

## COMBATING TAX EVASION: BETWEEN GOALS AND ACHIEVEMENTS

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### 1. General considerations

The first concerns in the fight against tax evasion dates from 1877, when, by tracking the achievement of revenue law of the state government, counties and municipalities, administrations and public establishments and charity provided the "start of tracing the taxpayer who does not meet his duty until the 15th day of the second month of each quarter". However, the first vigorous attempts to control the phenomenon we find it in the draft tax reform proposed in 1921 by Nicolae Titulescu. Not agreed by taxpayers the "Titulescu Law" was repealed in 1923 was promulgated the "Law of direct contributions" which was dropped at minimal imposition and severe sanctions against inflationary practices. As a result, the IRS has remained almost defenseless against the anti-tax spirit manifested by some taxpayers and lack of training of law enforcement bodies.

One of the effects of law enforcement of direct contributions was the alarmingly low tax efficiency. Consequently, the special legislation had become an imperative repressive measure of tax evasion and a radical shift in methods of assessment for those classes of taxpayers who could easily evade tax. Against this background was born the first law that deals exclusively with tax evasion in Romania in 1929, as the "Law for tax evasion crackdown on direct contributions". In our view, its limits arise from the fact that it gives an explicit definition of the concept of tax evasion. In its content they are referred to some

issues that concern the delays in filing tax return statements, reducing reported income, double records, false balances, i.e. irregularities with administrative or criminal fraud without question in terms of tax evasion.

A milestone on the tortuous road of combating tax evasion is the emergence of "Direct contribution Law" adopted in 1933. Considered by some authors as "a code of evasion", the law classifies deviations in "simple negligence" and "qualifying offenses", which were sanctioned with fines ranging from four times the tax avoided. For corruption against fiscal agents correctional prison was scheduled from 6 to 12 months, just for tax agents who knowingly did not set correctly state rights.

A final test before the establishment of the command economy, designed to punish tax evasion, a new law was promulgated, Law no. 344 of December 29<sup>th</sup>, 1947. Acts of tax evasion, according to this law, were treated as crime of sabotage and sanctioned with the penalties provided in the law for the suppression of speculation and sabotage.

And in the command economy in the context of the continuing the phenomenon its attempts to keep within acceptable limits continued. Thus, by Law no. 18/24.06.1968 on the control of property of individuals that have been acquired illicitly were watched those with high and unjustified incomes. According to experts it is actually a simplified and adapted version to the conditions of the time of future laws to combat tax evasion after 1989.

## 2. New developments in legislation in the context of coagulation of market economy

Phenomenon just as old as the existence of state, tax evasion has no boundaries of time and space. However, the extent and magnitude of this phenomenon sensitively differs from country to country, from time to time. In the former command economy countries with higher propensity of taxpayers to tax evasion and tolerant attitude of the authorities are accountable to a certain extent, through the feeling of rejection of everything that is dependent on state and law, after the years in which these two categories formed into instruments of oppression. Maybe so, some experts consider it *a manifestation of gross forms of democracy*, able to generate positive effects for the smooth operation of modern economies. For example, Nicolae Hoanță maintains that "following tax evasion could have benefited the economy as a whole, if the efficiency with which resources are used from evasion is greater than that which would be obtained by the government for such funds"<sup>1</sup>.

Even if due consideration is given to the concept mentioned, we cannot overlook the adverse consequences, on the long-term, of the manifestation of tax evasion at micro and macroeconomic level. If on the short-term the fraudsters benefit and the state loses, on the long term also the other taxpayers are losing who have not resorted to tax evasion by a possible increase in their tax burdens, which may cause them to resort to tax evasion. In our opinion, the acceptance and particularly the widespread of this phenomenon would be similar to the acceptance of suppression, of the state itself. Yet life has shown that this is not possible in modern times, given the fact that "never and nowhere in the world, the

private initiative was unable to provide, by itself, social and economic balance of a nation"<sup>2</sup>. In conclusion, the natural attitude towards the escapist phenomenon is to achieve a proper administration of it.

Only in the context mentioned and given the alarming increase of cases of theft of a growing number of taxpayers to pay taxes due the public budget, developments in the law on combating tax evasion can be assessed, on the extent of coagulation of market economy. In our opinion, can be defined, more significantly three intervals in its course.

**The first period**, covering the years 1990-1994, can be characterized as one of "legal vacuum". The only statutory regulation is represented by GO no. 17/20.08.1993 on laying down and punish contraventions of the financial and fiscal regulations, situation which was not able to provide gradual sanction, in accordance with the seriousness of the infringements of the law in this area. The legislative framework of GO no. 17/20.08.1993, as the basic rule for acts of tax evasion, have been completed, to some extent, by other ordinances and laws, which came off with details, details about some underground activities identified or brought in thereafter in the concerns skilled institutions, such as: the Accounting Law no. 82/24.12.1991, Law no. 78/08.05.2000 for prevention, detection and punishment of corruption Law no. 656/07.12.2002 for the prevention and sanction of money laundering, GO no. 92/24.12.2003 regarding the Fiscal Procedure Code, Law no. 161/19.04.2003 on measures to ensure transparency in the exercise of public dignities, public functions and in business, prevention and punishment of corruption, GO no. 75/30.08.2001 regarding the organization and operation of the tax record.

<sup>1</sup> Nicolae Hoanță, Economics and Public Finance, Polirom Publishing House, Iasi, 2000, p.281

<sup>2</sup> Nicolae Craiu, Underground economy between yes and no, Economic Publishing House, Bucharest, 2004, p.223

However, once initiated in terms of environment, the escapist phenomenon experienced an unexpected escalation. Tax burden and other factors, including economic and political instability, caused its inflammation and escape of control. Considering the fact that the law is totally utopian in the abolition of avoiding the payment of taxes, considering that some experts have recognized a "natural rate of tax evasion", measures were taken to stop the phenomenon, resulting in the promulgation of Law No. 87/18.11.1994. In our opinion, this act marks **the demarcation of the second period** which extends until 2005.

