CONSIDERATIONS ON TAX EVASION

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Abstract

Tax evasion represents a unilateral act whose purpose is to avoid paying the due sums to the state, such as taxes, by the means of legal or illegal methods, especially in the "underground" economy.

The high number of tax obligations, provided by various laws, imposing a considerable burden to the tax payer, represents an incentive for tax evasion, continuously stimulating the ingenuity of those who are to pay these taxes to evade their payment.

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Since ancient times, the tax payers have always tried to reduce the financial obligations, appealing to the most varied and ingenious methods.

Tax evasion, together with "underground" economy and corruption shows a certain economic condition and economic and social conduct of those who, related to their gains, are obliged to contribute to central and local budgets, by the means of taxes and other contributions due to the state.

Tax evasion can be not only a unilateral act of "sheltering" of a part of the individual gains, by legal or illegal means, being encountered both in "above-the-ground" economy, but especially in "underground" , where currently the tax evasion is widespread[1].

Certain activities such as: drug production and selling, gambling and so on, the so-called "underground economy", represents the unlawful removal of certain economic activities, evading the taxes due to the state, as provided by law.

Therefore, tax evasion is the circumvention of Romanian and foreign, natural and legal persons - by any means – of payment of taxes, contributions and of other amounts due to the state budget and special fund budgets[2].

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[1] I. Văcărel, G. Anghelache, Gh. D. Bistriceanu, T. Moşteanu, F. Bercea, M. Bondar, F. Georgescu – *Public Finances*, Third Edition, revised and completed, Didactică and Pedagogică Publishing House, Bucharest, pp.476-478.

[2] See Law no. 241/2005 on prevention and fight against tax evasion, published in the Official Gazette, Part I, no. 672 of 27 July 2005, modified by Government Emergency Order no. 49/2011, on amendment and completion of Law no. 571/2003 on Fiscal Code and other financial-fiscal provisions, published in the Official Gazette, Part I, no. 381 of 31 May 2011.

The high number of financial obligations, provided by different laws, has stimulated continuously the tax payers' ingenuity in avoiding imposition or payment of taxed financial incomes, by hiding different forms of sources and the amount of the real income,

There are two types of fiscal evasion, namely: legal tax evasion or "under the protection of the law", which enables the partial circumvention of the taxable amount, without being considered offense or crime and fraudulent, illicit, evasion, with the violation of law and punishable as such[3].

Tax evasion is fraudulent when the tax payer who is obliged to supply justificatory data to accompany its statement, decides to hide the taxable object, to undervalue the taxable material or uses other ways of evading the payment of the due tax by: drafting of fake statements; drafting of fictional payments; non-declaration of the taxable material or its incomplete declaration; sales with no invoice or issuance of invoices without effective sale, all these hiding the taxable real operations; making of unreal accountancy registers: making of double evidence registers, of which one real and one fake; fake balance and so on.

Legal tax evasion takes place when a certain part of the income or possession of some persons or social categories are evaded from taxation, as a result of the way the financial legislation rules the taxation or when an income is established according to some criteria that determine taxable rate, lower than the real one.

Since the great reform of direct taxes in 1921 and especially the one in 1923, the Romanian lawmaker has been preoccupied with organization of an effective imposition system, so that people can not evade the payment of the taxes to the state.

As a result of the anti-financial attitude shown by some tax payers and lack of preparation of the law enforcing organs, the minimal imposition was abolished in 1923 and the severe sanction stipulated by 1921 law against evasion practices was mitigated, also as a result of certain aspects of social life which were ignored in 1921.

The 1921 law had the tendency to restrain the application sphere of the direct acknowledgement, using instead the tax payer's statement and replacing fixed and minimal imposition based upon exterior signs and tax payer's income estimation.

In order to increase tax efficiency, the 1929 law did not seek to increase quotas and sought by all means to limit the then tax evasion possibilities.

According to the Law of Direct Contributions of 1923, the financial burden was not spread equally, thus enabling some companies to evade the tax, which remained insignificant. For example, the buildings in the property of industrial companies were not subjected to taxation.

