

Proposals to Improve the Fight against the Evasion Phenomenon

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Abstract (en): Economic evolution has a major impact on the social stability and national security with all its components. Consequently, the evolution of economic indicators in a negative direction affects the economy as a whole, as well as security with all the sectors that make up. Analyzing the national economy, certain categories of risks can be identified which may have an impact on economic security, such as: commercial risks arising from non-compliance with contractual provisions consisting in failure to pay in the relationship between traders, indirectly reducing the amounts paid to the State; tax hazards that consist of diminishing or hiding taxable measures by taxpayers, thus reducing the sums collected to the village budget; competitive risks that have the highest degree of monopolisation of the national economy and which have the effect of increasing structural inflation, lowering the level of quality of goods and services and supplying inflationary stocks; financial risks caused by the degree of protection of market funds, consisting of deposits with banks and investments in the capital market; foreign exchange risks arising from the foreign currency depreciation of the domestic currency.

Keywords: tax evasion; fraud; transport; camera system and software

1. General Considerations on Economic and Financial Crime

Economic evolution has a major impact on social stability as well as national security with all its components. Therefore, the evolution of the economic indicators in a negative direction affects the whole economy and the security with all the sectors. Analyzing the national economy, certain categories of risks that may affect economic security can be identified, such as: commercial risks arising from non-compliance with contractual provisions consisting of failure to make payments in the relationship between traders, indirectly leading to a reduction in the amounts paid to the state; tax

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hazards that consist of diminishing or hiding the taxable amount by taxpayers, thus reducing the amounts collected to the state budget; competitive risks that have the highest degree of monopolization of the national economy and which have the effect of increasing structural inflation, lowering the level of quality of goods and services and the supply of inflationary stocks; the financial risks determined by the degree of protection of market funds, consisting of deposits with banks and investments in the capital market; foreign exchange risks arising from the foreign currency depreciation of the domestic currency. Following what he said we can conclude by saying that national security is affected differently by the nature and magnitude of economic risks.

Crime being an integral part of society has emerged and developed with it. In the specialized literature in different fields such as sociology, psychology, criminology, we tried to develop theories, analysis models, scientific explanations to help understand the phenomenon called criminality, but due to diversity and widespreadness, defining this phenomenon in a way completely raised the real difficulties. Starting from the elements of time and space, criminality represents the totality of crimes committed in a certain period of time, in a well-defined territory. With regard to the definition of crime, we can deduce the distinction between economic and financial crime as the totality of the illicit fact of economic and financial nature, such as tax evasion, bankruptcy, money laundering, turnover forgery, etc., committed by natural and legal persons, for a certain period of time and in a well-disturbed place that can be represented both by the territory of a state and by the territory of several states.

Over the past few years, due to the damaging economic and social consequences, modern states are paying more attention to macroeconomic policies to combat economic and financial crime. Reported to our country, this phenomenon has gained a great deal in the last two decades, affecting both the economic environment and the development of society.

Economic and financial crime often involves the application of ingenious mechanisms to conceal money, which are difficult to detect by the authorities in the fight against this phenomenon.

An important role in the proliferation of illicit acts of economic and financial nature is the lack of coherence of the legislation in the field, the imperfection of regulation or even the legislative void. These shortcomings led to a non-uniform interpretation

and application of the legal provisions both by the competent bodies in the fight against the economic-financial crime phenomenon, but also by the economic agents.

Addressing this issue is of particular interest to the tax authorities, as they face a phenomenon that is widespread due to the generalized tendency of taxpayers to diminish or hide amounts of money subject to tax checks in order to increase their income. The fight against the evasion phenomenon has also become a priority for our country, given its quality as a member state of the European Union, but especially the long-term negative effects it produces on national security by affecting the development of society and the economic environment.

2. Proposals to Combat the Evasion Phenomenon

The monitoring of intra-Community acquisitions has proven to be useful in time by identifying, controlling and attracting the responsibility of the main subjects concerned with fraud and tax evasion activities, thus creating the possibility of a competitive business environment in the area of intra-Community acquisitions and implicitly increasing the degree of voluntary compliance of the subjects involved.

The first steps towards monitoring the road transport of goods from intra-Community acquisitions have been made since 2007, but the activity gained consistency in 2012 by issuing OMFP no. 334/2012.

The importance of the activity was also noted by the U.E. in the region (Bulgaria 2014 and Hungary 2015), which drew inspiration from Romania's experience creating more complex monitoring systems for intra-Community acquisitions.

The need to adapt the monitoring system of intra-Community acquisitions in Romania to the current economic reality must take into account the technical possibilities implemented in the last period regarding the availability of the financial effort to be made.

