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Tax evasion and its implications in the current economic climate

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The excessive increase of the tax burden, the existence of a bad legislation, the lack of effective fiscal control and insufficient education of taxpayers are the main causes of tax evasion. While impossible to determine the exact size of the tax evasion, approximate measures and statistical data are used for its measurement. This is necessary to determine the effectiveness of prevention and combating evasion methods but also to estimate the negative consequences.

Tax evasion is a complex phenomenon that came into being with the advent of tax laws, manifesting itself differently from one period to another, depending on the specific legal context of each period.

Conceptually, tax evasion was approached differently over time, being associated with the notion of fraud, with fleeing from taxes or evading tax obligations. In legal literature, is present a relevant definition in terms of the causes leading to tax evasion, "the logical result of flaws and inconsistencies of a imperfect legislation, of bad methods of application and failure to provide and incompetence of legislator whose excessive taxation is as guilty as those they thereby challenges to evasion"¹.

The legal definition of tax evasion is included in Law no.87 / 1994 for combating tax evasion (repealed by the Law no.241 / 2005 for preventing and combating tax evasion) "theft by any means from the imposition or payment of taxes , contributions and other amounts owed to the state budget, local budgets, state social insurance budget and special funds by individuals and legal Romanian or foreign taxpayers', named in the content of the law"².

Unlike previous legal regulation, Law no.241 / 2005 for preventing and combating tax evasion, as amended and supplemented does not offer an explicit definition of evasion, assimilating it with the crime, for which is provided the imprisonment for different periods, depending on the seriousness of the offense committed. However, in this normative act are listed acts committed in order to escape the tax obligations that constitute tax evasion offenses:

„- Hiding taxable goods or source;

- The failure, in whole or in part, to highlight in the accounting documents or other legal documents, of the conducted commercial operations or revenues;

- Highlighting, in accounting documents or other legal documents, of the charges that are not based on real transactions or highlighting other fictitious operations;

- Altering, destroying or hiding accounting documents, memoirs of tax machines or electronic cash registers or other data storage of media;

- Execution of double accounting records, using documents or other data storage media;

- Evading financial checks, tax or customs by not declaring, fictitious or inaccurate declaration on the side of the head offices or secondary of checked persons;

- Substitution, degradation or alienation by the debtor or by third parties of forfeitures in accordance with the provisions of the Fiscal Procedure Code and the Code of Criminal Procedure³.”

¹ D.D. Șaguna, Financial and Tax Law, Ed. All Beck, Bucharest, 2003, p.468

² Art. 1 of the Law no.87 / 1994 on combating tax evasion republished M.O. no. 545/2003

³ Art. 9 of Law No. 241/2005 for preventing and combating tax evasion, as amended and supplemented, M.O. No. 672/2005

Tax evasion is known in the literature as two manifestations: legal or tolerated tax evasion, which is performed at the law shelter and fraudulent evasion, unlawful, which is achieved by breaking the law. Theoretically, legal tax evasion can be seen as a contradiction by joining the two terms, since it is difficult to perceive an avoidance as legal, in the same way that illegal tax evasion is a redundancy.

Although no law refers to legal tax evasion, it is found in practice in various forms, from the speculation of regulatory gaps, to the migration of capital to tax havens. Thus, the absence of clear tax laws, regulating certain taxes and fees has the same effect of generating tax evasion and the existence of a thick or confused legal framework. Lack of political will or inability of the legislature towards developing legislation which is clear and precise are predisposing factors. But successive attempts to exploit loopholes in the law, lead the legal taxpayer to fraud.

Tax evasion can be achieved not only locally but also internationally. Applying the principle of free movement of persons and capital leads to migration of people interested towards member states that offer a convenient tax haven or by transfer of taxable in countries with low tax or even inexistant. In such cases, tax avoidance achieved at law shelter can not be imputed to those who benefit from it.

