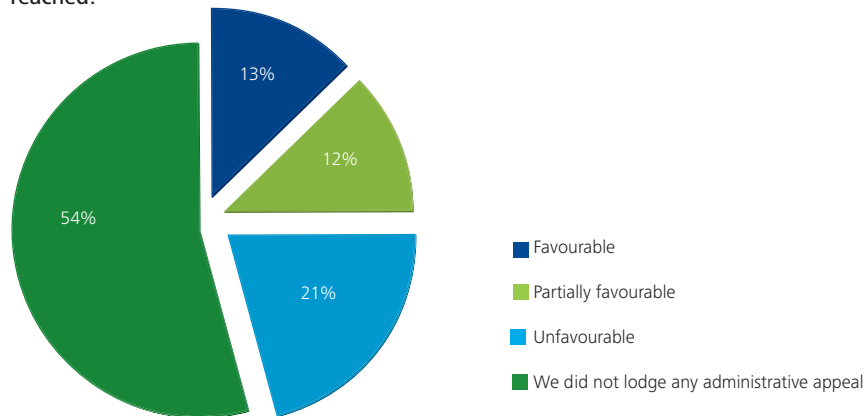
Have you asked late payment penalties for delayed VAT reimbursements?



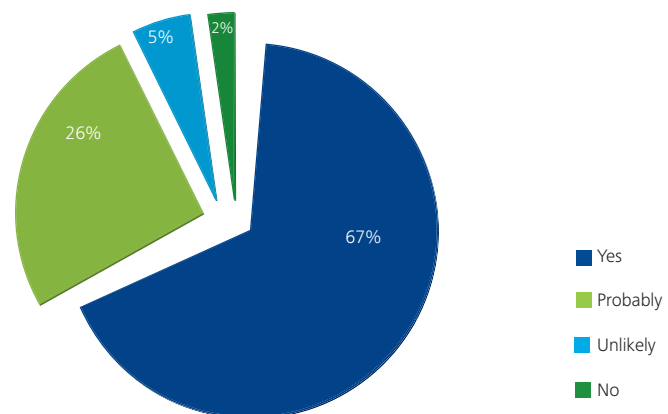
If you would not be able to reach agreement with the tax authorities on specific matter, would you lodge an administrative appeal against this decision?



If you previously lodged any fiscal administrative appeal on a certain tax matter, how would you range the solution reached?



If an administrative appeal fails, would you be prepared to go to court?



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