

CORRUPTION AND TAX EVASION IN ROMANIA

MARIANA TRANDAFIR*

Abstract

Tax evasion has become a ubiquitous phenomenon in economic and social. Extent it has taken a tax evasion is worrying because the lack of control measures may close in the future stability of national economy. To combat tax evasion is not necessary to impose some severe penalties, but should be made an effective fiscal control, a viable legal system.

Keywords: *evasion, fraud, corruption, tax system, fiscal record*

1. Preventing and combating tax evasion in Romania

For the prevention and combating tax evasion in Romania will act all measures that are prescribed in regulations came into force. The first step, in this purpose, is the organization of the fiscal record, as a means to record and track the financial discipline and to strengthen administration of taxes owed. Fiscal record is held by the Ministry of Public Finance at the central level and the general public finance departments of counties and Bucharest, electronic forms. In the fiscal record are listed individuals and legal entities and associates, shareholders and legal representatives of legal entities, which are actively works, sanctioned by financial laws, customs, and those relating to financial discipline. These penalties may be included in fiscal record if they have become final and irrevocable. The certificate of fiscal record is mandatory to be presented in the following cases:

- the establishment by parent company, shareholders and legal representatives appointed
- the establishment of associations and foundations by their founding members
- the authorization to exercise independent by applicants.

Since 2003 were established a number of very important measures that will impact favorably towards firm combating tax evasion phenomenon. On this line, is made public the list of contributors (except micro-companies), who recorded outstanding obligations owed to one or another of public budgets, accounting for taxes, contributions and other revenues. This list and the information it contains is made aware of the public on its Internet page of each of the institutions and public authorities responsible for implementation of respective budgets. Updating outstanding debtors and their obligations is made quarterly. Publication of this list has become a practice. New details of the scope of tax evasion made by Law. 161/2003 - which amends the Law. 87/1994 on combating tax evasion - in that it includes waiving the payment of taxes, contributions and other amounts owed to the state, thus having the same connotation as to circumvent the tax taxable matter, we believe that will impact positive to combat tax evasion (publication of the list of taxpayers with outstanding obligations with those who evade the tax, prompting some debtor to pay the arrears before the list is made public).

The Law nr. 161/2003 - which amends the Law nr. 87/1994 on combating tax evasion - includes favourable conditions in this respect. It provides for taxpayers who receive income from trading activities or provide services to the population that are required to show where work, operating authorization and certificate of registration. Is important and necessary point that taxpayers are required to use only primary documents and work accountancy established by law, to be purchased only from the units established by legal rules. At the same time are more clearly defined

* Assistant, Ph. D., "Danubius" University, Galati (e-mail: mtrandafir2003@yahoo.com).

and delineated acts and deeds that constitute crimes, making the presentation according to gravity and severity of sanctions that apply.

2. Competent bodies in combating tax evasion

Lack of a well organized control and properly skilled staff can lead to large-scale forms of tax evasion. For the organization and functioning of financial control and the Financial Guard, on 22 March 1991 was adopted the Law No. 30, published in Official Gazette nr. 64 of 27 March 1991. In accordance with Article. 1 of Law 30/1991, Ministry of Finance, on behalf of the state, made control and managing of the specialized funds of central and local state administration and state institutions and monitor compliance with financial accounting regulations in the work of by autonomous, companies and other operators in connection with fulfilling their obligations to the state. The second paragraph of that article states that the specialized unit of the Ministry of Finance acting for the prevention and combating fraud, violations and offenses to the taxation, customs and prices and taking measures under the law. In Article 4 states that financial control of the state is organized and operated in the Ministry of Finance and is performed by General Directorate of State Financial Control and Financial Guard.

By law, the powers conferred to the General Directorate of State Financial Control and its subordinate units are:

- control the management and use of funds provided from the budget for running costs and maintenance of central and local government and financed by the budget units,
- monitor the use of funds for state investment interest, activities and products and subsidies for other purposes provided by law;
- check the use of endowment funds and funds and accounts in compliance autonomous activity and state-owned companies;
- verify the accuracy and reality of entries in records required by law and the provisions of incorporation of companies and other businesses, seeking the correct and complete and timely fulfillment of all financial and tax obligations to the state;
- control and also perform other duties established by law in charge of the Ministry of Finance.

Are also covered the Financial Guard duties:

- implementation and enforcement of tax laws and customs regulations, aiming to prevent any embezzlements or evasion of payment of taxes
- trade compliance, seeking to prevent smuggling activities and any procedures banned by law
- verify the existence and authenticity of documents during transport, as well as places of production activities, services, acts and deeds of trade, when there is evidence of evasion of tax obligations or of establishing procedures prohibited by law
- verify the records or any other documents resulting tax obligations
- to find violations and apply appropriate sanctions
- to bring prosecution in connection with the crime found in the exercise of duties.

Following the findings of financial control, Ministry of Finance is entitled in accordance with the provisions of Article. 7 of Law No. 30/1991 should:

- take measures to eliminate and prevent irregularities in business accounts of central and local administrations, autonomous and
- correcting and expanding the balance sheets and paying the taxes and other budget revenues legally owed the state
- application for law enforcement measures in prices and tariffs
- suspension of measures contrary to financial regulations and accounting.