Between legal and illegal there isn't a rupture, but a continuity. Successive attempts to exploit loopholes in the law lead the taxpayer from legal to fraud. Unlawful evasion is qualified by law depending on gravity and is sanctioned by administrative, pecuniary or custodial measures. It emphasizes fraudulent inequality between taxpayers and those who pay their tax obligations honestly and economically is distorting free competition.

Tax fraud is as old as the tax law and procedures used have become more ingenious and sophisticated, making it hard to identify.

Often, fraudulent tax evasion occurs in various forms, such as false accounting record keeping; willful destruction of documents that may help to reveal the truth concerning deliveries of goods, the prices used, collected or paid commissions etc; preparation of documents for fictitious payment; unjustified price change of supply and transportation costs, storage and handling, etc.

Due to the diversity of methods which taxpayers resort to illegally evade tax payment of their duties, it is possible to achieve a classification of phenomena of tax evasion, as follows:

- Traditional fraud which consists in whole or in part from evading tax obligations, the preparation and submission of incorrect documents or abstention of the documents required by law;
- Legal fraud involves concealing the true nature of a body or a contract in order to get rid of certain tax consequences;
- Accounting fraud which creates the appearance of a regular accounting, but used false documents to increase spending or decrease revenues or resort to keeping a double record (real and fictional), falsification of balance sheets. The ultimate goal of this practice is to reduce taxable income and the fixing of an increased VAT deducted value;
- Fraudulent evasion by evaluation is a process for diminution in value of inventories, the overstatement of amortizations and provisions, having as object an effect the displacement of profit in time.

The main conditions favoring tax evasion can be summarized as follows:

- Deficient legal framework creates a favorable climate for taxpayers seeking escapist purposes;
- Excessive taxation creates dissatisfaction among taxpayers who consider themselves entitled to find ways to avoid declaring income and paying taxes;
- tax authorities not doing enough efforts for propaganda of taxpayer compliance and training.

EVOLUTION OF FISCAL EVASION

An exact quantification of tax avoidance is impossible, the methods for measuring tax evasion is approximate. Thus, the Fiscal Council published in the report of the year 2013 the evolution of tax evasion based on data supplied by the National Statistics Institute. According to this report, tax evasion remains at a big share in 2013, respectively 16.23% of GDP, although

recorded a slight decrease than in 2012. The largest share is represented by WATT tax evasion about 75% of total tax evasion, while the tax evasion of „undeclared employment” represents about 16% of total tax evasion.

In general, there is a downward trend in tax evasion, the major taxes and fees, excluding VAT. Unfortunately, in 2010-2013 evasion on VAT registered a continuous growth, the highest being in 2012, with 14.923 million lei compared to 2011.

The large share of VAT in total tax evasion and tax avoidance complex thereof increase from year to year, led to higher total evasion, although in other areas evasion has decreased in recent years.

Thus, tax evasion at VAT increased from 50.347 million lei in 2010- to 76.747 million lei in 2013, leading to the evolution of total evasion from 79.008 in 2010 to 102.013 million lei in 2013.

On the other hand, efforts of legislative improvements and strengthening controls on tax evasion are seen in the decrease of „undeclared employment” at 16.665 million lei in 2010-16.414 million lei in 2013.

Tax evasion on income tax has know a decrease in 2012 at 2.624 million lei compared to 2010 when had the value of 3.512 million lei, while in 2013 is registered a significant increase to 2.795 million lei.

Evolution of major tax evasion on taxes ⁴

Million lei	2010	2011	2012	2013
Tax evasion from undeclared work:	16.665	17.510	16.966	16.414
- income tax	3.950	4.151	4.022	3.891
- social security	12.715	13.359	12.944	12.523
Tax evasion in the informal sector:	4.821	3.448	3.504	3.620
- income tax	1.143	817	831	858
- social security	3.678	2.630	2.673	2.762
Total tax evasion on income tax	5.093	4.968	4.852	4.749
Total tax evasion CAS	16.393	15.989	15.617	15.285
VAT tax evasion	50.347	57.476	72.399	76.747
Tax evasion	3.512	3.126	2.624	2.795
excise duty evasion	3.663	2.616	2.323	2.438
Total tax evasion	79.008	84.175	97.816	102.013
Gross value added in the unobserved economy	129.769	135.450	143.906	143.907