By occurrence of Law no. 87/18.11.1994 the legal framework to combat tax evasion has been improved. The strength of the new law consists in the fact that it seeks a definition, closer to reality, of the concept of tax evasion as stealing by any means the imposition or payment of taxes, contributions and other sums due to State budget, local budgets, state social insurance budget and special funds by Romanian or foreign individuals and legal entities.

We cannot underestimate the weaknesses, limits of this law. Neither in its republished form in the Official Gazette no. 545/29.07.2003, the law does not distinguish between fraud and tax evasion, putting equate between the two concepts, with major implications for understanding the causes that generate the two forms of circumventing the payment of taxes and especially the measures to be taken to combat it. Within the text of the law is used the concept of tax evasion within the meaning of tax fraud, i.e. that form of tax evasion which is to circumvent tax laws and is sanctioned by law.

Depending on their severity the actions sanctioned by law have been included in two categories namely:

➤ offenses punishable by imprisonment and the banning of rights;

➤ misdemeanors punishable by fines.

The gaps arising from the application of Law no. 87/1994 generated increased searches for their elimination, embodied in the emergence of a new legislation, namely the entry into force of Law no. 241/15.07.2005. In fact, its enactment may be considered as the time of genesis **of the third period** of the evolution of law on combating tax evasion.

Among the strengths of the new law, which not only gives the necessary flexibility, but also the effectiveness expected, we mention:

✓ rigorous definition of the concepts of fraud and tax evasion. The new law only stipulates specific penalties for tax fraud, irregularities of the nature of contraventions being established and sanctioned by the tax code and tax procedure code;

✓ elements considered in its crystallization process: the intentional character of acts, meaning that subjectively, all acts of evading tax obligations are committed intentionally, fiscal authorities have the obligation to prove the intent to defraud the taxpayer, the probity of committing more crimes in the contest established by Law no. 241/2005, as well as other offenses related to fraudulent tax evasion, such as false and / or use of false, fraudulent bankruptcy, money laundering, organized crime, etc., bad faith, as the legislative act punishes those facts committed by unfairness and dishonesty by the taxpayer, the social danger generated by forms of theft (acts of evading tax obligations, which are withheld at source by the taxpayers and not transferred to the general consolidated budget, have a greater social danger than other acts of tax evasion committed by taxpayers who are at the same time fund and tax supporters and payers), just punishment, which means there is close correlation between the severity of the offense and the penalty applied to the taxpayer;

✓ the emergence of the new law results as a phenomenon of continuity in the evolution of tax law. From the assessment of offenses specified in Law. 241/2005 can be drawn the conclusion that some of them are covered for the first time, while others were taken from Law no. 87/1994 and reformulated. Among the offenses covered first, we mention: non-remaking, willfully of destroyed accounting records, the dates recorded for control documents; preventing, in any form, the competent bodies to enter, under the law, the offices, premises, land, with the purpose of financial controls, tax or customs; retention and non-payment, intentionally, within 30 days of maturity, the amounts of taxes or withholding contributions; replacement, degradation and alienation by the debtor or third persons of seized property, according to the provisions of the Fiscal Procedure Code and the Code of Criminal Procedure;

✓ imposition of more stringent measures to punish the acts of tax evasion. The new normative acts of tax fraud are similar in that the sentences imposed on fraudsters, especially for facts based on major losses are as great as in the case of offenses against life and personal integrity;

✓ statutory of exemptions from criminal liability in the sense of non-punishment of crimes committed or reducing sentences under certain circumstances, if the prosecution or trial until the first term, the accused or defendant to the acts of tax evasion covers all damage caused.

Highlighting the strengths of Law no. 241/2005 we believe that a real interest presents, given that any legislation is perfect, the revealing of gaps arising in its design and implementation. The most significant seem to be:

❖ confusion created even by its title: although in the title is included the notion of tax evasion, in reality it is tax fraud;

❖ failure in defining the concept of tax fraud, an act which would have established unequivocally the powers of specialized compartments of local government authorities in terms of prevention and combating the escapist phenomenon;

❖ non-punishment as infringements such acts as escape to pay tax obligations by taxpayers, through the transfer of shares or non-retain and non-payment, by law, in legal terms, of taxes, fees and contributions which are made by stop at the source, although they were punished as crimes under Law no. 87/1994.

By putting in the spotlight these weaknesses of the Law no. 241/2005 and considering them to their just size, we believe that they are not able to diminish the importance step forwarded in the process, often difficult, aimed at modernizing the tax laws in general, the combat against tax evasion in particular. By integrating this legislation in the package of legislative measures that have the purpose of harmonization of tax legislation with the European Union, we consider it possible to create premises for the limitation of the escapist phenomenon and the negative effects it generates.

### **3. Conclusions**

Undoubtedly, tax evasion is one of the nuisances of the utmost importance that all states face more or less. Life has shown that what can be done effectively in this area is to limit the maximum possible of this phenomenon, its eradication being virtually impossible.

The literature of specialty, both legal and economic, has multiple interpretations of the concept of tax evasion. As we state in the early lines of our approach, the phenomenon is one of vague and permeable outlines. Therefore we believe it is important to investigate its genesis, which is the cause that triggers it, how it evolves, what are the

instruments and measures that allow the development of its decrease. Naturally, we cannot deny the significance of

searches aimed at defining it. We believe that only this can create tools for keeping it under control.

## REFERENCES

Nicolae Craiu	Underground Economy between Yes and No, Economic Publishing House, Bucharest, 2004, p.223;
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