Failure, unperforming the provisions within the document control data entered into the financial-fiscal body is, according to the Law System. 87/1994, offense and punishable as such. Tax evasion has become a ubiquitous phenomenon in economic and social. Extent it has taken a tax

evasion is worrying because the lack of control measures may close in the future stability of national economy. The economic situation of balanced state budget would lead to macroeconomic balance and ensuring economic development conditions. To combat tax evasion is not necessary to impose some severe penalties, but should be made an effective fiscal control, a viable legal system may first fiscal education of citizens. Tax laws should be simple, clear, accurate and relatively stable, to make a distinction between cases where laws are violated intentionally violated when fraud or negligence, negligence, or causes beyond the control of the taxpayer. It is necessary to reorganize and control the tax checks, to be developed by The National Bank of Romania clear rules on the conditions to be met and documents to be submitted by individuals. Our country had one of the best tax procedure code, which was repealed by the dictatorial regime established after the Second World War. As measures already initiated or being implemented, with direct impact on preventing and reducing tax evasion can be:

12. strengthening the tax system by harmonizing the tax return with the requirements of Directives of the European Union, promoting measures for its gradual decline (in particular If direct tax), to stimulate the transfer of activities of the informal economy visible in the economy, implementing a simplified taxation system for small businesses, eliminating the effects of inflation

13. the strengthening and adaptation of economic accounting system by applying accounting rules harmonized with European Union directives and International Accounting Standards approved by Ministerial Order No. 3055/2009, for commercial companies and other publicly traded company representative to establish a simple filing system for small and medium enterprises;

14. elimination of firms in economic losses, irrecoverable;

15. approval of the draft Law exemplary management of commercial companies;

16. completing the legislative framework for control of resident associations and joint owners by local councils;

17. mandatory implementation of the acceptance of debit-credit card businesses with a business volume over a certain level and population ;

18. establish a well organized system of principles for tax record for better management of the prevention and combating tax evasion.

As measures to prevent international tax evasion, Prof. Ph.D. Dan Saguna proposes the following measures "tax heaven"¹:

19. exchange control

20. steps towards citizenship taxpayer

21. taxation even the income

22. taxation of gains from foreign made not by Legal way

23. using theory of law abuse

24. the refusal to allow access to the courts of foreign organizations deemed suspicious.

Finally, we can say that without a detailed and systematic analysis of internal mechanisms with the international tax evasion is difficult to trigger tools and measures conducive to combating and preventing tax evasion.

3. Tax evasion and corruption

In a world confronted with complex issues, the activities of corruption and of obtaining money by illegal ways are more frequent. History of human society reveals that crime and corruption in all forms of manifestation (embezzlement, trafficking in influence, giving and taking bribes, tax evasion, receiving undue benefits) and drove there with varying intensity of the oldest times. European officials have converging views regarding accession of 10 new member states, due to

¹ Saguna D, *Evaziunea fiscală pe înfelesul tuturor*, Editura Oscar Print, București, 1995, pag. 83

alarming issue: corruption in these country could be transferred to the Community market. Corrupt judicial system, which evolves slowly, worried European Union authorities because of the need to actually apply the directives and regulations to be adopted rapidly. From the perspective of EU integration, tackling corruption is needed to materialize unequivocal commitment of the Romanian society as a whole, to take and fulfill membership criteria. Corruption has always been regarded as one of the most serious behavioral misconduct that distorts the administration of public affairs for private order. From a sociological perspective, corruption - as social pathology - concerns a group of immoral and illegal activities conducted by individuals not only functions or exercising a public role, but also by various groups and organizations (public and private) to obtain material benefits or moral, or a higher social status, using forms of coercion, blackmail, deception, bribery, buying, intimidation. In essence, corruption is an abuse of power in order to obtain material advantages or other benefits (honors, titles, advertising exemption from liability, etc.). Most times, it is only "a trivial contract" (illegal – that is right), acting under the Roman law principle *do ut des* (I give you to give me) negotiated and placed in underground conditions and privacy.

Conclusions

The corruption has much more varied forms, some of them - like: favoritism, or interference in the work of civil servants, that form the traditional "intervention" - is considered, if not daily acts, at least minor deviations which can not be criminally sanctioned.

Also included other manifestations of corruption, widely practiced, arising from the influence of money in politics, more publicized, combined with local power decentralization, rapid urbanization and internationalization of economic relations. Corruption are identified with those acts which are committed in the exercise of functions or duties of office, which is the violation of duties, following - in all cases - a profit. Evolution of the phenomenon, reflected in ancient law, shows that bribery is an abuse of office in order to obtain material benefits, goods or other benefits.

Corruption can be considered an economic activity based on the following assumptions:

- corruption is based on limited resources
- has an operational process: support, facilitation, opportunity
- has a specific funding - to satisfy some need
- pursue profits.

