

INTERNAL AND EUROPEAN MEASURES OF COMBATING TAX EVASION

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Abstract

Tax evasion is a subject increasingly approached by the Romanian authorities - through the desire to prevent and combat it, as well as by the Member States of the European Union, which are looking for the most effective methods of preventing and combating tax fraud.

It can be seen as a "struggle" between authorities, who want to prevent and combat tax evasion by any means, and the natural or legal persons who continually invent new ways of circumventing their tax obligations.

The apparent intention of taxpayers to fraud the law results in large losses to state budgets, as well as increased unfair competition between individual taxpayers and increased financial pressure for individual taxpayers who consistently comply with their tax obligations.

Keywords: Tax evasion, fighting measures, tax system, legislation.

Clasificare JEL : E62, G38, H26, H32

1. Introduction

In Romania, we identify the definition of tax evasion in the provisions of Article 9 (1) of Law no. 241/2005, law that criminalizes the facts of tax evasion.

As it can be seen, even from the title of the law, it is first and foremost the prevention and then the fight against the tax evasion offense.

This paper will highlight measures to combat and prevent tax evasion at both national and European level.

Unfortunately, in Romania, although there is a special law providing for tax evasion and punishment, it can easily be observed that it regulates only the fight against it without being issued in a specific way the prevention.

In this condition it is necessary to identify and develop ways of prevention that have not been included by the legislator in the special law. By preventing, the taxpayer no longer feels the need to circumvent the law, but fulfills his tax obligations. Naturally, the state budget increases, and social facilities are easier to support at national level.

The main cause of the evasion phenomenon is given by the ratio between the total amount of taxes due by the taxpayer to the state, namely the capacity of the state institutions to collect them efficiently. The difference between the estimated taxes and the taxes actually collected results in the real value of the tax evasion manifested in the national economy.

The macro-level measures to be taken to reduce tax evasion should focus on tax policy adjustment. Thus, a small number of pressures on the taxpayer may lead him to choose to pay them, thus giving up the means of by-pass, because the gain thus obtained would be much lower at the risk he assumes, from the point of view of criminal and administrative liability, if he chooses not to pay them.

What the authorities should do? First they must prevent and then to combat. It is very important to identify new ways to prevent, than to combat a fiscal fraud that was already done.

So both Romanian and European authorities are trying to develop prevention strategies on three major pathways: legislative, social and fiscal.

2. Measures to combat tax evasion

The preventive nature should firstly be the determination of the suspected taxpayer to cover his own damages. Thus, the role of the legal and fiscal authorities is reduced, resulting in benefits from both sides.

To all these benefits a number of factors have competed, such as how the fiscal apparatus of the state is organized and functioning, and how tax fraud complaints are solved.

The sanctioning nature seeks to compel the taxpayer not to commit criminal acts with fiscal consequences. To prevent the occurrence of such an act, the causes of tax evasion must be taken into account.

Among these common causes are:

- Instability of the legislative framework - The continuous development of the various fields of activity requires the existence of a current legislative framework. From this point of view, the legislator must consider all the elements that influence the commission of tax offenses.

- Tax pressure - With regard to fiscal pressure, the authorities have to take into account the national fiscal pressure given by the tax rate and individual tax pressure of each taxpayer, by the financial pressure he feels every time he has to fulfill tax obligations, but also the psychological pressure that arises with the financial stress of paying taxes.

In motivation for committing tax evasion several elements should be considered:

- 1) material - by committing evasion the taxpayer increases his income, improves his living standards;

- 2) psychological - by which the taxpayer is aware of the risk he / she is assuming if he / she is committing the act, but considers that his / her income is inversely counterproductive to his / her work, so that the payment of some taxes on his / her would make life even more difficult;

- 3) social - which compares the personal level of living with the general level of living.

Both in Romania and at European Union level, evasion has particularly serious consequences on states budgets and tax systems, in this way the principle of fair and transparent taxation being broken.

