

## PREVENTIVE MEASURES AND FORMS OF COHERENCE THROUGH THE FISCAL EVASION PHENOMENON IN ROMANIA

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**Abstract:** *The effectiveness of the process of halting the phenomenon of tax evasion lies above all in the ability to remove the very causes that produce or favor offenses that run counter to tax laws, knowing that only the removal of the effects is not and can not be as effective as eradicating the causes.*

**Key words:** fiscal evasion; limiting fiscal pressure; degree of voluntary acceptance; fiscal regulation; fiscal financial control.

**JEL Classification Codes:** H26.

### 1. INTRODUCTION

Tax evasion is one of the complex economic and social phenomena of greatest importance that today's states face and whose undesirable consequences seek to limit them as much as eradication is virtually impossible.

There are, in my opinion, four main ways of action in this direction:

- qualitative service of taxpayers (Gyuricza and Țugui, 2013);
- reducing the pressure on honest taxpayers, who execute on time and in full the fiscal obligations;
- simplifying the system for declaring and paying taxes and fees;
- continuous improvement of fiscal control in order to identify and combat tax evasion.

The effects of tax evasion have a direct impact on tax revenue levels, lead to distortions in the market mechanism and may contribute to social inequities (increase) as a result of different "access" and "inclination" to tax evasion of taxpayers. The phenomenon of tax evasion in Romania still requires research and analysis to arrive at a correct and complete perception of its dimensions.

### 2. THE ECONOMIC AND SOCIAL EFFECTS OF FISCAL ISSUES

Eradicating tax evasion is a target for the authorities in all countries. But this is impossible to achieve, so the fight against tax evasion should not be eradication, but diminishing in an acceptable percentage for society at some point. As any harm is obvious, in order to be successful in this fight, it is more effective to prevent this phenomenon than to hold the accountants responsible after it has taken place.

In order to understand the need to promote measures to prevent and combat tax evasion, we will try to capture some of the economic and social implications of this phenomenon, with particularly damaging consequences both at the macroeconomic level and at the individual level,



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considering, firstly, the aggravation of the social-economic crisis by increasing unemployment and increasing social polarization.

Illegal zone	⇒ fraud
Grey zone	⇒ abuse of rights ⇒ fiscal ability
Legal zone	⇒ abstinence ⇒ applying tax regimes of favor ⇒ error ⇒ compliance with the law

**Figure no. 1 Fraud and tax evasion: degrees of illegality**

Source: Hoanta, N. (2010), *Tax Evasion, II-nd Edition, C.H.Beck Editorial, Bucharest.*

So one of the economic implications of this phenomenon would be to divert some money from the state budget and channel it to the underground economy or groups of mafia-type interests.

It is obvious that in the conditions in which tax evasion is out of control and reaches alarming rates - it could endanger the very formation of the state's financial resources, seriously affecting socially the fulfillment of its vital functions. Thus, many social convulsions can be generated by declassifying the date of payment of wages and pensions or, in the worst case scenario, even non-payment, the discontinuation of state aid granted to the most deprived social categories (social benefits, unemployment benefits, etc.).

These issues lead to the emergence of tensions, especially in the social sphere, leading to a decrease in labor productivity and a decrease in unemployment, leading to devastating effects through the uncontrolled rise of inflation amid a continuous poverty of the majority of the population and an increase in social polarization.

Also, on the social level, against the background of this social polarization, there is another extremely unfavorable effect, but whose dimensions can not be quantified strictly: the overthrow of the system of traditional values of the society, on the background of the decrease of the degree culture and education.

Due to material accumulations (obtained on illicit routes!), a series of "bad boys" from the world of organized crime of business become true models of life for a series of teenagers attracted by the mirage of such a life and, most of the time, by becoming simple tools handled by these criminals who only seek to achieve their criminal goals of economic nature.

