

TAX EVASION DURING AND AT THE “END” OF THE ECONOMIC CRISIS

Ioniță Gheorghe-Iulian*

Abstract

In Romania, tax evasion is a national “sport”, whose consequences can be “noticed” and “quantified”. The frequent and important amendments of the tax and social insurance legislation and policy which have been carried out in a short time interval have had the reverse effect, namely they chased away investors and encouraged tax payers to find various subterfuges to avoid paying their fiscal obligations. In the context of the economic crisis, VAT, minimum tax and health tax increases, the removal of deductible expenses, the reduction of pensions, salaries and the massive layoffs in the public sector have increasingly led to a growth of the tax evasion phenomenon.

Keywords: fiscal pressure, economic crisis, tax evasion, offenses

JEL Classification: G01, G20, H20, H26, K14, K20, K42

1. Introduction

Taking over some news posted on the web page of a Bulgarian press agency, Sofia News Agency (SNA, 2011), the national media claims: “Only the Italians are better than us at tax evasion”, “Romania, second place in the EU at tax evasion”, “Romania, European vice-champion at tax evasion”.

The study referred to would rely on data from the white collar crime police in the EU Member States.

According to this study, Italy is first in tax evasion in the EU, because over 51% of the taxable amounts remain undeclared, followed by Romania (42%), Bulgaria (38%), Estonia (37%) and Slovakia (32%). In comparison, Sweden is first in declared taxes, because only 8% of the taxable amounts are undeclared, followed by Belgium (10%) and UK (12%).

We do not want to contradict the above-mentioned headlines, but we have to understand what makes the tax payer break the law and avoid paying the amounts due, especially given the fact that the sanctions are quite severe.

* Ioniță Gheorghe-Iulian is Lecturer of Law at Romanian American University in Bucharest. E-mail: ionita.gheorghe.iulian@profesor.rau.ro

Romania's Constitution stipulates as a fundamental duty in article 56, „Financial contributions”, paragraph (1), „Citizens are under the obligation to contribute to public expenditure, by taxes and duties”. At the same time, paragraph (2) of the same article specifies „The legal taxation system must ensure a fair distribution of the tax burden”.

2. Fiscal pressure in Romania during the last few years

Fiscal pressure expresses the intensity by means of which part of the incomes obtained by natural persons and legal entities is collected through taxation.

This indicates, on the one hand, the extent to which incomes are adjusted through taxation and, on the other hand, the manner in which the state budget builds up its incomes as a result of taxation (Niță, 2010, p. 454-455).

Fiscal pressure has to reconcile two completely opposed tendencies: one is the tendency of the state towards an increasingly high pressure meant to cover the continuously growing public expenses, and the other is the tax payer's tendency towards as low a pressure as possible in order to keep as much as possible from the obtained incomes.

From tax payers' perspective, this involves certain supportability limits which are imposed by their reactions to resist the growth of compulsory taxes (Dobrotă and Chirculescu, 2010, p. 301).

Usually, taxes are willingly paid by the tax payer, up to the point when taxes exceed those supportability limits.

Once such limits are overcome, the tax payer's behavior becomes less normal; practically, he constantly tries, through whatever means, to avoid paying his taxes, hoping in a decrease of fiscal pressure.

The following are among the most important effects of excessive taxation (Niță, 2010, p. 459-461):

- the reduction of productive efforts of companies
- political and social instability
- risks of taxation inflation
- the reduction of the international compatibility of Romanian companies
- the development of economic-financial and fiscal criminality.

The table below presents the fiscal pressure for the year 2009 in EU countries.

