

MEANS AND METHODS OF PREVENTING AND COMBATING TAX EVASION ADOPTED BY ROMANIA AND MOLDOVA

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Abstract: *Tax evasion, complex social and economic phenomenon facing contemporary society, it is hard to quantify, but its direct and indirect effects on economic development are felt, for which the current tax laws more severe penalties are provided and some forms of evasion Tax crimes are defined as crimes. To what extent more drastic punishment of acts of tax evasion led to its decrease in the national economy, and the effect of excessive taxation policy and tax legislation permissive in terms of combating tax evasion we intend to explore this material, making a comparative law analysis on tax legislation in Romania and Moldova.*

Keywords: *tax fraud, tax evasion, tax policy, taxpayer, tax obligations.*

1. Introduction

In Romania, EU member state, also in Moldova, the former Soviet Union state, we meet very high level of tax evasion, while the authorities of the two countries should also adopt measures to stimulate and attract foreign investors but to implementation of the *acquis communautaire* for the prevention and combating tax evasion. Lack of legal definitions for the phenomenon of tax evasion, the fact that tax law does not operate that clear distinction between tax fraud and tax evasion, but also the multitude of facts which circumscribes the scope of tax evasion make difficult to specify these terms, so that in the legal literature, but also in economic literature we meet different approaches for the tax

evasion phenomenon. Whether we talk about tax havens and financial benefits they provide, or the benefits of employers and employees for illegal work, the legal and accounting data interpretations of tax provision for reducing taxable supply, or the use of preferential tax regimes and taxation without the necessary legal conditions, in fact we consider that the manifestations of the phenomenon of tax evasion which considerably reduces tax revenues.

This phenomenon we meet both national, and then an impact on national economic repercussions, and also in economic operations carried out by operators in different countries, in which evasion can be committed in relation to the tax laws of both countries.

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Tax evasion is part of the underground economy, because according to the National Institute of Statistics, declaring full VAT with income tax evasion and illegal employment are the main areas of the underground economy.

2. The level of tax evasion in Romania and Moldova

The cycle *L'espaces acoustiques* Spread tax evasion and to quantify precisely the amount stolen through tax evasion is difficult both in Romania and in Moldova. However, in order to create an image on the extent of tax evasion phenomenon and its trends, we believe that the share of shadow economy analysis, which includes tax evasion in GDP, in conjunction with share of budget revenues Gross Domestic Product provides information relevant in this regard.

Thus, we find that in Romania, in the period 2003-2010 the share of shadow economy in GDPⁱ has been growing, indicating the proliferation of tax evasion phenomenon in the national economy. At the same time, analyzing and share of budget revenues (tax and nontax) in GDPⁱⁱ note that Romania has the lowest percentage of revenues to GDP of EU Member States, respectively by 11.6 percentage points in 2009 lower than the European average, and also the tax revenues (taxes and tax contributions) to GDPⁱⁱⁱ was in 2009 by 12 percentage points lower than the average of other European countries, figures tell us a low level of collection of tax obligations, inefficient administration of public finances, but also a relatively low tax base, with many exceptions and deductions regulated by law, which ultimately translate into higher tax evasion.

In comparison, note that the share of shadow economy in GDP is below 15% in the countries of northwestern Europe (Austria, Germany, Ireland, Great Britain, Luxembourg and the Netherlands), and

these values are significant and point to the existence of underground economy, and implicit tax evasion.

One thing is certain: the underground economy exists in all countries, with different proportions relative to GDP, according to administrative and legal measures taken by authorities. However, not infrequently, some governors have admitted the existence of tax evasion for rapid accumulation of domestic capital and so to encourage consumption and boost their own output, even if that accumulation was made by reducing supply of public finances.

Comparatively, in Moldova in 1999-2006^{iv}, the economy registered a 45.8% share of GDP for the first nine months of 2010 to reach a contribution of 23%, while the overall level of taxation is 34% of GDP^v.