The specialist literature in the Anglo-Saxon countries concerns tax fraud evasion through a criminal reorganization of a business that is based on circumvention of tax obligations. In the case of our country, it is worth mentioning the need to promote vigorous strategies of promotion and combat precisely in order not to propagate these distortions in the business environment, which would seriously and irremediably affect the image of our country externally, thus bringing about significant economic damage by stopping the initiative of foreign businessmen to invest in Romania. Under the current development of the Romanian economy, this redirect of foreign direct investment flows to emerging markets could be a suicidal attitude towards a healthy and sustainable development of the Romanian economy.

Why preventing and combating the underground economy and tax evasion is a priority for an efficient government management? Because "it affects existentially a more restricted community or the human community in its entirety, altering a state of things that we have been accustomed to characterizing as normal. And when such phenomena, quickly embracing the globalization cluster, expand implacably on some economies and territories that are sometimes considered terra nova, essentially altering the expected results of certain policies, affecting

macro-decision-making insofar as it does not are enough studied, known and understood to try to monitor and channel them - you can not remain passive.

All the more so, by ignorance, their despondency or exclusion from state management, the failure of the adopted economic policies is to be expected”(Craiu, 2004).

The underground economy and organized crime constitute support elements for intensifying this phenomenon of tax evasion. Practically, organized crime and tax evasion activities interchange and generate each other, in the sense that the amounts of money illegally generated will have as their final destination the underground economy, which in turn will generate a new revenue stream that escapes from under the incidence of tax laws. In this direction, one should consider the gradual reduction of the level of certain categories of taxes and duties, which is very high, to the extent that the taxpayer's temptation to not pay such taxes is diminished, knowing that a budget is being fed better with small taxes but paid by a larger mass of taxpayers than with high taxes but paid by a lower number of taxpayers.

A number of phenomena that have spread worryingly and are fueling the underground economy refer to trafficking of luxury stolen cars abroad, black work - without legal forms and without payment of the related tax obligations.

Fighting tax evasion becomes all the more important by the extent of the distortions it generates in the economic environment and limiting the state's margin of action by stealing revenues to this area, thus jeopardizing both the fulfillment of the vital functions of the state and the achievement of the claimed performance criteria the integration of our country into the European Union.

### **3. PREVENTIVE MEASURES THROUGH THE FISCAL EVASION PHENOMENON**

For many analysts, tax evasion is one of the diseases of modern societies, along with the underground economy, corruption and others, and for others it is an attitude, a manifestation of democracy. Measures to combat tax evasion must act in the following areas: legislative, administrative and educational.

Firstly, with regard to tax evasion prevention, the tax legislation is in place to eliminate ambiguities that leave room for interpretations that can be speculated by tax evaders.

Secondly, the fight against corruption among law enforcement officials needs to be stepped up, both by severely punishing them and by improving the methods of tracking the behavior and wealth accumulated by those officials. Collaboration between law enforcement authorities in our country and other states(especially neighbors) is another way to reduce tax evasion, as it is common knowledge that an act of tax evasion often also involves an element of foreign affairs (false invoices of import and export, accounts or personal companies abroad, often by fictitious names, the internationalization of mafia-type links, etc.).

From the administrative point of view, the measures imply the creation of a complex and operative information system, the provision of the appropriate administrative structures and instruments for efficient combating of tax evasion, as well as the training of specialists with morality and professionalism imposed by the forms and dimensions of tax evasion.

From the educational point of view, it is intended to ensure the necessary conditions for the taxpayers' education in order to comply with the tax legislation and even to motivate taxpayers through incentives in this sense by increasing the voluntary compliance of the taxpayers in order to increase the budgetary revenues.

#### **3.1 *Legislative measures to combat tax evasion***

International tax practice attests that a modern tax system must also have components that enable taxpayers to be educated and promptly informed about their obligations to correctly

compile tax returns, to obtain accurate records of income and expenses incurred by the business, penalties and sanctions applicable to those who violate legal provisions.

At the legislative level, in order to prevent this scourge - tax evasion, a series of preventive measures, elaborated in the Law no. 87/1994, which represented the central legislative framework in the field of tax evasion, for a period of more than 10 years (1994-2005), being completed and republished throughout its existence.