Another example was the inflation of depreciations, which was an exaggeration of the value of the buildings and installations owned by a company, or their number

[3] See: Mircea Boulescu, Marcel Ghiță – *Financial Control*, Efficient Publishing House, Bucharest, 1997, p. 234.

and to require and obtain from fiscal authorities the right to deduct from the benefit a depreciation fund, for investments higher than the real ones.

As a result of the enforcement of in 1923 law, the direct taxes decreased, which led to enactment of special repression measures of tax evasion and modification of imposition methods for tax payer categories who could evade the payment of tax obligations.

This moment was considered as the beginning of anti-evasion fight in Romania.

The 1923 Law of Direct Contributions, concerning the methods against fiscal evasion, classified the infringements of the law from simple offense and qualified offense and punished them with fines which could be as high as four times the tax due for the hidden and acknowledged income. The imprisonment from 6 to 12 months was provided as punishment, and this penalty was also applied to fiscal agents, who intentionally did not establish the rights of the state, as provided by law.

The law enforcement organs had an important role within the relations between fiscal authorities and tax payers, because no matter how good a fiscal measure was, it did not provide the desired efficiency as long as the fiscal authorities were unfair and lacked professional training.

The new reform initiated by the Law of Direct Contributions of 1 April 1941, provided a series of principles such as: simplification of taxes and quotas provided by the old law and generalization of the imposition method for traders and industrialists, depending on turnover[4]. At the same time, sole efficiency coefficients are established, in accordance with the nature of each category of company.

The law aimed to strongly punish all tax evaders who failed to meet their obligations to the state, but giving the opportunity to those who had evaded the payment of taxes, to become legal and liquidate this kind of obligations, even if they had fully or partially avoided in the past to pay their taxes.

After 1990, tax evasion has been approached with a new regulation and there is a closer identification of the tax evasion acts, which fall within the category of contraventions and crimes, but the tax evasion phenomenon has increased a lot.

In market economy, the fiscal authorities are facing a mass scale evasion phenomenon, as a result of the temptation of removing taxable income under the law.

The specialized legal literature is currently analyzing the tax evasion under two aspects: legal tax evasion and fraudulent tax evasion or fiscal fraud, depending upon the tax avoidance methods.

The illicit acts on tax evasion, especially those from economic and financial field, represent a consequence of the legislative imperfections, various legislative changes[5] or lack of regulations during the transition to market economy.

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[4] Gh. N. Leon - *Elements of Financial Science*, Second Edition, Cercetări juridice Publishing House, Bucharest, 1942, pp. 278-279.

[5] Romanian Tax Code, which regulates taxes and social contributions, has been amended 54 times during 2004 – 2011. Only in 2010, the Tax Code was amended 11 times and four times in October 2010. In the same interval, it was attacked at the Constitutional Court 71 times for constitutional challenges of art of some provisions, of which 18 times in 2008, 14 times in 2009 and 13 times in

The most frequent causes that can generate or favor fiscal evasion are:

- Inadequacies of imperfect, unstable or poorly implemented legislation;
- Poor enforcement of the legislation;
- Excessive taxation[6];
- Increased number of the cases of profiteering, smuggling, financial impropriety etc.[7]

The excessive taxation will make the tax payer not declare all incomes, he will be more cautious in his income statements and will try to hide those incomes which he considers as difficult to be identified by fiscal agents.

As a rule, tax payer tries to evade obligations towards the state, irrespective of the tax amount he is to pay. Cheating of the tax authorities is considered as an ability test, and paying the contributions to the state is considered by some people as naïve.

Favorable interpretation of fiscal legislation, leads to avoidance of taxation, by different means: investing a part of the profit in purchasing machines or technical equipments for which the state grants tax income deductions, whose aim is to encourage accumulation; creation of depreciation or reserve funds in a higher level than those economically justified; favorable interpretation of legal provisions on facilities or exemptions or reductions for tax payers, by supporting social, sportive or other kind of activities which actually do not take place; income localization in countries with low taxation (tax havens) etc.

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[6] SISMONDE said "the tax should never put to run the material it hits. The more fugitive this wealth is, the more moderate, the tax should be".

[7] Also see DAN DROSU ŞAGUNA, *Financial and Fiscal Law Treatise*, Eminescu Publishing House, Bucharest, 2000, page. 759