Evolution of major tax evasion on taxes as a percentage of GDP⁵

% of GDP	2010	2011	2012	2013
Tax evasion of undeclared work	3,18%	3,14%	2,89%	2,61%
- income tax	0,75%	0,74%	0,69%	0,62%
- Social security (CAS)	2,43%	2,40%	2,21%	1,99%
Tax evasion in the informal (population)	0,92%	0,62%	0,60%	0,58%
- income tax	0,22%	0,15%	0,14%	0,14%
- Social security (CAS)	0,70%	0,47%	0,46%	0,44%
Total tax evasion on income tax	0,97%	0,89%	0,83%	0,76%
Total tax evasion CAS	3,13%	2,87%	2,66%	2,43%

⁴ Annual Report 2013 of the Fiscal Council, www.consiliulfiscal.ro

⁵ Annual Report 2013 of the Fiscal Council, www.consiliulfiscal.ro

VAT tax evasion	9,61%	10,31%	12,34%	12,21%
Tax evasion	0,67%	0,56%	0,45%	0,44%
excise duty tax evasion and vice tax	0,70%	0,47%	0,40%	0,39%
Total tax evasion	15,09%	15,10%	16,67%	16,23%
Gross value added in the unobserved economy	24,78%	24,30%	24,53%	22,89%

PREVENTION AND CONTROL OF FISCAL EVASION

Prevention of tax evasion can be achieved through continued application of a complex of measures aimed also to eradicate it:

- Development of clear and precise regulations on management accounting, preparation of documents, registration of phenomena, the conclusion of the annual accounts, determination and calculation of the tax benefit;
- Sanctioning based on the seriousness of tax evasion;
- Directing taxpayers to the knowledge and compliance with legal regulations;
- Organizing a fiscal device able to include in numbers the payers, well-trained professional to identify even the most skillful forms of evasion and well prepared to minimize the opportunities for corruption by those interested in it;
- Vigilant monitoring of business areas with high fiscal risk and the selection, more rigorous, by clearly defined criteria, of newly incorporated taxpayers who wish to register for VAT.

Nationally, tax evasion occurs on a large enough scale, which is why identifying and monitoring high risk areas is a priority in fiscal tax control actions. Thus, monitoring the movement of excisable products and warehouses tax of intra-community transactions and import-export operations are the most common action measures of fiscal control bodies. In the field of excise goods, the favorite target of the actions of tax evasion are petroleum products, alcohol and tobacco, although in recent years there has been a decrease in tax evasion of excise duty and the vice tax.

The scope of the services is another area where they meet various forms of tax evasion by rendering them fictitious, showing only a fictional documentary circuit, under which expenses are inflated or illegal deduct the VAT.

A measure to prevent fraud in the collection phase, takes place by analyzing ongoing solvency indicators of taxpayers in order to prevent occurrence of the situation of accumulating large debts compared to the patrimonial situation and, in this respect, the avoidance of impossibility of enforcement.

One of the priorities of tax administration policy is the fight against tax evasion, considering the implications it has on the collection of budget revenues, in this respect being considered the following directions⁶:

- Develop risk analysis widespread in the whole tax administration activities, based on fiscal information about taxpayers;
- Collaboration with European tax authorities to combat cross-border fraud;
- Develop business tax information;
- Ensure tax compliance of individuals with big wealth / income;
- Intensification of controls aiming the undeclared work;
- Implementing electronic trade control;
- Strengthen customs control;
- Increasing the effectiveness of sanctions;
- Improved services provided to taxpayers.

In conclusion, it is impossible to eradicate tax evasion but authorities are making continuous efforts for the prevention and limitation of tax evasion phenomenon and the negative effects they generate.

⁶ A.N.A.F. medium term strategy 2013-2017, www.anaf.ro

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