Nowadays, in Romania, Law no.241/2005 is the normative act regarding the prevention and combating of the phenomenon of tax evasion, which seeks to redefine the principles and rules of Law no.87/2004, namely repositioning and adapting them to the current stage the evolution of techniques in the field of economic and financial crime.

It is remarked that by Law no.241/2005, only violations of the law, which constitute economic-type crimes of the type of tax evasion, are being sanctioned, unlike the previous law in the field (Law No.87/1994), which also contained a component contravention.

We consider that Law no.241/2005 is largely in line with the *acquis communitarium* in the field of preventing, detecting and sanctioning the facts of financial and accounting fraud, because the fiscal sanctions stipulated by this normative act are diversified and sufficiently punitive in relation to the seriousness of the act, while having a preventive role on the discouragement of such practices.

We would like to give some examples to this effect from the content of the law:

**Table no.1 Fiscal evasion- tax offense according to Law no.241/2005**

<b>LAW NO.241/2005</b>	
<b>Article from the law</b>	<b>Purpose</b>
1. according to art.no.7: "it's to be considered an offense of tax evasion the printing, putting into circulation, in any way, without the right, or the unfair holding of the special forms"	Restricting the scope of action of phantom companies by certifying the authenticity of tax evidence used in business transactions. Under the conditions of the abolition of the special regime of insertion and numbering, the offense in question remains out of the question.
2. according to art.no.8:"it is a criminal offense to establish the tax, taxes or contributions in bad faith by the taxpayer, resulting in the right to obtain sums of money by way of repayments or repayments from the general budget or compensations due to the general consolidated budget "	Irregular VAT reimbursements and compensation are incriminated. In addition, we consider that if the VAT is illegally deducted, even if no repayment or compensation with other tax liabilities due to the general consolidated budget is required, the offense constitutes an offense in accordance with this law, since " facto" with the VAT collected
3. according to art.no.9 align (1) lit.c: "it's to be considered a crime of tax evasion recording of fictitious operations"	In this sense, the term fictitious operation is quite clearly defined: "the concealment of reality by creating the appearance of an operation which in fact does not exist." The material object of this crime is the supporting documents in which fictitious economic operations are recorded; From this perspective, the active subject can only be a person with financial and accounting responsibilities.

4. according to art.no.4: "the unjustified refusal of a person to submit to the competent bodies, after having been summoned 3 times, legal documents and assets in the patrimony for the purpose of preventing financial, tax or customs checks "	The objective side of this crime is represented by the act of refusal of the taxpayer and the subjective side is represented by the fact that the guilty form under which this crime is committed is the direct intention (can not bring into question a refusal of fault, because the law provides for the summons the previous three times the taxpayer.
5. according to art.no.5: "preventing, in any form, the competent authorities from entering, under the conditions laid down by law, in premises, premises or land for the purpose of carrying out financial, tax or customs checks"	The current law can be improved by delimiting situations where access is prevented from intent to those in which it is guilty (or without the knowledge of the taxpayer)
6. according to art.no.6: "retention and non-payment, intentionally, within 30 days of the due date, of amounts representing taxes or withholding contributions"	The act itself is considered an offense if two conditions are met cumulatively: the sums are not exceeded for more than 30 days after their detention and the deed is committed intentionally
7. according to art.no.9 align(1) lit.d: alteration, destruction or concealment of accounting documents, records of taxable or electronic fiscal stamps or other means of storing data "	We consider that, as a crime, the actions listed in the law are to be undertaken with guilt form the direct intention (and not the fault) and to follow the circumvention tax liabilities owed.
8. according to art.no. 9 align(1) lit.f: "evasion of financial, fiscal or customs checks, by failing to declare, fictitious declaration or inaccurate declaration of the principal or secondary premises of the persons checked"	the active subject of this crime will always be qualified given the normative framework governing the quality of the persons who can declare the registered office of a company (depending on its legal form of organization)

Source: Law no.241/2005 for preventing and combating tax evasion, published in Monitorul Oficial, Part I no. 672 of 27/07/2005 updated October 2017

