

TAX EVASION IN ROMANIA – A NATIONAL SECURITY ISSUE

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Abstract: *Given the fact that the level of tax evasion in Romania has consistently been above average in the European Union, factors such as the fluctuating tax law, the IRS poor results in recovering overdue taxes, the increase in the corruption of the dignitaries and state officials involved in tax evasion cases have contributed in recent years to a worrying increase in the tax evasion in Romania. The devastating economic consequences of tax evasion on the national budget currently qualify tax evasion as a frontal attack on the economic safety and national security, as confirmed by statistical data and which must be countered by drastic fiscal measures and national operative strategies.*

Key words: *tax evasion, underground economy, tax burden, tax, black labour.*

1. Introduction

Being a European Union Member State, Romania is facing serious problems in recent years regarding tax evasion and tax fraud, whose level remains constant over the average level in the European Union.

The two fiscal phenomena have proliferated increasingly amid the economic crisis in 2009 in the Romanian society, underpinned by the growth of corruption and bureaucratization of the public system and public administration, under a restriction of public transparency facilitated by an unstable legislation, subject to frequent changes of substance and institutional ones.

Having at disposal a tax legislation with loopholes and lax in terms of interpretation, the fiscal control bodies seem to abandon the fight with fraudsters, as if resigning before the complex

operations and mechanisms of the "white-collar" offenders.

The fact that tax evasion and widespread corruption, especially at the level of public administration, are negative phenomena which negatively affect the level of taxation and the economic growth, leading to the increase in Romania's public debt, it is recognized in the economic literature [1] and in the trials, reports and analyzes of the Fiscal Council [14] or UNDP [15] - The United Nations Development Programme in Romania.

Against the adverse economic consequences and combating these phenomena nationwide, reform measures and strategies have been and are proposed, starting and taking into account the findings of the institutional, governmental and nongovernmental evaluations, made in Romania, but also from external sources (monitoring reports of the European

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Commission, Transparency International reports).

In this study we aimed, starting from the causes and general effects of tax evasion in relation to the state of facts in Romania in the post-accession period and analyzing the existing legal framework, to identify the reasons why, although the NACS 2008 2010 (Government Decision no. 609/2008 [10]) and 2010-2013 (National Strategy for Public Order 2010-2013 of 13 October 2010 [12]) it was established as a priority objective to ensure a climate of legality in the business environment through combating tax evasion and customs fraud, tax evasion continued to proliferate, now reaching alarming levels so that through the direct negative effects on the consolidated budget of the state, the stability and competitiveness of the business environment it become a matter of national security.

2. Causes and effects of tax evasion

A complex phenomenon considering the approach, the mechanisms and the consequences, tax evasion currently has a legal definition in the Law no.241 / 2005 [13], for which the legal literature attempted a more comprehensive definition: tax evasion represents all illegal or licit procedures by which those interested circumvent all or part of their wealth from the tax obligations established by law [8] or *tax evasion exists in the proper sense of the term when the one who should pay the tax does not pay it, without the obligation being passed on to a third party* [4].

There is a psychology of the taxpayer not to pay taxes ever, apart from the cases when it is impossible for them not pay.

We believe that the definition of tax evasion given by the professor D.D. Şaguna best captures the generating factors, establishing that tax evasion is the

logical result of defects and inconsistencies of an imperfect and badly assimilated legislation, of the improper methods of application, as well as the lack of provision and incompetence of the legislator whose excessive taxation is as guilty as those whom thereby it causes to commit tax evasion [9].

Having determined the factors that favour the development of the escapist phenomenon, the Romanian authors D. Şaguna and M. Tutungiu establish a close correlation between the excessive tax rate on the one hand, and tax evasion, on the other hand: *"an excessively tax routs the taxable matter "for when the tax burden presses too hard on the taxable matters, this tends to escape* [8].

Taxes support the social policies of each state and the economic development, but these must be set at a level that does not affect the economic activity, for which since the eighteenth century there is talk of compulsory limitations on tax levies, limitations that ensure the budgetary resources necessary to the social policies and to determine the taxpayer to transfer from his income the amounts necessary to ensure the general interest.

A famous attempt to highlight the issue of increasing fiscal pressure is that of professor Arthur Laffer, representative of the economists who support the "theory of supply" and who, using a bell-shaped curve in a xOy axis system (Figure 1) shows that any increase in the tax burden (by increasing taxation on the Ox axis) causes the decrease in the compulsory levies charged by public authorities (through low level on the axis Oy) because the compulsory levies too "loaded" perceived by the public authorities destroy the tax base by the emergence of the phenomenon of resistance and evasion from payment to the taxpayer who feels primarily the reduction of his/her revenues.