In order to have a lower value of tax evasion, Romania needs to make the collection of VAT more efficient as well as the fight against it.

Romania is the weakest European Union (EU) state in VAT collection, with the Romanian Fiscal collection accounting for less than two-thirds of the total

This means that one third of the money is leaked because of tax evasion, but also because of VAT frauds through ghost companies and tax optimizations by some multinationals.

Income collected from value added tax			
Indicator	Trim. II 2016	Trim. II 2017	Trim. II 2017 versus trim. II 2016
	millions		percent
Total VAT	12.108,50	12.286,30	101,5
VAT charged	15.223,40	15.908,40	104,5
VAT returned	3.262,30	3.736,80	114,5
Interests and penalties	147,4	114,7	77,8

Source: www.consiliulfiscal.ro

The European Union has tried to have a good governance system in the tax area, following some basic principles such as transparency of information, automatic exchange of information a fair tax competition. Based on these principles, the European Union has attempted to elaborate several tools to improve the ability of Member States to combat evasion.

Among these principles, the European Union developed the most comprehensive legislation on transparency, information sharing and administrative cooperation, coordinated action by Member States, including aggressive fiscal planning and recommendations to each country.

The European Union considers it to be a priority for Member States to use these systems specifically designed to combat tax evasion, to make the necessary improvements to national economic systems and to implement the measures agreed in the conventions to which the Member States were signatories.

2.1. Actions at national level

All these systems need to be reviewed and reformed to support social protection systems, public services, to limit refinancing costs supported by the state and public authorities, and to avoid having a negative impact on the rest of the economy. By reducing fraud and tax evasion, Member States can increase their revenue from taxes and duties, which will also give them the opportunity of fiscal restructuring of systems in a way that promotes better growth

Reducing tax fraud and tax evasion can also support the efforts of the Member States to ease the tax burden on low-income people and the most vulnerable groups. For one third of Member States, improving tax systems is a special challenge generated by several factors, such as:

- high administrative costs of net collected revenue,
- non-use of information provided by third parties for the pre-completion of tax returns,
- less use of electronic forms,
- the considerable administrative burden generated by tax systems on medium-sized enterprises.

At national level, each Member State has to implement the system of combating tax evasion designed by its own government, but it also has to take into account the aspects that the European Union has recommended some elements/measures to be implemented.

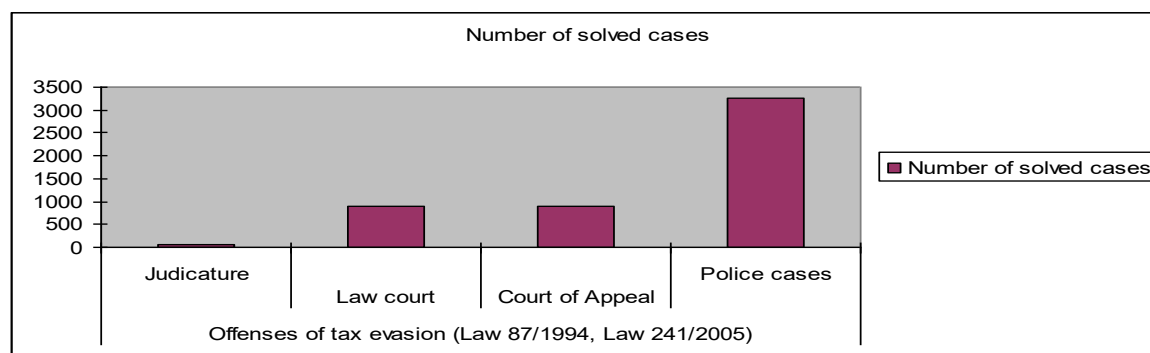
Measures to improve compliance with tax rules and promote more efficient tax administrations include:

- developing a compliance strategy and focusing efforts to combat tax evasion;
- greater use of information provided by third parties;
- preparation of pre-completed tax returns
- making concerted efforts to reduce the size of the underground economy, for example by imposing criminal sanctions for those who hire non-legal workers,
- the use of mandatory electronic payments for acquisitions that exceed a certain threshold or the use of monetary incentives to declare income (tax cuts).