Table no. 1: Tax and extra tax pressure level, in the member states in 2009

	GDP	Direct taxes	Indirect taxes	Social contributions	Prfimp	Prcb	Prpo
Belgium	337,758	51,600	42,602	56,535	27,89	16,7	44,6
Bulgaria	66,256	3,982	11,027	5,273	22,65	8,0	30,6
Czech Republic	3,627,188	270,889	413,895	559,654	18,89	15,42	34,3
Denmark	1,657,857	498,907	278,487	31,973	46,89	1,92	48,8
Germany	2,407,200	259,640	303,210	411,120	23,38	17,1	40,5
Estonia	214,828	16,349	32,259	28,828	22,62	13,41	36,0
Eire-Ireland	163,543	16,888	17,987	12,485	21,32	7,63	28,9
Greece	237,494	18,902	26,421	30,328	19,08	12,8	31,9
Spain	1,051,151	101,024	91,796	140,361	18,34	13,35	31,7
France	1,919,316	186,347	284,794	351,271	24,54	18,30	42,8
Italy	1,520,870	222,655	206,956	215,003	28,24	14,13	42,3
Cyprus	16,947	1,890	2,542	1,570	26,15	9,26	35,5
Latvia	13,244	943	1,398	1,160	17,67	8,75	26,5
Lithuania	92,353	5,519	10,468	11,081	17,31	11,99	29,3
Luxembourg	37,755	5,258	4,492	4,576	25,82	6,82	37,9
Hungary	26,094,824	2,546,205	4,261,696	3,401,517	26,08	13,03	39,1
Malta	5,712	795	813	435	28,15	7,61	35,7
Netherlands	570,208	67,682	67,871	83,968	23,77	14,72	38,5
Austria	276,892	35,149	40,415	45,649	27,29	16,42	43,8
Poland	1,342,612	100,015	172,384	152,343	20,28	11,34	31,5
Portugal	163,891	14,998	21,366	22,446	22,18	13,69	35,9
Romania	491,274	32,439	53,920	51,261	17,57	10,43	28,0
Slovenia	34,894	3,132	4,994	5,387	23,26	15,43	38,7
Slovakia	63,332	3,778	6,520	8,095	16,26	12,78	29,1
Finland	170,971	27,818	22,886	22,237	29,65	13,00	42,7
Sweden	3,057,056	519,438	579,205	364,146	35,93	11,91	47,8
United Kingdom	1,395,872	219,012	162,531	119,848	27,33	8,58	35,9

Prfimp - the tax burden of taxes and duties

Prcb - pressure of social security contributions

Prpo - compulsory levies pressure

Source: Dobrotă G., Chirculescu M.F., *Analysis of tax and extra taxes pressure in Romania an European Union* (Annals of the „Constantin Brâncuși” University of Târgu Jiu, Economy Series, Issue 4/2010, Table no. 1, p. 303)

According to these data, in Romania, in 2009, the pressure has been compulsory levies a 28% level, i.e. by 12.6 percentage points less than the average in the EU27 and 1.58 percentage points more than the minimum recorded by Latvia.

Unfortunately, starting with 2009, the fiscal pressure grew because of the increase of health taxes, the minimum tax, the removal of deductible expenses, VAT increase etc.

In this context, the above-mentioned consequences were not a surprise.

3. Tax evasion and related offenses

In art. 1, the former law no. 87/1994 for the prevention of tax evasion defined tax evasion as the avoidance, by whatever means, of paying taxes, charges, contributions and other amounts due to the state budget, the local budget, the state social insurance budget and special fund budgets by natural persons and legal entities, Romanian or foreign, who are called (in the law) tax payers.

Although this regulation was abrogated and the applying regulation for the prevention of tax evasion, Law no. 241/2005, no longer defines the term, its meaning was preserved both by theoreticians and by practitioners of financial and fiscal law.

In fact, according to article. 9 paragraph 1 of this regulation (Law no. 241/2005), the following deeds which are meant to avoid paying fiscal obligations are deemed tax evasion crimes and are punished with imprisonment from 2 to 8 years and the interdiction of certain rights:

- a) hiding the taxable asset or source;
- b) omitting, in full or in part, to indicate in accounting books or in any other legal documents, the commercial operations performed or the obtained incomes;
- c) specifying, in the accounting books or in any other legal documents, expenses which do not rely on real operations or other fictitious operations;
- d) the alteration, destruction or hiding of accounting books, memories of taxation devices or any other means of data storage;
- e) keeping double accounting books, using documents or other means of data storage;
- f) avoiding to make financial, fiscal or customs checks by failure to declare, fictitious or inaccurate declarations regarding the headquarters or secondary offices of the checked persons;
- g) substitution, damage or estrangement by debtors or third persons of any assets seized in compliance with the provisions of the Code of fiscal procedure and the Code of penal procedure.

The same paragraphs 2 and 3 stipulate two serious forms of the situation when, through the above-mentioned deeds (paragraph 1), a prejudice exceeding Euro 100,000 and 500,000 respectively was produced in the equal amount of the national currency, the minimum limit of the punishment stipulated by the law and its maximum limit increasing by 2 and 3 years respectively.