The large number of taxes imposed on taxpayers in Romania^{vi}, while the state counterpart to collect money by not paying are not directly felt, excessive bureaucracy and widespread corruption, adversely affect the level of taxation and increasing Romania's economic growth through processes and means of circumventing the tax liabilities identified by the taxpayer, in a word by the expression on a large scale and even more aggressive tax evasion.

3. The spectralism in Romania Methods for expression of tax evasion

Since ancient times, the taxpayer sought varied and ingenious methods, which over time has improved, in order to evade the payment of tax, thus protecting the family net income.

Psychologically speaking, human nature has always had a tendency to put personal interests ahead of public interest, for which it was found that tightening fiscal fines have not determined the taxpayer, driven by personal interest, to declare income for

tax purposes exactly, but on the contrary, they determined to improve methods of evading tax obligations.

Shortages and gaps exploiting or taking advantage of tax law exceptions, exemptions and deductions remain legal and thus the lower limit of legality, the taxpayer can preserve certain taxation amounts will be removed.

The most common tax evasion the taxpayer favorable tax laws interpreted are:

- Building depreciation and reserve funds in an amount greater than necessary economically in order to reduce taxable income;
- Possibility to either opt for personal income tax or tax system applicable to income of corporations, in the latter case there are many facilities and tax exemptions legal burdens and stimulate the development corporation;
- Reduction of the taxable income of entertainment costs, advertising and publicity costs are pushing to limit legal, even if the destination does not have;
- Use the law on charitable donations, whether the final destination is that the amounts stolen or not, in order to reduce taxable income;
- Interpretation of legal provisions for taxpayer contributions to support the facilities for social activities, cultural, scientific or sports;
- The legal possibility to reinvest a portion of profit achieved in procurement of machinery and equipment for which are regulated income tax reductions;
- Use the law to exclude from taxable meal expenses of living labor, with training and experience, as well as amounts paid for research contracts which have as their object the priority programs of national interest;
- Interpretation of the provisions on self-interest tax exemptions from various periods since the establishment of societies based on profile;
- Interpretation and use for their own legal provisions on tax relief granted to residents and business conducted in areas declared free economic zones.

All these methods and practices are possible in the legislative system of Romania and Moldova^{vii}, while the intention of the legislator in the two countries was to stimulate certain areas of activity of national economy and support and development of certain sports social, cultural and scientific activities, and taxpayer intends to preserve a portion of income to ensure their own interests.

On tax evasion^{viii} practically its forms are endless, depending on the subject of tax and taxpayer action that used to evade the law on taxation. The purpose of tax evasion is to reduce taxes, to underestimate the amount of taxable materials, and frequent mention of its forms : preparation of false statements regarding taxes, preparation of documents for fictitious payments, sale of companies with debts to the state budget, composition and maintenance of accounting records double, false accounting entries to reduce taxable materials^{ix}, sales invoices without invoice or sales without effective ; falsifying balance^x

Internationally, we see a trend of proliferation of fictitious companies, the seat of many companies in tax havens, using fake documents in exchange of goods between different economic agents and subsidiaries and their use of economic agents in different countries for sale products through transfer pricing method^{xi}.

Escapist phenomenon in Moldova and hence the shadow economy^{xii} is growing more aggressive, involving various fields and a growing number of taxpayers. Shadow of the main forms of activity in Moldova remember, as an example : production and income concealment, illicit import-export operations^{xiii}, illegal privatization, production and marketing of counterfeit or unlicensed, tax evasion, corruption, ghost companies.

With the unprecedented technological development in recent decades, both in

Romania and in Moldova have increased on-line business operations and thus increased the number of frauds committed by electronic means, especially for online trade.

4. Preventing and combating tax evasion

Because the effects of economic, social and political, and thus reduce public revenues due to tax evasion, whether committed in flagrant violation of the law or the law, should be reduced and prevented, because the phenomenon itself cannot be eradicated totally human nature and psychological perception of tax liability.