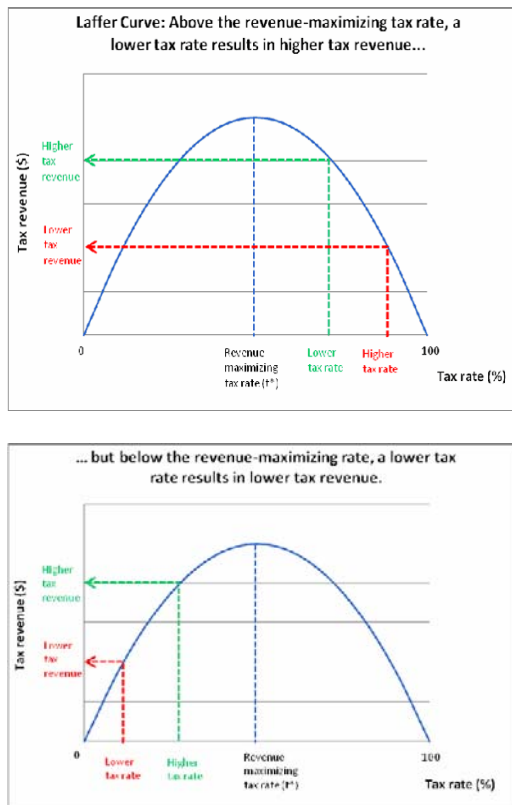


Fig. 1. Laffer Curve

In general, the causes of tax evasion are multiple and act simultaneously.

Considering the importance of promoting and maintaining the escapist phenomenon, but also their practical incidence, we list some reasons in order to understand the combating measures and strategies adopted by the executive:

1. *excessive tax burdens*, i.e. an exceeding, unfair tax burden from the perspective of the taxpayer, and unstable (especially for some categories of taxpayers) - these causes may create moral grounds of tax evasion of the taxpayer (in general, the small and medium entrepreneurs), which treat the facts mentioned as an expression of repression (dominance) of the state, considering themselves, at the same time, righteous to resist in order to survive and seeking

mechanisms and means of evading taxes by reducing the tax base.

2. *economic factors felt by the taxpayers:*

- the rapport between the level of taxation and the accountability measures (level of fines or criminal sanctions) - the contributor compares the economic consequences of tax paying, in terms of reducing their own income, and the implication of enforcing the measures of contraventional or criminal liability for non-payment.

Thus, if the tax level / rate is higher and the contraventional measures against comparatively smaller, the economic effect of the tax evasion is higher, the taxpayer risking undertaking legal liability for concealing the tax base;

- the economic status of the taxpayer - the harsher the economic situation of the contributor (the incomes are considerably lower than the production and subsistence costs), the higher the temptation to tax evasion (in some cases, the execution by the taxpayer of all tax obligations may worsen his/her economic situation to the critical level of bankruptcy and tax evasion may become the only chance of survival), so that the enforcement of the accountability measures for tax evasion is the taxpayer's option to survive;

- the economic crisis at the national system level - the financial situation of both the taxpayer and consumer of goods, works and services is worsening, decreasing the possibility of transferring the taxes through the increase of the sale/delivery prices;

3. *insufficient measures to promote the tax compliance (permanent) and as a result - insufficient fiscal education of the taxpayers.*

4. *the tax law loopholes and possibilities of interpreting the legal norms because of, on the one hand, not including in the fiscal rule reports related to taxation, on the other hand because of*

the inaccuracies and ambiguities in the legal texts that leave the taxpayers the possibility to evade taxes by creating the appearance of legality.

5. the lack of a well organized fiscal control body well organized, starting with efficient means and methods of control, surveillance or investigation, to sufficient staff, trained and motivated in control procedures, and who can not be diverted from its control purpose.

Depriving the national budget of an important part of resources necessary to fulfil the tasks and responsibilities assumed by each state, tax evasion is also harmful to the taxpayers because by reducing the budgetary resources, the budget revenues are smaller and this create distortions in the tax burden.

3. The effects of tax evasion on society

Tax evasion methods are innovative, rapidly changing, combining national and international elements, and seem to outrun the control and investigation methods, the latter having to adapt to the rapid evolution.

Based on the role of the fiscality in politics, the economic and social development of a country, we find that tax evasion and tax fraud in particular, reducing the level of revenues that cover social spending and that of society evolution generates not only economic, social and political effects, but also effects on the formation of the state revenues.

