

TAX EVASION AND MONEY LAUNDERING – WAYS OF EVADING THE PAYMENT OF THE STATE BUDGET LIABILITIES

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Tax evasion is an antisocial phenomenon to be fight against with all forces. By reducing collection of taxes, this phenomenon abridges society of significant public resources which could be used for achieving some social and economic goals used by the whole society. It is known that since the old times tax payers were looking for means of reducing tax liabilities through various and ingenious methods. Basis of tax evasion phenomenon are in the deep structures of human cerebration, in the selfish spirit of human being, which always tend to bring specific interest before overall interest.

Keywords: *tax evasion, legal tax evasion, illegal tax evasion, budget, fraud, tax fraud, money laundering*

1. Tax evasion – general notions

In the Law no. 87/1994, art. 1, tax evasion is defined as evading by any means impose or payment of taxis owed to the state budgets by natural or legal persons.

Iulian Vacarel suggests as definition of tax evasion "evading from impose of some part of taxable income". Regarding clarification of this matter, the author underlines: "Tax evasion can be committed by a person either under the blanket of law (legal evasion) or by infringement of law (fraud evasion). In first case, evasion is not a law-breaking while in second case is considered fiscal fraud".

Illegal fraud, pleonastic expression, was suggested in specific literature by some authors through symmetry to legal fraud, meaning direct and open violation of tax law.

Tax fraud, in tax law, is the most studied chapter by theoreticians, technicians and even journalists. Although there are a lot of works about its causes, ways and ampleness, control and sanctions, it is difficult and even doubtful to nominate the area covered by the fraud term.

Indetermination of terms is coming from their variety. If we are discussing about fraud, we can also discuss about legal fraud, illegal fraud, legal and illegal evasion, about tax heavens or subsurface economy. In other words, a kaleidoscope of images and words gravitate round tax fraud, making very difficult the understanding. Terminological confusion is more significant because of different words with the same meanings in various occasions.

Hereby while tax fraud is understand as a law-breaking, it still can be distinguished by tax evasion defined as using law's opportunities.

2. Tax evasion - ways of action

As a general rule, taxation is stated on the basis of tax payer declaration, which has the duty to communicate to fiscal authorities all the necessary elements for assigning the tax liability. In this case can often appear tax fraud phenomenon, tax payer resorting to dissimulation of tax object, undervaluation of tax value as well as other ways of avoiding payment of due taxes.

The law sanctions the cases of non-compliance with rules and regulations in the customs area by inaccurate statement of values, in any forms or by keeping back dutiable goods in order to non-pay customs duty or other taxes.

Human nature always tends to bring specific interest before overall interest and to consider tax as a prejudice more than a vested contribution to public expenses and to always see with bad eyes the one which tries to reduce its patrimony. This anti-tax spirit is specially demonstrated by different tax payers' categories.

There are many unauthorized ways and methods of cheating taxation, methods met in practice by the control authorities, forced to fight against this antisocial matter which is tax fraud. The most representative are as follows:

- sales without invoice and issuing of invoices without real sale, intending to hide real taxable operations;
- keeping double registers: one real and one assumed;
- recording personal expenses of associates or some assumed expenses as company's expenses intending to reduce taxable value;
- balance sheet justification as taxation cheating;
- falsification of documents;

- payment of some illegal depreciations or in rates higher than legal;
- creating passive accounts with assumed terminology;
- accounts compensation;
- errors of addition, reporting etc.

According to implications of fraud in the economic-financial area, the manner of committing it and the consequences occurred, it is sanctioned with penalty or confinement. The act itself is qualified as contravention or law-breaking.

The fiscal system within fraud is developed it is considered as first cause of fraud, based on the principle of tax payer declaration.

It should be remembered that taxing technique with many wavers (decreases and deductions) explains fraud development, arriving at paradox that each tax contains basis of own fraud.

Another cause of fraud is excessive taxation. When fiscal tasks are too many, imposing value tends to escape, so too many taxes mean in fact low cashing. We can find cases in which cheating revenue authority is considered "a sport test", a skill prove.

3. Forms of tax evasion

Depending on the reason of avoiding tax liabilities there are two forms of tax evasion:

- legal tax evasion, licit or under the cover of law;
- illegal tax evasion, illicit or unauthorized, known as fiscal fraud.

Legal tax evasion

Legal tax evasion is understood as the tax payer action of avoiding the law, referring to an unpredicted combination of law, so "tolerated". This form of evasion is not possible except when law presents gaps or misunderstandings. In case of legal evasion tax payer tries to be in favorable position as possible, in order to profit as much as possible of the advantages offered by tax regulations in force.

This form of evasion can not be imputed to those using it, because it can be avoided through alterations and additions of the law which generates it. So, we can say that main cause of this form of evasion consists in tax legislation weaknesses and more precisely in lack of clearance and accuracy of this. Also an impulse to avoid tax liabilities is complexity of fiscal disposals, variety of taxes and fiscal rules in contemporary world. In certain cases the state itself creates a favored tax system.