Measures to combat tax evasion were also taken by the police authorities and the judiciary courts by resolving cases of the tax evasion offense.

In 2017 from a number of 3397 cases registered on Romanian courts of justice involving tax evasion 1865 were solved and the criminals have been convicted.

Also in 2017 the police authorities from a total number of 20603 cases solved on crimes concerning special laws 3260 were on tax evasion.



Source: Romanian Ministry of Justice and Romanian Police

Another measure ordered by the authorities is confiscation of goods. Tax authorities are increasingly confronted with the tendency of individuals and businesses to "improve" the phenomenon of tax evasion. For this reason, it is attempted in all legal ways to prevent and combat this phenomenon.

From the tax point of view, it was tried to impose taxes, to set up specialized departments in the fight against fiscal fraud, as well as the option to declare the revenues on their own, and from the legal point of view, it was attempted to support the fiscal prerogatives, by introducing into the current legal system offenses that provide for and punish this kind of deeds.

The legal measure of confiscation is the security measure provided by the Criminal Code, which consists in the forced passage of property belonging to the person who committed the offense to the state property in order to prevent the commission of another offense.

The Romanian Criminal Code provides for two categories of confiscation: the special confiscation and the extended confiscation.

The measure of confiscation is a sanction that falls within the criminal law, ordering the deed, respectively the assets related to the investigated crime and the judgment. For this reason, this measure is one that enjoys imprescriptibility. It is also not affected by those causes leading to the procedural measure of termination of the criminal proceedings or the elimination of criminal liability.

The confiscation measure is a definitive legal measure. In other words, it can not be revoked on the grounds of ending the state of danger. As a result of this measure, the confiscated property passes to the state patrimony or is destroyed. However, in certain circumstances, if the measure of confiscation has been wrongly ordered, it will be ordered, according to the law, to return the goods or their counterfeit if the goods no longer exist.

One of the prerogatives of the judiciary is the extensive confiscation of property as a security measure, as provided by Article 112¹ of the Criminal Code, as follows:

"They shall be liable to the confiscation of goods and goods other than those referred to in Article 112, if the person is convicted of having one of the following infractions, if the deed is susceptible to obtain a material benefit and the penalty provided by law is imprisonment for 4 years or more:

(...)

d) money laundering;

g) co-establishment of an organized infra-State group;

k) divorce of economic secrecy, unfair competition, non-compliance with disputes concerning import or export operations, misappropriation of funds, import and export regimes, importation and removal from the country waste and residues;

n) tax evasion offenses;

p) frauds committed through computer systems and electronic payment systems" (Criminal Code, 2014) [7].

Hence results that the extent of the large confiscation means that security measure by which goods belonging to persons who have committed a certain offense and who can not justify the lawful origin of their possessions are confiscated. Against the decision to dispose of the extended confiscation measure, appeal may be declared within 10 days.

When, under the criminal procedure, no legal remedy has been raised, the extended confiscation measure may also be challenged by lodging an appeal against enforcement under the civil procedure.

When it is decided to apply the complementary measure of extended confiscation, account shall also be taken of the amount of property previously transferred by that convicted person or by a third party to one of its family members or other persons with whom the person against whom the measure was settled, established relations of the nature of affiliated legal entities, those that exist and are recognized between legitimate spouses or those between their parents and their children.

According to Article 118² of the Criminal Code, the goods include money. When determining the difference between licit and known incomes, on the one hand, compared to the

value of the uses (the acquired goods), account will be taken of the value of the goods at the time of their acquisition, as well as the current expenses incurred by the person ordered the measure. If the assets that can be subject to confiscation can not be identified, they are subject to the confiscation of amounts of money and goods to cover their value. At the same time, it is confiscated within this measure and the goods, respectively, the money that resulted from the activity of exploiting or using the goods that have been subjected to the confiscation measure.