The revenues brought to the state budget ensure a general economic balance, because through them the state intervenes in the economic activity, adopting measures of adjustment of the economic processes and correction of the national and international economic conjuncture. Relying on the budget revenues expected to be attracted, the states adopts different policies and measures at national level,

some with inflationary effects by increasing unsupported public expenditure, other with deflationary effects, so in order to fulfil these measures, a high volume of public revenue is required, and even a steady income to the state budget from taxes.

If these budget revenues are not ensured, the budget will not have the financial strength to support the proposed measures undertaken including by the state budget law.

Constituting an important source of revenue to the state budget, the tax represents at the same time a financial leverage stimulating the development and expansion of the economic activity at macro level, with consequences on the investment behaviour in the national economy.

Benefiting from the budgetary sources, the governments will allows certain tax incentives (discounts, tax breaks) in order to guide the economic agents in certain areas to be supported or stimulated through investment and employment, and thus the economic budget fulfils its role - bringing investments.

In terms of spending, the state budget is considered an instrument to achieve certain social and economic objectives through subsidies and tax incentives which the taxpayers themselves can benefit from.

Subsidies are gained both on the path of direct costs incurred from budgetary resources, as well as by the renunciation of the state to certain budgetary revenues due to it under the laws in force. Certain economic agents, as well as certain social categories regarded as disadvantaged and in need of such financial help can benefit from subsidies.

Aiming at implementing specific governmental or local programs, the public authorities will provide all the tax benefits from the state budget in the form of reductions, exemptions or deferments from

the tax payment, only if the budget revenues by their amount support these measures.

Given that, due to the large share of tax evasion seconded by very low performance of the national economy, the state budget is reduced significantly, these government programs cannot be brought to a conclusion and, accordingly, those social groups that need state financial support and who should receive it see themselves in the situation of not benefiting from these financial funds.

Speaking of the social effects generated by tax evasion in society, it should be noted that one of the main concerns of the tax system is the attention given to social equity.

This is very important because social equity is very important because the inland revenue, the taxes affect individuals in their wealth, touches the most sensitive concern: the financial interest [5]. For this reason, all tax payers are very "sensitive" to any irregularity or any inequity to which they are subject.

The option for tax evasion will seem the best solution for taxpayers considering a contributor notes directly that paying on time and in full the taxes related to his/her work, s/he can experience certain financial difficulties, in the same economic context in which another taxpayer will have a better economic situation in terms of income on which to order, just because they do not pay their obligations to the state budget and s/he is not sanctioned immediately by the tax authority, or if it is sanctioned, this happens with a delay.

Another social inequality is felt by the Romanian economic agents taxpayers through a fiscal policy of the state providing tax incentives for foreign investors, the Romanian taxpayers considering that they should have the same rights and obligations regarding the contribution to the state budget.

In general, in a society where the percentage of tax evasion is high and is reflected acutely in the standard of living being at a low level, this leads to deep feelings of social inequity, which in turn, may cause more adverse effects for that company, one of these negative effects being the sharp decrease of the taxpayers' confidence in the public authority and the fiscal policy adopted by it.

The specialized literature often refers to the objectives that any state is to attain by masking the taxes, as well as the financial policies they promote, such as achieving prosperity, security and social justice [9].

Maurice Duverger [4], referring to the distribution of burdens on individuals concludes that, although apparently the poorest citizens appear to receive more than they give the state (being the beneficiaries of subsidies, aids, state budget allocations, although their contribution to the formation of budget revenues is minimal or missing) however, in reality the situation is often the other way around.

Following the lack, sometimes acute, of financial funds, the state can take only one effective measure and with immediate effect in the short term - the increase of the tax rates on existing taxes and even creating new taxes.

This increase in tax rates causes an immediate increase in the budget revenues and leads to the increase of the fiscal pressure on the honest taxpayers, but also, on a medium and long term it will cause other adverse effects such as increased resistance to taxation and thus an increase of the phenomenon of tax evasion. Further, the existence of a phenomenon of increased tax evasion causes a deeper reduction in the volume of state revenues and the cycle described above can be resumed with a greater magnitude.

This gives birth to a vicious circle from which one can only come out if the tax evasion is significantly reduced and implicitly, the amount of income stolen from the state budget, thus jeopardizing the stability and economic security.

As noted above, tax evasion is an important generator of social inequality and distrust of the taxpayers in the public authorities, at the same time being a driver of distrust in the political powers, especially in those political powers which are responsible for the state government at some point.