In the market economic practice, more often forms of legal tax evasion are:

- practice of some companies to invest a part of the profit in cars and equipments acquisitions for which state offers adjustments of income tax, measure intended to stimulate accumulation;
- advantages in nature (office cars, allowances more than generous for professional expenses, loans, etc.) offered by employers to the best paid employees in order to escape from high rates of income tax;
- income tax allowances for profit of some expenses regarding depreciation and reserve fund, in a bigger value than it could be economic justified;
- residences abroad, in fiscal heavens (financial centers offering more favorable tax conditions than in own countries) for residents investing here etc.

Illegal tax evasion

Law-breaking in fiscal domain is known as unauthorized tax evasion or fiscal fraud. Unlike legal tax evasion consisting in a careful keeping of avoiding in legal limits, fiscal fraud is committed through outrage breach of law, availing of specific form of taxation.

Illegal tax evasion can be defined as that act of legal and natural persons of legal tax regulations infringement. Tax evasion is sanctioned civil or penal, according to the grossness of committed financial error. This notion is used in national fiscal legislation with a broader or limited sense, depending on tax practice and repressive policy of each country.

Acts of tax evasion exceeding limit tolerated by law are acts based on its contempt, fraud and dishonesty.

Ampleness of illicit tax evasion phenomenon clearly exceeds licit tax evasion, ways of avoiding taxation being too many and extremely various.

4. Demarcation of tax evasion forms

It is difficult to set a limit between legal and illegal fraud in what concerns tax evasion.

It is obvious that it can not exist a legal fraud and a prohibitive fraud, as it is clear that subject of taxation can either comply or non-comply with law, pay or not pay tax.

Because of clear delimitation of legal and illegal fraud, it should be marked a line to separate the two domains. But in practice this delimitation is as uncertain as the difference between fraud and evasion. Uncertainty is coming from two factors: on one side the interpretation of legal and illegal terms and on the other side the contradiction of comparative law.

Theoretically tax payer comply or not with law. He owns or not the tax, pay or not. In practice,

this conception does not correspond to complete reality of taxation. So that between legal and illegal there is not a breach but continuity.

Successive attempts to avail of law gaps are leading tax payer from legal to fraud: "it can be said that there are three families of tax payers: one of those honest (white), the other of those dishonest (black) and one grey which gets away either legal by cleverness or illegal by tumbling or law abuse".

5. Tax evasion – universal social phenomenon

It should be underlined that tax evasion and tax fraud are phenomena present on national and international level as well.

It is to be said that tax fraud is an universal social phenomenon. All developed or in course of developing countries know it at least sociologically speaking.

Ampleness of such phenomena cover all developed or in course of developing countries. Unlike developed countries where market economy practice is well known, and fraud is hold on moderate percentages, in countries in course of developing, especially those in transition to market economy, fraud reaches outrageous percentages. Studies of international tax evasion prove a trend of proliferation of fictive companies founded to achieve huge amounts of money by evading tax regulations.

Form of fraud usually starts through creating in legal conditions some companies disguised as solid and professional, residence of such company being in a fiscal heaven where because of less restrictive system the controls are not detailed. Further more are founded branches and representatives in well-known international centers and are opened bank accounts within countries with very strict rules concerning bank secret keeping.

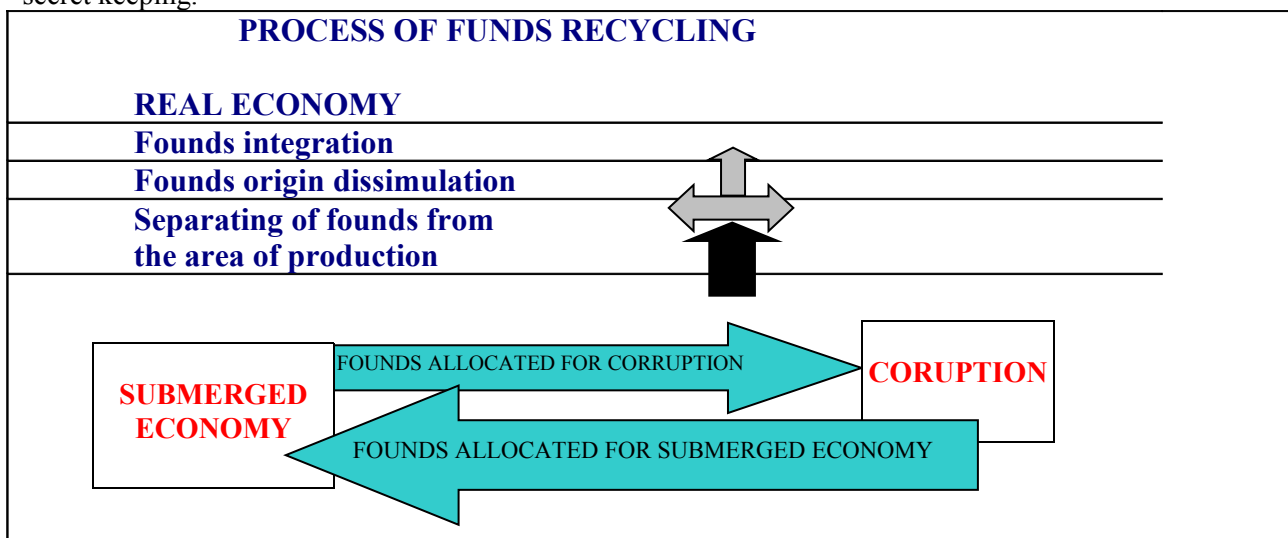
Confidential, impenetrable character of bank operations under law cover is not in fact an exclusive Swiss specialty. In Luxemburg, Liechtenstein, Panama and other countries there are liberal rules for developing businesses but strict rules for keeping professional discretion. By reason that represents tax heavens, Andorra, Bahrain, Hong-Kong, Bahamas, Bermuda, Cayman Island, Hebrides and other places offer nonresidents the opportunity of evading tax system, customs control and various legal rules from the origin countries, because of the inexistence of businesses supervision.

