

TAX EVASION – NOTION AND MEANS TO COMMIT IT

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Abstract: *Tax evasion is the circumvention, by any means, from the enforcement or payment of taxes, contributions or any amounts owed to the state budget, the local budget, the state social insurance budget and the budgets for special funds by Romanian or foreign natural persons or companies, commonly referred to as tax payers in the text of the law. It is currently present under various methods and represents a direct and dangerous threat for society's stability.*

Key words: *economic-financial criminality, tax evasion, contributions, taxes.*

1. Introduction

Tax evasion, as a form of economic-financial criminality, has known an impressive evolution along with the setup and evolution of the public finance system, and inseparably, the occurrence of a state-type organisation.

The public finance system represents the regulation object of tax law. Tax law, also referred to as tax right is drawn up and supported in the European doctrine of public finance, with the purpose of individualizing and underlining the category of juridical norms regarding public income, and more particularly, taxes [2].

Art.139 of Romania's Constitution provides that "The contributions, taxes and other income of the state budget and the social insurance budget are set only by law". This provision is settled by art. 3 of the Public Finance Law of 1991: "The Parliament, as decision body for public finances, sets and approves by law (annually through the state budget law) the

contributions, taxes and other incomes of the state".

So *the tax* represents a mandatory money contribution with non-reimbursable titles owed according to the law of the state budget by the natural persons or companies, for the incomes they obtain or the goods they possess. This idea is confirmed and supported by the provisions of art. 56 line 1 of the Constitutions, an article that states that "the citizens are bound to contribute, through taxes and contributions, to the public expenses".

The tax has a unilateral character, as a consequence of the state's sovereignty. It is a public right institution without which the existence of the state cannot be conceived, being an integral part of it [1].

Besides the contributions, *the taxes* are a budget income category, received by the state and paid by natural and legal persons, as counter-delivery title for the services or activities carried out by some state bodies.

The circumvention from the contribution of the tax payer is called *tax evasion* and

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the “possibilities to elude the IRS differ from one social category to the other, depending on the nature and source of the income or property subject to taxation, the concrete method for setting the taxable material, the way the tax body is organized and other factors as well” [7].

Representing a social phenomenon with large economic implications, tax evasion has represented a point of attraction and controversy for the specialized literature, in an attempt to define and characterize this phenomenon. The distinguished author, N. Hoanță stated that: „If there’s talk about fraud, there’s talk about legal or legitimate fraud, illegal fraud, legal evasion, international evasion, legal evasion, fiscal paradises or refuges, the abuse of the right to escape taxation, the freedom to chose less taxable ways or fiscal underestimation, law fraud or underground economy ” [4].

At the beginning of the 20th century, Oreste Atanasiu considered tax evasion as being “the total licit and illicit processes through which the interested parties, totally or partially avoid their property from being subjected to the obligations provided by tax laws ” (quoted by D.D. Şaguna in „Financial and Fiscal Law”, ed. All Beck, Bucureşti, 2000, pg. 1056).

In the period between the two world wars, Virgil Codrescu makes the difference between the legal or tolerated evasion and the illegal, fraudulent one, defining tax evasion as the total illicit processes through which the interested parties partially or totally circumvent their assets, from the operations set through fiscal laws.

Professor Iulian Văcărel keeps the idea of the distinction between legal and illegal evasion defining evasion as the “circumvention from the imposition of a part from the taxable matter [7].

To the same purpose, prof. D.D. Şaguna defines tax evasion as “ the total licit or illicit processes with the help of which the

interested parties totally or partially circumvent their taxable matter from the obligations set by fiscal law” [6].

Professor D. Clocotici tries to formulate a simpler and more comprehensive definition of the tax evasion phenomena, representing the circumvention of the tax payer from taxation [1].

A definition of the tax evasion phenomena has also been formulated by university lecturer Ioan Gliga, in whose opinion, tax evasion represents the circumvention of the tax payer from the payment of budgetary obligations, either totally or in part, by any means prohibited by the law” [3].

The legislative act that defines tax evasion aspects Romania, at the same time setting the penalties that are applied for this activity is Law 87/1994 for the fight against tax evasion, republished. A series of other legislative acts come to complete the framework for the prevention and fight against tax evasion: Law 82/1991 republished, Law 64/1999 (O.G. 70/1997) regarding tax control with its ulterior amendments and additions, Law 21/1999 for the prevention and sanctioning of money laundering; Law 30/1991 regarding the organisation and functioning of the Fraud Squad with its ulterior amendments and additions, etc.