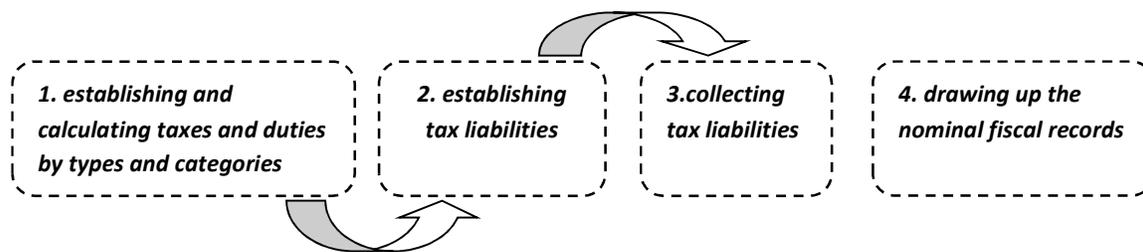
Also a role in the prevention of tax evasion is also incriminated in art. 3 of Law no. 241/2005. More specifically, regarding the taxpayer's obligation to present all the documents at the place of the tax inspection, it should be noted that although the law of the Fiscal Procedure Code does not distinguish, in the case of lost, stolen or destroyed accounting documents, the provisions of art.26 of the Accounting Law no.82/1991, according to which they must be reconstituted within 30 days of the finding; otherwise, the provisions of art. 3 of the Law no. 241/2005, according to which it is a crime "the taxpayer's act, which intentionally does not restore the destroyed accounting documents, within the term inscribed in the control documents, although he could do so".

I would point out that, although the possibility of imposing a fine is foreseen, this is a penal sanction of a criminal nature and not a contraventional, and therefore its application rests solely with the courts, not with the financial-fiscal control bodies.

### 3.2 Administrative measures to combat tax evasion

Starting from the "conflict" between accounting and taxation, the necessity of drawing up nominal fiscal records appears as an effective way to reduce the phenomenon of tax fraud, in the context of the tax registration approach as a basic function of the tax administration. Clearly, fighting techniques and methods are the attribute of tax authorities that, based on practical considerations, have come to the conclusion that rigorous drawing of documents such as the payer's records may be an effective means of reducing tax fraud, achievable by increasing the input of the information system.

The process of drafting this document is quite complex and is based on several essential steps:



**Figure no.2 The steps of drawing up the payer’s records**

*Source: the authors’ view*

The importance of drawing up the "Payer's records" is that it represents a fiduciary image for the taxpayer as well as for the fiscal unit regarding the concordance and the balance between the established amounts and the actually received ones, and the negative effect generated by the omission of the payer is the impossibility of correctly assessing the obligations tax payable by the taxpayer and their centralization according to the nature of the income.

In accordance with the provisions of GO no.75/2001, regarding the organization and functioning of the fiscal record, it is organized in order to prevent and combat tax evasion, as well as to strengthen the administration of taxes and duties due to the state budget.

In this context, we appreciate that the operative and efficient operation, but also with a large scope, of the fiscal record represents an opportune measure in limiting the evasion phenomenon, but at the same time an efficient way of monitoring and monitoring the observance of the financial laws accounting by taxpayers.

Also, in order to prevent and combat tax evasion as well as to administer the taxes and duties due to the state budget, the fiscal record of the taxpayers was organized, which records the natural and legal persons who have committed deeds sanctioned by the financial, customs laws, as well and facts pertaining to financial discipline (Toader, 2011).

### **3.3 Institutional measures to combat tax evasion**

In international practice, the efficiency of a tax system is not measured by the importance of fiscal income, but by the degree of tax consensus that is inversely proportional to the degree of tax resilience, i.e. tax evasion. As mentioned above, one of the major causes of the amplification of the phenomenon of tax evasion is the incomplete and ambiguous legislative system, to which are added the subjective considerations: taxpayer's psychology and insufficient tax education.

In this scenario, we believe that the lack of well-organized control and endowment with a skilled and correct staff can lead to large forms of tax evasion.