Ways of action of fictive companies are various. Most frequent there are used false documents, starting with delivery invoice and finishing with document attesting loading of goods.

Trying to conclude about diversity of opinions concerning notions of legal and illegal tax evasion, legal and illegal fraud, we consider that there is only one phenomenon which reflects on tax incomes of state budget, and this is tax evasion which depending on proportion unto the law of the action, it can be *legal tax evasion* (meaning allowed; according to DEX, legal means which exist or is performed on the basis of a law, which is allowed by a law, it is complying with law) or *illegal tax evasion* which is synonymous to *tax fraud*.

6. Money laundering – purview

Another phenomenon which threats developing in good conditions of different countries economy is the process of funds recycling or money laundering. This consist of assembly of techniques, economic and financial methods where through money or other goods obtained from illegal activities are separated of their origin and given a false provenience, justified legal and economic, in order to invest them in real economy.



Thus values obtained from various illegal activities of submerged economy are out of this area and invested under many forms in economy. For hiding their origin most of the times this process is supported by an entire chain of fictive companies and questionable activities. Law provides that association or starting an association, adherence or supporting in any forms of such association in order to commit money laundering law-breaking is punished with confinement.

According to Law no. 656/2002 "for preventing and sanctioning of money laundering", is up to money laundering law-breaking as follows:

- a. changing or transfer of goods known as rising from law-breakings, in order to hide or dissemble their illegal source or to help the person committing law-breaking to escape from prosecution, judgment or penalty execution;
- b. hiding or dissembling of real source, circulation or property of goods or of the rights against them, goods known as rising from law-breakings;
- c. achieving, holding or using of goods known as rising from law-breakings.

7. Persons covered by Law no. 656/2002 "for preventing and sanctioning of money laundering"

Persons covered by Law no. 656/2002 "for preventing and sanctioning of money laundering" are as follows:

- a) banks, branches of foreign banks and credit institutions;
- b) financial institutions;
- c) insurance and reinsurance companies;
- d) companies developing activities of gambles, mortgage, buys and sells of art objects, precious metals and stones, tourism, services and any other similar activities implying values circulation;
- e) legal and natural persons offering legal, notarial, financial-banking assistance, respecting legal rules concerning professional secret;
- f) persons with tasks in privatization process;
- g) post-offices and legal persons performing services of money transfer;
- h) estate agents;
- i) state treasury;
- j) exchange houses;
- k) any other legal or natural person, for acts performed outside financial-banking system.

Authorities with tasks of financial control and those of advised surveillance of above mentioned persons will control within job tasks, the manner of applying law stipulations and when they will

found doubts of money laundering will inform immediately the National Office for Preventing and Sanctioning of Money Laundering. The above mentioned legal persons will set adequate procedures and methods of internal control for preventing and stopping money laundering and will ensure training of employees for recognizing operations which can be related of money laundering and for adopting immediate measures for these situations.

Tax payer is more often aware that activity can not develop without risks. Fiscal risk is part of the various such risks (business, financial, currency, rates, liquidities etc.). Except cases this risk is conscious assigned (tax evasion and fraud as scope of enrichment), most times fiscal risk is inherent for activity of companies.

Elimination of fiscal risk should be firstly legislator concern and secondly of tax payer. In first case there is a grave lack of coherence, terseness and clarity of law texts from tax domain, as well as an almost imperceptible concern for assuring fiscal security of tax payers. In second case it can be noticed easiness and "off-handedness" financial aspects are treated with, especially fiscal ones, by tax payers – Romanian companies. From here occur frequent evasion cases founded as many other of potential tax evasion. These open the road for various forms of money laundering.

The interest for eliminating the fiscal risk concerns (or it should) equally: public (fiscal) administration directly; company (managers, associates and employees); company's partners.

Contemporary social-economic realities prove the fact that a weak and inefficient financial control generates fraud and corruption and can not be a significant instrument in fighting these law-breakings.

Thus, it is necessary to extend collaboration between all control institutions for obtaining real and quality information to prevent inefficiency, as well as implementing international standards and methods of identification of fraud and corruption indicators.

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