As the vast majority of taxpayers, individuals, are citizens with voting rights and the legal entities taxpayers are formed, in fact, also of individuals who have the right to vote, then we can easily deduce that this dissatisfaction regarding the tax measures is reflected on the activity of the political parties in power, which will have to choose between the social opprobrium and the indebtedness of the state, as it can be easily reflected in the results of parliamentary elections, in the hope of a change of fiscal policy at the state level.

From this perspective, the effects of tax evasion on the state functions, when the level of tax evasion is very high, is compromised in direct proportion to the level of evasion, and the state's role in society, tax evasion becoming a matter of national security.

4. Tax evasion and the underground economy

Tax evasion is the main cause of reduction in tax revenue, while the human nature instinctively resists to taxing, directly perceived as an offense to one's own property and the individual interest.

The state's role should be to limit and restrict the escapist phenomenon and to bring in the real economic cycle the amounts evaded through tax evasion [2].

Classifying tax evasion in identified and unidentified evasion by the control bodies, we find that the hidden or unidentified evasion is an important part of the underground economy, economy prevailing in all countries, in different proportions in relation to the GDP (from a share of 8-10% of GDP in Switzerland, Austria, Holland, the underground economy evolves to about 30% in Bulgaria, Romania, Croatia, Lithuania and Estonia), noting that the GDP share of the underground economy is in a directly proportional relationship to the taxation level in the national economy.

Addressing the causes which benefit the development of the underground economy, in the scientific literature, we identify various tax issues as causes of the underground economy either in the form of fiscal pressure [3] or in the form of tax morality, understanding by this the citizens' attitude towards the state [6].

According to the European statistics, two-thirds of the economy is represented by the black labour, the rest of the income circulating at underground level, i.e. income evading the legal taxes, resulting from activities supported by the facts of evasion.

Thus, we find that the most appropriate and comprehensive definition of the underground economy is the one given by Pierre Fish and reproduced by Stella Radulescu in her book [7]: "*the totality of economic activities that are carried out outside the criminal, tax or social laws or escaping the inventory of the national accounts*".

5. Measures against tax evasion provided by the Romanian Government in the adopted National Strategies

Considering the statistics in the years 2012-2013 provided by the Fiscal Council [14], we understand why tax evasion in

Romania, due to its high level, has become an issue of economic security.

The tax evasion in Romania has a very high dimension, representing 16.2% of GDP in 2013, given that about 75% of the evasion is generated at VAT, which reached a maximum of 12.34% of GDP in 2012 and in 2013 it slightly decreased to 12.21% of GDP.

If Romania would collect the taxes it has at maximum level, it would have budgetary revenues in terms of percentage of GDP more than the European average, given that the legal level of the main taxes in Romania is higher than the European average (at European level, Romania has the 3rd highest standard VAT rate and the 7th highest tax burden on labour - generated mainly by CAS; at the same time, Romania has one of the lowest legal tax rates for the personal profit and income from the European Union, but they have a low share in the revenue budget) [14].

According to GD no. 609 / 2008 [10], between 2005-2007, in the financial-fiscal sector, legislative, organizational measures, as well as those in the field of recruitment and training of staff from within the National Customs Authority and Financial Guard were adopted in order to combat corruption and money laundering, to prevent, detect and combat tax evasion.

Pursuing the goals proposed by GD no.609 / 2008 [10], a notable progress was the adoption of the current law on combating tax evasion, Law no.241 / 2005 published in July 2005 [13].

Analyzing the implementation of the National Public Order Strategy 2010-2013, we must remember that the financial sector (taxes) and fiscal control, the following measures were adopted: in the Government Emergency Ordinance no. 54/2010 several proposals to reduce corruption and tax evasion were included, such as limiting the opportunity to sell or transfer shares of the

companies with debts concerning paying VAT or other debts to the state budget following an inspection conducted by NAFA; The National Anticorruption Directorate has acquired competence power of investigating fraud, abuse of office, of certain offenses related to customs and tax evasion, if the damage exceeds 1,000,000 Euros, and all offenses against the financial interests of the EU, regardless of the damage caused (so tax evasion and EU funds).

In the draft Decision for approving the National Strategy for Public Order and Safety 2015-2020 [16] brought to public discussion by the Ministry of Internal Affairs on 23 March 2015 clearly shows that the greatest threats to public safety and the business environment in Romania are represented by the manifestations of organized crime, the most versatile, specialized and damaging organized groups operating on the Romanian space being concentrated in the economic - financial domain (evasion, smuggling, illegal transactions, money laundering) and government contracts, representing the major pillars of the underground economy and important sources of corruption.