In 2007 was released the Law no. 144 which concerns the establishment, organization and functioning of the National Integrity Agency. This institution is an autonomous administrative control authority that is operationally independent, having as its material competence: the verification of assets, the verification of conflicts of interest and the verification of compliance with the incompatibility regime while exercising public functions.

According to this normative act, when integrity inspectors find that there is a difference of more than EUR 10 000 between the wealth acquired in a given timeframe compared to the statutory and known earnings established for the same reference period, they shall address to the Commission Investigation of the assets of the Court of Appeal. After the checks are carried out, if there are indications of a crime, it may decide, as the case may be, to refer the case to the judges of the Court of Appeal, to classify the case or even to suspend it.

The competent court, in such a criminal case, may issue a judgment ordering the confiscation of the property or part thereof, which has been unreasonably gained, additionally applying the prohibition to perform a function; or public dignity, with the exception of elective positions, for a maximum period of 3 years. The applicable rules are, therefore, those of the civil proceedings, and there is no need in this situation to issue a conviction.

The procedural steps to be taken on a mandatory basis in the application of the complementary confiscation measure (applicable to both the special confiscation procedure and the extended confiscation procedure) are as follows:

- Identification of all susceptible goods coming from committing offenses;
- Effective lifting or blocking all assets or values that could be identified;
- Applying the precautionary measure of seizure (i.e. unavailability of them, followed by their preservation).

In accordance with the provisions of Article 163 of the Criminal Procedure Code, all such precautionary measures may be ordered during the period of the criminal prosecution or by the court.

These measures consist basically in the unavailability of the identified movable and immovable property through sequestration for the purpose of subsequent special confiscation in order to repair the material damage caused by the offense in question and to ensure the execution of the punishment of the fine.

In the case of the injunctive measures ordered to repair the damage, they may be ordered for all property belonging to the suspect or the defendant, as well as the person in charge of the civil liability, up to the value set as loss. The precautionary measures ordered for the purpose of guaranteeing the execution of the punishment with a fine are only available on the property belonging to the suspect or defendant.

During the course of the criminal investigation, if the owner does not agree, when the prosecutor who ordered the execution of the seizure considers that it is necessary to realize the exploitation of the movable assets that have been seized, a term not less than 10 days, the date on which the presence of the parties and the custodian of the goods is ordered, in the situation in which it was designated.

Against the order by which the measure of valorization of seized movable goods was ordered, the parties, custodians can complain. He can also appeal to any other interested person, but within the same 10-day deadline. The complaint shall be lodged with the court having jurisdiction to hear and settle the case at first instance. Execution is legally suspended when the complaint is filed against the order.

Judgment of this case is carried out with emergency. The decision of the court to settle the appeal is final. In the course of the trial phase, the competent court may, ex officio or at the request

of the prosecutor, respectively of one of the parties or of the designated custodian, order the recovery of movable assets that have been seized. In this respect, the court is to set a time limit, which may not be less than 10 days, to which the parties and the custodians of the goods are quoted, if they have been appointed. On the occasion of the finalization of the term, the parties are to be discussed in public session with the question of the capitalization of the seized movable goods, specifying their right to make observations or submit claims related thereto.

2.2. Actions at EU level

The European Commission is currently carrying out a set of ambitious measures aimed at implementing the tax policy as transparently and as efficiently as possible by the Member States. In order to achieve its goal of pursuing sustainable economic growth and the implementation of investment measures capable of supporting the people and national economies by creating new and more balanced jobs in a market as unitary as possible.

Tax evasion and non-compliance with the tax rules imposed by each state affects the budgets of very large sums every year, distorting competition between economic agents to the detriment of all taxpayers. This undermines the concept of tax systems favorable to economic growth and prevents a successful union of capital markets.