The current road haulage monitoring procedure for intra-Community acquisitions has reached its functional limits and it is necessary to replace or substantially improve it in such a way that information on road transport of goods is relevant, accurate, complete, up-to-date and be obtained with low resources, with the least invasive involvement of the human factor (targeting transports by taxpayers with high fiscal risk).

In this context, a number of sources of information can be analyzed which can be accessed or generated through a series of obligations established by public authorities and/or different actors involved in intra-Community transactions. Thus, the following potential sources of information can be analyzed:

(a) Mass of means of transport carrying goods at entry and exit from national territory and at various key points within the country

For this purpose, it is necessary to install scales at the entrance and exit of the national territory so that information on the mass of the means of transport can be obtained in order to determine whether they are entering/being loaded into/out of the country. The information can not be considered sufficient and could only be conclusive for transit means only, but there are limitations for those who are not exactly aware of the goods being transported.

For intra-Community deliveries and acquisitions with place of delivery/purchase, Romania would also need information on the weight of the loaded means of transport at the time of commencement of the intra-community delivery or the completion of the intra-Community acquisition. This would require that all taxpayers delivering intra-Community acquisitions and acquisitions should be required to provide scales or to use specialized services to weigh the means of transport in such a way as to be able to provide the information required for the tax authority.

At present, according to GD no. 1373/2008 regarding the regulation of the supply and transport of goods on public roads in Romania, with the subsequent modifications and completions, there are obligations for economic operators who distribute by road goods divided by registered motor vehicles or registered or any combination made up of a motor vehicle and semi-trailer or trailer towed by it, with a maximum authorized mass of 12,0 tonnes or more, used for the public transport of divisible goods. These obligations include:

“a) have weighing installations for divisible goods and/or road vehicles at the points of loading of vehicles ...”

“b) to issue a weighing ticket for each vehicle used for the distribution of goods which are separate from their own points of loading;”

“d) keep records of the issued slips and their correspondence with the accounting records of the divisible assets provided for a minimum period of five years after the issue;”

“e) present to the control personnel provided for in art. 8 par. (4) the bookkeeping of issued scales, and their correspondence with the accounting records of the divisible goods supplied;”

The legal provision refers to certain categories of divisible goods, namely bulk materials transported unpackaged, in unordered piles, in the form of powder, granules or pieces, or of fluid or semifluid materials from: the production of ferrous and non-ferrous metals; recovery of old iron; wastes of any type resulting from the construction activity; forestry or wood warehouses; mining, quarrying or quarrying operations; concrete plants, asphalt mixtures, additives and binders in construction, located on Romanian territory.

The weighing ticket issued by the weighing device of road vehicles shall contain:

- “a) the name and identification data of the supplier;
- b) ticket number;
- c) the date and time of the weighing, the date and time of the printing of the weighing ticket;
- d) location of the loading point;
- e) installation code and type of weighing;
- (f) the registration or registration number of the weighted/loaded vehicle;
- (g) the total mass recorded by the weighing of the vehicle or the total mass of the loadable dividable goods in the case of weighing equipment fitted to the loading equipment;
- h) type and nature of the divisible goods transported.”

ANAF has no powers to establish and sanction non-compliance with the obligations established by GD no. 1373/2008, but it is obvious that the documents issued for compliance with such obligations contain information that may be useful to ANAF in the risk analysis and fiscal control activities.

Similar obligations regarding weighing are also found in Law no. 108/1414 on the road transport of vegetable crops on public roads, which provides for the issue of weighing scales after weighing, weighing plants of after-harvest crop products from holdings and/or vehicles. According to this act, post-harvest crop products obtained from agricultural holdings are transported from the collection points to the own storage facilities of the agricultural holdings concerned with the accompanying

approval of the goods, without the vehicles used for that purpose holds a weighbridge.

Transport of post-harvest crop products from holdings, from collection points to storage sites other than farm holdings or other landfills authorized for storage or marketing, over distances of more than 70 km from the place of loading, shall be accompanied by the legal documents specific to the shipment, the consignment note and the weighing voucher. ANAF also has no powers to detect and sanction irregularities.

At the same time, references to weighing vouchers are also found in Order no. 995/2011 for the approval of the Methodological Norms regarding the way of carrying out inspections and control on road transport, the activities related to them, the activity of the training and improvement centers of the specialized personnel from the field of road transport, the activities of driving schools and the activity of authorized trainers and amending the Order of the Minister of Transport no. 1.058/2007 for the approval of the Methodological Norms regarding the activity of controlling the observance of driving periods, breaks and rest periods for drivers and the use of devices for registering their activity (art. 36).