With regard to fraud and tax evasion in the draft Strategy, it is indicated that, though underground economy has a slight downward trend in Romania, its level still stands at a higher rate than the European average -18.4% - (source: Eurostat [17]).

Recognizing the serious implications of tax evasion on the national security, the draft Strategy confirms that tax evasion continues to produce major damage to the consolidated budget of the Romanian state, despite the fact that, in recent years, the phenomenon has experienced a slight decrease, mainly in the area of mass evasion (evasion made by the small-scale producers and traders or peripheral criminal groups), as a result of the

institutional / legislative combat measures adopted by the authorities, and the contraction of financial markets during fiscal restrictions.

The trends and the risk factors on tax evasion identified in the draft strategy for the period 2015-2020 relate to increasing the number of customs frauds, including those in the category of the counterfeited and under quoted merchandise and the complexity and diversity of the specific aspects of the money laundering phenomenon, as well as the criminal networks engaged in widespread evasion, which act independently in Romania or in connection with similar structures in member states, and which targeted primarily towards the Community transactions.

6. Conclusions

Given the implications of the escapist phenomenon in the national economy, particularly the pressure exerted on the national budget makes tax evasion a cause of economic insecurity and thus becomes a risk to the national security from the perspective of domestic politics of a state.

According to the Fiscal Council [14], the effectiveness of fiscal rules is determined by the degree of restraint that it exercises over the wording of the fiscal policy.

From a sociological and psychological perspective, tax evasion not sanctioned by the competent control authorities has not only economic influences but also ethical consequences, a moral degradation of society, as it is not normal that those who violate fiscal rules have positive economic results, and the contribution of those who are honest and pay their taxes but do not have outstanding economic results, to bear the public costs for those who are not correct.

The ease with which fiscal rules could be circumvented repeatedly in Romania from 2010-2013, including because of the regulatory gaps, highlights the weakness of the constraints exerted by the fiscal rules in the Fiscal Responsibility Law [11] and raises serious questions about the commitment to the future compliance with the fiscal rules established by taking in the national legislation the provisions of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

Given the low efficiency in collecting the taxes to the state budget, we consider it necessary in Romania to reform the system of collection of taxes, reform that will reduce the impact of the tax evasion on the national economy.

In the context of an irreversible fiscal reform of tax collection that will prove its efficiency on the medium to long term, the executive can tackle a policy of tax cuts in order to encourage and support the voluntary payment of taxes to the national budget thus creating the fiscal space needed to reduce the tax burden on wage labour, which is currently at a very high level in Romania, and discouraging the black labour, as part of the underground economy.

Taking into account the growing evolution of the escapist phenomenon in Romania, and in particular the proliferation of criminal groups in terms of tax evasion and targeting the escapists towards the Community funds occurs naturally amid the jeopardizing of the economic security as in the proposed National Strategy for the period 2015-2020, the prevention and combating of macro criminality, particularly the economic and financial crime and corruption to be declared the overall objective no.2, after preventing and combating the organized, cross-border crime and terrorism.

Also, the courses of action proposed in the National Strategy for Public Order and Safety draft [16] towards the convergence of the specific objective no. 2.1: preventing and combating tax evasion and other forms of economic and financial crime concerns resizing and enhancing the activities of information - intelligence and criminal prosecution for acts of tax evasion, smuggling and offenses against intellectual property rights; emphasizing by the Strategic Ministerial Group (GIS) of the measures to prevent and combat all forms of manifestation of macro criminality, protecting the national and Community customs territory, of that with special products, counterfeit goods, as well as trafficking and illegal trade with excise products; the harmonization of national legislation in the field of prevention and combating economic-financial crime with the European regulations in the domain, especially in the seizure and confiscation of assets / goods originating from crime; creating complex structures of investigation (Joint Investigation Team - JIT) under the operational coordination of GIS, composed of the representatives of all institutions responsible, in order to ensure uniform action, according to the models operating in the Member States of the European Union.

We consider that the measures proposed to be implemented by the National Strategy for Public Order and Safety [16], corroborating the general objective no.2 - preventing and combating macro criminality, particularly the economic and financial crime and corruption with the overall goal no. 3 - increasing the safety and protection of citizens amid the current level of the escapist phenomenon in the national economy, it aims to mitigate the risks that threaten the economic and national security at this time, a growing trend of the escapist phenomenon.

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