The fiscal-financial control act should be approached not as an administrative act but as an objective necessity to timely detect dysfunctions and minimize negative effects by removing the causes that led to this state of affairs.

The fiscal-financial control implies the observance of uniform control rules which are generally valid, and the effect of its exercise is materialized in increasing the tax compliance of the taxpayers against the legislation and the regulations in force.

In strict sense, the notion of fiscal control is equivalent to that of fiscal inspection and does not overlap with the notion of anti-fraud control.

According to the Fiscal Procedure Code, the Fiscal Inspection aims at verifying the legality and compliance of tax returns, the correctness and accuracy of tax payers' compliance with the

tax and accounting legislation, the verification or establishment, as the case may be, of the tax bases, payment and related accessories.

Instead, as regards anti-fraud control, the Fiscal Procedure Code does not provide clear information on what this operation entails. Thus, according to the fiscal legislation, the anti-fraud control is operative and unexpected and can also be carried out in order to carry out thematic control operations, which are the verification activity that aims at finding, analyzing and evaluating a fiscal risk specific to one or more economic activities determined.

The fiscal inspection is carried out exclusively, directly and unhindered through the National Agency for Fiscal Administration or, as the case may be, by the specialized departments of the local public administration authorities or other authorities that are competent, according to the law, to administer taxes, taxes, contributions or other amounts due to the general consolidated budget.

On the other hand, anti-fraud control is carried out by fiscal anti-fraud inspectors within the General Anti-Fraud Directorate, a structure without juridical personality, with tasks of preventing, discovering and combating acts and deeds of tax evasion and tax and tax fraud.

In view of the optimal functioning of NAFA's own apparatus in the fight against economic-financial crime, we believe that each of these directions should follow the line of action for which they were set up.

In this sense, the Anti-Fraud Directorate - as the main objective of its actions – should be to investigate and sanction the facts of tax evasion, and, to a small extent, to apply minor sanctions. The activity of this institution should take into account not only the quantitative component of the control activity, but also the qualitative side of the control act, thus reducing the scope of illicit tax behaviors sensibly. The Anti-Fraud Directorate is not and should not be to become a collection body, but to be a public control institution whose role is to represent the fight against tax evasion.

It should not be forgotten that the harmonization, efficiency and timeliness of the actions carried out by this institution, with the actions of the criminal investigation bodies, can only be a step forward in the detection and sanctioning of economic crimes.

#### **4. CONCLUSIONS**

By virtue of the legal provisions, there are laws and other normative acts and establish the obligation of natural and legal persons to contribute through taxes and duties to the establishment of budgetary funds, which gives rise to their fiscal obligation (Sîngeorzan, 2011).

Excessive taxation has forced businesses to resort to tax evasion in order to be able to carry on their business or to recover their investments. They did not pay the taxes due within the legal deadlines, did not record in full or in part the realized revenues, they used the work at "black" or declared salary incomes diminished as compared to what actually paid, the difference being paid from other legal sources (dividends distributed by shareholders) or unlawful tax evasion.

In order to limit options in favor of tax evasion, complex measures are needed that focus on the organization and management framework of the society, especially the political power to be put in the service of the citizen. The taxpayer has to perceive these measures on the tax side by reducing fiscal pressure, by trusting that the law is respected and taxed. Between the state and the fraudsters there must always be a "fight", each side defending its incomes considered legitimate by each. The variety of forms of income, the subjective and ambiguous nature of tax laws, the stance they apply are leading to breach in any tax system. Although all political factors promise in government programs to fight tax evasion, the existence of group interests makes these factors contradictory.

As individuals, we are all inclined to tax evasion, especially when the fiscal pressure is excessive, the governors do not manage their income correctly and efficiently, or when we find

that the incomes are not indescribable. But the law must be applied correctly and must be respected by all members of society, and the state must defend the interests of all its members, not only the rich, it must be the guarantor of the prosperity obtained through the work and by correctly paying the taxes and duties due.

Tax evasion, as a phenomenon, can not be totally combatted, but its effects can be limited by the permanent involvement of the government and the honest taxpayers.

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