Competition is likely to be very small or lacking, due to the fact that small and medium-sized enterprises, which are the main source of jobs in Europe, are getting to state budgets much higher taxes and charges, inversely proportional to revenues which it receives, unlike large enterprises, which would have the potential to develop aggressive tax planning.

Also, the lack of fair taxation, according to each taxpayer, can also be observed in the case of labor force. Thus, if the labor force lacks or develops at a very slow rhythm, governments compensate lost income by increasing other taxes.

Taking into account the cross-border nature of tax evasion, action to combat this phenomenon at national level is not sufficient. If national tax decisions are taken not to coordinate with European and international fiscal measures, the situation can be aggravated by fragmenting the single market, creating new tasks for taxpayers and opening new breaches that can be exploited by those who use aggressive tax planning. It is very important to always take account at national level of measures taken at European and international level to combat tax evasion.

"The European Commission inserted in the White Paper of the European Governance the principles to be observed in the governance reform process: openness, participation, availability, effectiveness and coherence, principles specific to the rule of law and the democratic system at all levels of government: national, regional and local" (Pîrvu, 2010) [4]

The European Commission, also taking into account the global context of combating tax evasion, always proposes aggressive measures and has a firm position against tax abuses. Among the progress made in combating tax evasion at European level, one can observe:

- **Increase fiscal transparency** - A first step towards fairer and more efficient taxation has been to increase Europe-wide fiscal transparency. Among the targets proposed by the European Union are transparency and cooperation between tax authorities, as well as enhanced control of cross-border business tax practices. Starting in 2017, all Member States apply a policy of automatic data and information exchange systematically regarding their cross-border tax decisions.

It also aims at transparency towards the people. In this respect, financial institutions have to publish key information about their own activities, taxes, profits and public subsidies received, broken down by country, inside or outside the European Union. Another Commission proposal on transparency was that all multinationals should publish their financial results for each country in which they operate. In this way, these multinationals are responsible, competition between these types of businesses becomes a fair one, they are encouraged to pay taxes accordingly. Transparency is not examined and imposed only on multinational enterprises but also on individuals.

- **A fairer taxation.** For the stated purpose of applying fiscal transparency, a firm approach was taken to ensure that Member States have at national and European level instruments to ensure the protection of taxable bases against abuse and to collect as efficiently as possible the legitimate

revenues. A series of measures aimed at modernizing the taxation system of EU companies, combating aggressive fiscal planning and factors favoring it, as well as minimizing the risk of unjustified double taxation

- **Exploitation of links between anti-money laundering and tax transparency rules.** The existence and disclosure of certain fiscal havens has confirmed that lack of transparency with regard to real beneficiaries may facilitate money laundering, corruption and tax evasion.

- **Improve the exchange of information on real beneficiaries.** The European Union reiterated the need for all Member States to be aware of the importance they need to give to administrative cooperation activities between tax authorities with an active role in preventing and combating tax abuses.

- Strengthen the oversight of facilitators and aggressive tax planning promoters. With the devolution and implementation of this additional measure at the level of the European Union, the competent tax authorities of the Member States are in a position to identify more rapidly and to provide measures to block the fraud activities. They will also be able to identify the shortcomings of the legislative system and correct them more efficiently.

3. Conclusions

Effectiveness of preventing and combating tax evasion is a necessary fact as it actually changes the economic activity of a country and condition the quality of the services it offers to its citizens. In this sense, each state must develop a system of citizens' awareness of the necessary character of taxation, of tax compliance, as well as of the results that tax law compliance has in combating and preventing tax fraud.

Awareness raising has no effect if the population does not respond positively to it. The degree of compliance varies from one country to another, from one entity to another, from one individual to another. In order to reach a high level of prevention of tax fraud, the factors influencing fiscal behavior must be studied in detail.

However, the main way to combat tax evasion remains control. To that end, precise targets that taxpayers have to respect should be studied and set out. Checks should be made at both microeconomic and macroeconomic level.

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