Regarding the means to fight tax evasion, we consider that the first step must be done in the legislative field, by adopting fiscal rules as clear and perfected the means evasion is diversified, efficient state institutions involved in collecting and verifying taxpayer contributions, simplifying the tax system, advertising system, process and results on combating tax evasion.

Romanian legislature passed the first law on combating tax evasion in 1994^{xiv}, repealed by legislative act adopted in 2005 Act 241^{xv}, which wanted to increase the control and prevention of tax evasion and filling legislative gaps prior law.

Law nr.241/2005 recently amended Ordinance nr.54/2010, has unfortunately also shortcomings and inaccuracies that are exploited and used by taxpayers evaders, but the legislature must continue to legalize these acts to increase the efficiency of their application.

Before making a brief analysis of the normative act in force, we find that the legislature did not sufficiently regulated to prevent and combat tax evasion facts, facts which have a lower risk than crime itself of tax evasion and could be regulated by the legislator in the realm of contravention.

Thus, the legislature in the current law criminalizes seven distinct acts of tax evasion (Article 9 of the Law no.241-2005), obviously that cannot be satisfied that it would be different ways of a single offense. Some of these crimes are likely to attempt but it is not sanctioned by the legislature, although we believe that the attempt should be punished because of the impact of tax evasion phenomenon.

Penalty provided by law is imprisonment from 2-8 years with additional penalty of prohibiting certain rights. The court may apply a security measure. Tax evasion offenses aggravated know two forms, according to art. 9 paragraph. 2 and 3 of Law no. 241/2005.

Such offenses are punishable as tax evasion following facts:

- a) good hiding taxable or taxable source
- b) the omission, in whole or in part, to reflect the accounting regulations or other legal documents, commercial operations conducted or revenues
- c) highlighting the accounting documents or other legal documents, expenses which are not based on actual operations or other operations highlighting fictitious;
- d) alteration, destruction or hiding of accounting documents, memoirs of devices charged or electronic cash registers or other data storage means;
- e) execution of double accounting records, using documents or other data storage means;
- f) avoidance of financial checks, tax or customs by declaring, declaring fictitious or inaccurate declaration on the main or secondary offices of the persons examined,
- g) the substitution, damage or alienation by the debtor or by third parties of goods seized according to the Tax Procedure Code and Criminal Procedure Code.

The legislator also devotes six other law articles^{xvi} related crimes of tax evasion crimes, namely: the refusal to restore the destroyed accounting documents, refusal to

provide legal documents and assets of heritage, preventing performance of financial control, tax or customs detention and intentionally not paying taxes and withholding, printing, storing or putting into circulation, without law, stamps, Bands or printed forms, obtaining or association to obtain reimbursement, refund or compensation illegal.

Although the drafting of the Law no. 241/2005 for preventing and combating tax evasion legislator started from the premise of a high degree of social danger of the crime of tax evasion, as shown by high limits of imprisonment and fine of no alternative sanction, however, in the individualization of sanctions was regulated by art.10 and can cause the application of mitigation of punishment and even punishment.

Regarding the law of the Republic of Moldova, note that the notions of tax evasion and tax fraud are set and regulated as such nor the Criminal Code or the Tax Code, nor the Law of the Republic of Moldova on prevention and combating money laundering and terrorist financing no. 190-XVI from 26.07.2007, although in art.244 of the Criminal Code of the Republic of Moldova to provide for fines or banning some legal right to perform certain activities, or imprisonment if the accounting documents, tax or financial obviously distorted data introduced on income or expenditure, or by concealment of other taxable items. Also, none of the above legal acts does not provide and does not establish measures against tax havens.

Analyzing these legislative rules, they conclude that economic agents do not give clear explanations of the notion of tax evasion; tax required to determine behavior, causing conflicts between taxpayers and the state, leads to violation of taxpayers and reduced effectiveness of fiscal control bodies.