In the applying regulation for the prevention of tax evasion, Law no. 241/2005, the following are also sanctioned as crimes:

- the deed of the tax payer who, willfully, fails to redo the destroyed accounting books within the term specified in the control documents, although he could have done so; the sanction is a fine of RON 50,000,000 – 300,000,000 (art. 3)

- the prevention under any form of competent organisms to enter, under the law, headquarters, perimeters or plots of land with the purpose of performing financial, fiscal or customs controls; the punishment is imprisonment from 6 months to 3 years or a fine (art. 4)

- the possession or use without any right of stamps, badges or standard forms used in the fiscal field; the punishment is imprisonment from 2 to 7 years and the interdiction of certain rights (art. 5)

- willingly printing, owning or using forged stamps, badges or standard forms used in the fiscal field; the punishment is imprisonment from 3 and 12 and the interdiction of certain rights (art. 6)

- the tax payer's setting, in bad faith, of taxes, fees or contributions which result in obtaining, without any right, amounts as returns or refunds from the general consolidated budget or compensations due to the general consolidated budget; the punishment is imprisonment from 3 and 10 years and the interdiction of certain rights (art. 7 paragraph 1)

- association for the purpose of committing the above-mentioned deed; the punishment is imprisonment from 5 and 15 years and the interdiction of certain rights (art. 7 paragraph 2).

The law has a double destination, namely, to warn on the consequences of the sanctions tax payers expose themselves to in case they intend to avoid paying their fiscal obligations and to be the legal instrument which is the basis for the penal liability of those tax payers who, in bad faith, breach the provisions thereof (Voicu et al., 2003, p. 103)

4. Special cases

The public control institution (which has legal personality) that carries out operative and unexpected controls for the prevention, identification and fight of certain deeds and acts in the economic, financial and customs field resulting in tax evasion is, according to art. 1 paragraph 1 of Government Decision no. 533/30.05.2007, the Fraud Squad.

It is organized as a specialty organ of the public central administration subordinated to the Ministry of Economy and Finance – National Agency of Fiscal Administration.

During its activity (ANAF, 2009), the Fraud Squad registered some special situations which are worth mentioned.

A. In the field of oil products

Following the control of the activity of a trading company in Constanta County, the Fraud Squad officers established for this economic agent a prejudice of over RON 16,800,000. In fact, the controls revealed that during the year 2009, the said company, a certified warehouse operator of energy products, sold the total amount of 4,995,191 l of diesel to a number of 4 beneficiaries without paying the excises. The amounts of fuel provided to these companies were meant for the bunker of four ships. When extending the controls onto the beneficiary companies which operate these ships, the officers discovered that they are inexistent at their declared registered office and their legal representatives systematically avoid any controls. In this context, the control also revealed that three of the ships were not supplied with fuel from Romania in the year 2009, and the fourth ship was delivered to the owner since February 2008 although the company under control issued the delivery documents at a later date, between March and December 2008, for the total amount of 7,253,952 liters of diesel and the documents specified that the fuel had the clear destination of supplying the ship. Corroborating these facts, the officers reached the conclusions that in reality, the fuel meant for these ships was detoured from the legally declared destination. Consequently, under the provisions of Law 571/2003 with the subsequent amendments, the Fraud Squad calculated the unpaid excises and the related VAT. The resulting prejudice was RON 16,879,172. Considering the way in which the payment of such obligations was avoided, in order to continue the investigations, the Parquet near the High Court of Cassation and Justice – the National Antifraud Division was notified. At the same time, in order to calculate all the obligations to the budget, the investigation result were sent to the D.G.F.P.- Constanta and A.N.V.- Division of Supervision of Excises and Customs Operations.