Advantages and Disadvantages

The implementation of this weighing system has the advantage of providing useful information from which indications can be drawn that goods in transit have been unlawfully discharged into national territory and transit has been simulated. However, such information must be corroborated with other means of proof, especially since the goods are not known precisely and in the national territory there may be situations in which the means of transport are discharged (totally or partially) and loaded with goods having a similar structure.

For the weighing of the means of transport on the national territory by the senders/recipients it is necessary to establish by normative acts certain obligations, including declaratory ones, and to establish sanctions for their non-observance. At present there is GD no. 1373/2008 and Law no. 108/2014 which establish certain obligations, but these were not adopted for the purpose of managing the tax receivables, the domains being limited and the generated information is not centralized and capitalized unitarily.

Thus, in the context of the simplification of the declarative system, the introduction of additional cost-generating obligations for taxpayers could be considered inopportune and would create a rejection response from the business environment, especially as it will significantly affect the activity of taxpayers who do not exist an obvious fiscal risk.

Moreover, the scales installed by the authorities must be able to be used with the minimum transport time (traffic jams can be avoided) and be matched by an automated registration system for vehicle registration numbers (tractor and trailer, as appropriate) in order to make the necessary comparisons to draw correct and useful conclusions.

b) Installation/use of a camera system and software to recognize/take over the registration number of motor vehicles involved in the carriage of goods which are subject to intra-Community operations.

Such a system may provide for the possibility of promptly analyzing the transport route as well as useful indications for determining the consignee/shipper of the goods in question.

Advantages and disadvantages

One of the advantages is the existence of an infrastructure at the level of the National Company for Road Infrastructure Administration (CNAIR), so the main concern would be the interconnection of the databases and the development of an analysis software that provides relevant information for ANAF.

In this regard, a legal framework should be set up to provide transport information to ANAF and develop an analysis software that provides timely signals on tax-conscious transport. DGAF's human resources could be channeled to clarify the situation of shipments to which a fiscal risk has been attributed by performing traffic-oriented controls exclusively on means of transport and cases reported by the dedicated IT application.

The major disadvantage of this system is the impossibility of generating information regarding the beneficiaries/shippers, carriers (in cases where the means of transport are not registered in Romania) and the nature of the goods transported.

3. Conclusions

At the national level there were fiscal policies that granted tax breaks (tax exemptions, taxes and accessories, payment schedules, tax breaks) granted by the government unjustifiably. In such a situation, we found ourselves when the Romanian state granted facilities to foreign investors. Referring to domestic economic traders, they were in an unfair situation that prompted them to resort to tax avoidance mechanisms. Consideration should be given to our developing country status, which converges to an increased rate of tax evasion generated by the need for increased investment coupled with the lack of experience of market investors. Excessive tax pressure is a factor that directly influences tax evasion, which is represented by the taxpayer's inability to pay off debts to the state. One should not neglect the big differences between social classes and the perceived taxpayer's taxpayer's perception, and observing the eco-social reality of the way other individuals dwell wealth through tax evasion, concludes that the sure way in which you can accumulate large sums of money is that of circumventing the tax law. The same problem also arises for economic agents who can not keep up with the tax traders from a competitive point of view. We believe that for the fight against the evasion phenomenon it is necessary to keep up with the level of development of the technology and of the socio-economic environment.

4. References

Treaties, books, monographs, jurisprudence collections

- Bufan, Radu & Minea, Mircea Ștefan (coord.) (2008). *Codul fiscal comentat/ Fiscal code commented*. Bucharest: Wolters-Kluwer.
- Ciobanu, Viorel-Mihai & Nicolae, Marian (coord.) (2013). *Noul Cod De procedură civilă comentat și adnotat/ The New Civil Procedure Code commented and added. Vol. I, art. 1-526*. Bucharest: Universul Juridic.
- Costaș, Cosmin Flavius (coord.). (2016). *Cod de procedură fiscală. Comentariu pe articole/ Tax Procedure Code. Comment on articles*. Bucharest: Solomon.
- Dascălu, Daniel & Alexandru, Cătălin (2005). *Explicații teoretice și practice ale Codului de Procedură fiscală/ Theoretical and practical explanations of the Fiscal Procedure Code*. Bucharest: Rosetti.
- Dascălu, Daniel (2011). *Recuperarea extrateritorială a creanțelor fiscale/ Extra-territorial recovery of tax receivables*. Bucharest: C.H. Beck.
- Dascălu, Daniel (2014). *Tratat de contencios fiscal/ Treaty of fiscal contentious*. Bucharest: Hamangiu.