Conclusion on the current measures to prevent and combat tax evasion in the two neighboring countries, we believe that to have coherent and effective regulatory measures to combat tax evasion should be considered several key issues:

- Tax authorities should set taxes so that they are acceptable to taxpayers in terms of quantity and perceived by its pivotal role in shaping taxpayer revenues;
- the discovery of the offense of tax evasion sure the taxpayer has a greater impact than criminal sanction, so that the precise and explicit in the law of the facts constituting the offense or offenses provide increased certainty and is accessible to recipients law;
- increasing the training of officials of the fiscal control bodies and establish a transparent and fair incentives for them to reduce and even eliminate corruption in tax administration system;
- establishment of a national filing system of natural or legal persons who do not pay outstanding liabilities, a system that is communicated to other financial institutions providing a true picture of the taxpayer.

Notes

- i For Romania, the share of underground economy in GDP are as follows: 2003 - 15.4% of GDP, 2004 to 14.5% of GDP, 2005 to 16.6% of GDP, 2006 - 17.9% of GDP, 2007-18 , 0% of GDP, 2008-21% of GDP, 2009-24%, 2010-27% of GDP
- ii In 2009, in Romania, the share of budgetary revenues in GDP was only 32.4% of GDP
- iii Regarding the share of tax revenues in GDP in 2009, Romania is the penultimate state in the EU with a level of 27.1%, significantly lower than in Bulgaria (28.9%) and Hungary (39.5%)
- iv World Bank study developed "Underground economies around the world ", the analysis for the period 1999-2006, source www.imedia.md

- v The data is provided by National Bureau of Statistics of Moldova, the source www.statistica.md
- vi According to the survey conducted in 2008 by analysts at PricewaterhouseCoopers (PwC) and
- vii World Bank, Romania is ranked first in the EU and the fourth worldwide in terms of total taxes to be paid annually by individuals and legal, and the situation has not changed even now when no less than 420 taxes and fees regulated by tax legislation, the Ministry of Finance estimates
- viii For example, the 2008 Tax Code of the Republic of Moldova was modified by introducing zero tax rate reinvested profit by introducing incentives and deductions for investors in free economic zones declared, also in the Moldovan Tax Code and other regulations provided tax relief for charitable donations
- ix If tax evasion is the result of favorable interpretations of tax laws, legislative gaps and inconsistencies, but also improvidence and faulty methods of law enforcement, tax fraud or tax evasion involves fraudulent intent to violate the legal norm taxpayer in order to avoid tax and fees due the state.
- x Reduce turnover by recording the costs of personal expenses of the shareholders or by recording fictitious expenses, outstanding in fact.
- xi Since the balance sheet is submitted on his own responsibility of the employer and accounting officer, any discrepancy is detected during fiscal control body, two Onenes is joint responsibility.
- xii Goods are exported by subsidiaries of international trader of countries with lax tax laws and lighter taxation.
- xiii The phrase used for underground economy in economic and legal specialized materials in Moldova
- xiv Among the illicit import-export activities in Moldova include: smuggling - are striking cases of smuggling counterfeit tobacco products; pseudo barter - where the products are exported, and the proceeds are deposited with banks in other countries; pseudo transit-products for export according to the documents, not arrive at their destination being sold in the Republic of Moldova, thus avoiding taxation.
- xv Law no.87-1994 to combat tax evasion nr.299 published in the Official Gazette of 24 October 1994.
- xvi Law no.241-2005 for the prevention and combating tax evasion, published in Official Gazette No. 672 of 27 July 2005.
- xvii Articles 3-8 of the Law no.241-2005 established the legal regime of crimes related crimes of tax evasion

References

1. Law no.87-1994 to combat tax evasion nr.299 published in the Official Gazette of 24 October 1994.
2. Law no. 241-2005 for the prevention and combating tax evasion, published in Official Gazette No. 672 of 27 July 2005.
3. N. Hoanță. *Tax evasion* Bucharest: Tribune Publishing House, 1997.
4. D.D. Şaguna, *Financial Law and Tax*. Bucharest, All Beck Publishing House, 2003.