B. In the field of intra-Community procurements

During an action of a similar nature related to the activity of trading company in Calarasi, the Fraud Squad officers set for this economic agent a prejudice of over RON 23,000,000. In fact, this company which is administered by a Bulgarian citizen, made, according to the information communicated by the Central Relation Service within DIF – ANAF, intra-Community procurements of various products in an amount exceeding RON 121,000,000. On site controls made by the Fraud Squad officers revealed the ghost-like

behavior of this company. This aspect, together with the fact that the statements submitted to the fiscal institutions do not specify the intra-Community commercial operations, determined the intentional nature of the deeds, which is also supported by the fact that, in all the cases, the documents issued by the company in Calarasi are signed by the Bulgarian administrator, and the statements obtained during the cross controls revealed that the deliveries were personally made by him, who presented the offers directly at the beneficiary's headquarters. Considering all these aspects, the Fraud Squad officers established, based on the identified documents and the information in the statements of the commercial partners, the amount of traded goods and, consequently, of the prejudice to the state budget caused by avoiding to declare the commercial operations and to pay the related fiscal obligations. The prejudice was RON 23,014,577. Given the criminal nature of the deeds, DNA Bucharest was also notified. At the same time, the file was sent to the fiscal organisms, in order to detect all the fiscal obligations due.

C. In the field of tobacco and cigarettes

During a traffic control activity, various vehicles meant for the transportation of goods were identified and stopped. Following their inspection, in two of the controlled vehicles, a total amount of 40,000 packs of "Platinum" cigarettes were found. They did not have the marking stamps stipulated by the law for this type of products. When asked to give explanations, the two drivers declared that they did not know about the existence of those cigarettes. Motivated by the aspects resulting from the control, the Fraud Squad officers proceeded, according to the provisions of Government Order 92/2003 with the subsequent amendments, to the civil sanction of the two drivers with fines in total amount of RON 200,000, a measure which was doubled by the confiscation of the 40,000 unmarked packs of cigarettes and of the two vehicles used for their illegal transportation.

D. In the grain field

Following the control on the activity of a group of companies whose shareholders were the members of a single family, the Fraud Squad officers discovered that the state budget was prejudiced with over RON 7,000,000. They discovered that three of the family members (two brothers and their mother) set up five trading companies in the field of grain trade. They operated in Braila County, making procurements from natural persons, producers of grains. Subsequently, the products were transferred to the companies, at higher prices than the real ones, in order to hide the real profit by mentioning false

expenses. The last company in the chain traded in culture products to large warehouse owners (COMCEREAL or ROMSILOZ). Through this fraudulent activity, the criminal group whose activity was stopped by the Fraud Squad officers prejudiced the state budget with RON 7,539,779. After establishing the prejudices to the state budget by each firm, considering the particularly serious nature of the deeds of this criminal group, the file was sent to DNA – Territorial Office Galati. At the same time, the documentation was sent to DGFP Braila for the accurate identification of the prejudices and of the other related payment obligations.

E. In the field of financial-accounting discipline

Following the controls of the activity of a company in Bucharest initiated upon the request of DNA, Fraud Squad officers discovered that this economic agent avoided paying fiscal obligations in total amount of RON 18,000,000. Thus, the controls revealed that the company representative, a Syrian citizen, used the company to cash large amounts of money under illegal conditions from several leasing firms. Subsequently the amounts were directed towards a series of ghost companies, controlled by the same person, from which such amounts were withdrawn in cash. In order to obtain from the leasing companies these amounts, which were requested with the declared purpose of financing the procurement of construction plant, the company representative presented a series of false sale-purchase contracts. At the same time, in order to simulate the existence of commercial operation, the same company falsely registered fiscal invoices with fictitious information in its financial books, which led to the modification of the fiscal obligations, namely the fictitious increase of supply costs and the reduction of the mass volume. The controls also revealed that the representative of the company under control tried to camouflage the illegal operations, transferring the company in September 2008, on which occasion a large part of the accounting books also disappeared, which forced the control team to retrace the company activity based on banking documents. According to the calculations made by the Fraud Squad officers, the state budget was prejudiced with the total amount of RON 18,854,580 (income tax and VAT). In order to calculate all the obligations to the state budget of this economic agent, one copy of the control act was sent to the fiscal organisms. Considering the nature of the deeds, which led to this prejudice, the results were sent to D.N.A. in order to continue the investigations.