In the conception of the law maker, tax evasion represents the circumvention through any means from the levying or payment of contributions, taxes and other amounts owed to the state budget, the local budget, the state budget for social insurance and special funds budgets of the natural and juridical persons, Romanian or foreign, referred to in the text of the law as taxpayers. (art. 1 Law no. 87/1994 republished, for the fight against tax evasion.)

On the background of the transition of Romanian economy from the centralized form to the market economy, a series of legislative, administrative, social and

economic factors have led to the tax evasion becoming a phenomenon that is very harmful for the society. It is currently present under various forms, some of which we will examine below, as presented by Professor N. Moldoveanu in his paper [5].

Bank account evasion

A private share company can have two bank accounts opened with different banks at the same time, the opening of the second account being made without the approval or notification of tax authorities or of the bank with which the first account is opened.

Evasion ways in the accounting through some accounts

In 1929, for the first time in our country, a special law has been adopted for the repression of tax evasion. The law maker has started from the principle according to which “fiscal responsibility is the essence of the democracy system” as opposed to the other systems where the tax-payer, being under a constrictive system, is outside any responsibility [6].

The provision of the law regarding the accounting forms of tax evasion, included in art. 8 set that; “any company that presents the IRS a balance meant to serve as a tax calculation element is responsible for the accuracy and truthfulness of the data included in the balance”. Not the fact that certain accounting operations that served to lower the income are not forbidden created a sort of legitimacy of such evasion forms.

The dissimulation means are varied, presented either as an account game that changes the profit nature of a certain amount, or a registration that has the purpose of presenting another status than the real one. The accounting expertise has the role of investigating to what extent the data presented by the tax payer correspond to reality and if the reality is fully presented. After the real gross benefit has been presented, the net taxable benefit has to be determined.

Tax evasion in the field of industry and agriculture [5]

The criminality in the industry is due to the rapid increase of the abuse and illegal acts against the public patrimony as well as due to the lack of control of the legality of the drawing up of the accounting documents: tools and installations have been fictitiously set aside, then sold for low prices in the private sector, sales have been made without bidding, raw materials, labour force, tools, materials have been illegally transferred from the public patrimony into the private one, state capital companies have purchased from the private companies materials that were of low quality and prices way over that on the market.

In agriculture, frequent infringements of the law have been carried out with the occasion of the privation of the former CAPs, the application of the land fund and the awarding of property titles, the transfer of the lands from the state to the private sector, etc.

Tax evasion in the field of service deliveries and constructions

The classical fraud method in this field is represented by the process through which the companies in Romania register in their accounting records the services provided externally or internally, that later on can no longer be quantified or identified physically or materially. In reality these services are not delivered as such, and there is only a fictitious circuit of the documents based on which the expenses are artificially increase, VAT is illegally deducted, or in case of the import of such services, there is an apparently legal currency transfer outside the country.

In the field of constructions there have been numerous cases of assets sale through the under-evaluation of the patrimony, the delivery of construction materials on site at prices lower than they should be, the conclusion of contracts that represented a disadvantage for the state share companies,

the subordination of the state capital companies to the personal interests of their managers, the creation of parallel private share companies, the entrusting of the execution of some construction works to some private companies without bidding, the use of the funds of state companies for the interest of private companies, the carrying out of construction works abroad by accepting prices inferior to that on the market, etc. [5].

Tax evasion in the field of import and export

In case of the imports of raw materials, materials, finished, under-evaluated products with customs paid as such, the main tax evasion method is the interposition of a phantom-type or real company, but transferred later on the economic circuit. By eluding the customs-currency regulations applicable regarding import-export activities and the coming in the country, through contraband most often with fabricated documents, of some important quantities of merchandize, by carrying out import-export operations with other products than that foreseen in the documentation accompanying the products, huge amounts have been obtained [5].

In the export field, from the practice of the financial –fiscal authorities the following aspects have resulted, underlining two types of tax evasion: the purchase of internal merchandize that is exported for symbolic prices to external beneficiaries located in fiscal paradise areas, where the price increase is applied and the currency recovery of the difference up to the real value of the export; “blind exports” to the purpose that the exported merchandize does not actually leave the territory of the country, being replaced by products of a much lower quality.

2. Conclusion

Thus, tax evasion represents a direct and dangerous threat for the stability of the company. There where necessary, the state authorities are bound to identify and force the defaulters to pay their contributions, for a good functioning of the governmental structures and public services. Rightfully so, in time, evasion has proven to be an art - „The art of avoiding the fall into the fiscal law’s field of attraction” – since it strongly appeals to human imagination and creates universes that are parallel to reality, and thus bring financial advantages to the companies applying them.

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