F. In the field of alcoholic beverages

A control made together with the workers of IPJ Prahova ended, among others, with the confiscation of approximately 154 tons of wine, whose legal origin could not be set under legal conditions. The checks carried out in a location for wine storage revealed that the entire amount of wine plus approximately 15 tons of wine yeast belonged to a firm in Prahova. It is worth mentioning that the wine was found on the premises owned by another trading company, storage in that location being made under a lease contract and a reception protocol closed by the two firms. Subsequently, when the control team went to the registered office of the firm under control, at another address in Prahova County, they discovered other recipients for beverages, and their inventory revealed the existence of 7.5 tons of white and red wine, plus 4.5 tons of distilled alcoholic beverage. The firm representative could not present any legal documents for the identified beverages, any recorded evidence referring to the company accounting books or the certification documents as a fiscal warehouse operator of production and storage. In this situation, in the first stage, Fraud Squad officers requested O.J.P.C. - Prahova to take samples of beverage and blocked, under the provisions of Law 571/2003 on the Fiscal Code and Government Order 92/2003, republished, the 4.5 tons of alcoholic beverages identified. At the same time, under the provisions of Law 12/1990, republished, they confiscated the total amount of 154 tons of wine and sanctioned the firm with a fine of RON 20,000.

5. Are we out of the crisis? What next...?

It seems that this year has good things in store for us ...

According to the authorities (ANAF, 2011, p. 2), after two and a half years of economic crisis, Romania has finally left the recession, since the gross domestic product registered real increases for two consecutive trimesters (trimester IV 2010 and trimester I 2011). GDP seems to have grown (in real terms) by 1.6% in trimester I 2011 as compared to the corresponding trimester in 2010.

However, the reduction by 22% of direct foreign investments in trimester I 2011 as compared to trimester I of the previous year increased the feeling of market instability, the tendency to protect liquidities, but also determined limited capital movements and negatively impacted the creation of new jobs.

According to the same source, at the end of March 2011, the unemployment rate registered nationally was 5.9% (2.5 % lower than in March 2010), and the number of the unemployed was 539.7 thousand persons

(dropping by 225.6 thousands as compared to the corresponding months of the previous year).

6. Instead of conclusions

Certain estimates (Garant) reveal that in Romanian households, around 110-130 mil. liters of alcoholic beverages are produced every year, which stands for approximately 45% of the national consumption. On Romania's territory, approximately 30,000 distillers were found (mainly in the country side), but in reality their number is a lot higher if we also add individual ones.

According to authorities (ANAF, 2011, p. 9-10), only last year, the Fraud Squad made 192,436 controls, applying 122,083 fines in the amount of RON 255.3 million. The confiscations amounted to RON 175.9 millions, and the prejudice raised up to RON 2,778.8.

In the same reference period (2010), the National Customs Authority registered 4,298 frauds and irregularities totaling RON 712.9 million and confiscated 1,445.30 hectoliters of pure alcohol, 62,524.756 cigarettes and 34,135.52 tons of energy products.

7. References

Boicu M. 2010. „760 milioane de euro pe an pierdere la buget, din evaziunea cu alcool”. *Financiarul* 12 March 2010, http://www.financiarul.com/articol_41363/760-milioane-de-euro-pe-an-pierdere-la-buget-din-evaziunea-la-alcool.html (last time accessed on 19 August 2011).

Dobrotă G., Chirculescu M. F. 2010. „Analysis of tax and extra taxes pressure in Romania and European Union”, *Annals of the „Constantin Brâncuși” University of Târgu Jiu, Economy Series*, Issue 4/2010, pp. 300-309, http://www.utgjiu.ro/revista/ec/pdf/2010-04.I/29_GABRIELA_DOBROTA.pdf (last time accessed on 18 August 2011).

Government Decision no. 533/2007

Law no. 241/2005

Law no. 87/1994

National Agency for Fiscal Administration (ANAF). 2009. *The Financial Guard Activity Report in 2009*, http://www.gardafinanciara.ro/download.aspx?id=MjM3Mw** (last time accessed on 17 August 2011).

National Agency for Fiscal Administration (ANAF). 2011. *Tax Statistical Bulletin. Quarter I 2011*,

http://static.anaf.ro/static/10/Anaf/Informatii_R/Buletin_Statistic_Fiscal_nr1_2011.pdf (last time accessed on 17 August 2011).

Niță N. 2010. *Drept financiar și fiscal*. Iași: Tipo Moldova.

Sofia News Agency (SNA). 2011. *Bulgaria Ranks 3rd in EU in Tax Evasion - Italian Poll*, http://www.novinite.com/view_news.php?id=130760 (last time accessed on 17 August 2011).

Voicu C., Boroș A., Sandu F., Molnar I. 2003, *Drept penal al afacerilor*, ed. a II-a, București: All Beck.