Creation of company "tick", that thrive in the near moribund state enterprises

In this case fiscal dimension of corruption is localized in the registration of oversize charges (most times even unrealistic), thus narrowing the legal basis of taxation of profits and hence and related income tax due the general consolidated budget. Profitable by outsourcing activities by companies from interest groups, it fails these enterprises after privatization are "suddenly" extremely profitable.

Trade and transactions entered into evidence - and used as the basis for recording financial records and accounting - does not reflect an actual state of affairs therefore covered by Law No. 241/2005 on preventing and combating tax evasion as a crime criminalizing evidence of fictitious transactions.

Fraudulent privatizations

Essentially, by means of fraudulent privatizations parasitic capitalism was encouraged at the expense of large privatizations, which could lead to multiple benefits for our country. Many of the companies acquired are dismantled and sold for scrap, the staff is fired and the products made by new investors fail to penetrate the market. The purpose of these investors is not only immediate profit.

Robbing banks

There are interest groups - beneficiaries of bad loans - which were identified in the banking sector favorite target of their criminal activity by providing preferential loans, favorable terms, the

client base. As the banking sector has undergone a privatization process effective and efficient, the phenomenon of illegal or preferred-financing shrank sharply.

Spoliation of the state budget by the tolerance by the public authority in unpaid tax liabilities owed by some companies and illegal VAT refunds

According to Law. 241/2005, VAT refunds have been expressly criminalized acts of tax evasion. This amounts fraudulently diverted money from the state budget lead to distortions and even undermine state functions formal economy, contributing to "welfare" of public officials who have contributed to the smooth functioning of this mechanism crime. Size corruption tax imposed directly on the public financial resources by returning (illegal!) Significant amounts of money from the consolidated general government accounts of private firms as a result of unrealistic sizing tax liability (in case of VAT).

There are other manifestations of corruption, among which may be mentioned: the smuggling of excise goods, embezzlement of EU funds provided through the Phare program type, with a grant, procurement rigging.

In all cases above, the funds used in criminal transactions intended to create "break through in the system" and, in substance, to cause weakness manifested in the smooth functioning of state institutions, which - in this context - can be locked and become inoperative. Prevention and eradication of corruption requires measures of social, economic, political, legal and administrative development to prevent and limit the extent and severity of the phenomenon, identifying and neutralizing the risk factors. If eradicate corruption and organized crime is a financial and economic utopia for the foreseeable future to prevent this phenomenon to dictate laws, values and politics of states and international bodies is a current requirement. Between tax evasion and corruption there is a parallel, the similarities and differences (both with devastating effect on "health" of a society as a whole)².

Key considerations stemming from this analysis include:

- tax evasion may be a unilateral act, while corruption requires always at least two parties (usually the one party is a public sector decision-maker)

- tax evasion does not, automatically, further recourse to corruption, while corruption acts and financing is secured, in particular, of pecuniary resources evaded tax

- tax evasion occurs, mainly the underground sector of the economy (being part of it), while corruption found "fertile ground" in area economy in the world of so-called "white collars" (although this does not exclude that the intention and the forces that resort to corruption come mainly from the economy underground);

- while corruption is intended, often, access to public resources for personal gain increased (by corruption of people who manage those resources), tax evasion can be equated with an act which would protect the "desires" realized against state (obviously, in substance, a phenomenon also illegal in most cases)

- while evading the tax evasion from tax a certain amount of personal gain, corruption is used to help public servants to get a win as more

- avoidance can sometimes be only a unilateral act, while corruption is always a bilateral or multilateral measure

- corruption always involves recourse to tax evasion, while tax evasion is not achieved with the use of corruption;

Eliminating corruption is the primary element in improving fiscal control as part of combating tax evasion. Along with corruption, another factor which leads to increased tax evasion is incompetence, between the two there is a directly proportional relationship. Action taken against corruption must create legal and institutional prerequisites needed to control the phenomenon. Introducing a comprehensive legislative framework and appropriate the *acquis communautaire*

² Hoanță, N., *Economie și finanțe publice*, Editura Polirom, Iași, 2000, pag. 281

(control wealth of dignitaries and public officials, regulatory incompatibilities with public functions, significant legislative progress in areas related to corruption - money laundering, tax evasion, procurement, etc.), creating the institutional framework for action against corruption at the top, by reorganizing the judiciary. The extent to which Romanian society will be able to manage the further dimension of corruption will depend on the expected positive response from external partners for the economy.

References

- Boulescu Mircea Sistemul de control financiar-fiscal și de audit din România, Editura Economică, București, 2005
- Craiu Nicolae Economia subterană între “Da” și “Nu”, Editura Economică, București, 2004.
- Lăcrița Nicolae Grigorie Cazuri particulare de paradisuri fiscale în “Impozite și taxe” v. 11, nr. 6, iunie 2005
- Lepădatu Gheorghe Scenarii industriale și implicațiile economico-financiare post-tranziție în România începutului de mileniu trei, Editura Științifică F.M.R., București, 1998.
- Moșteanu Tatiana Buget și trezorerie publică, Editura Didactică și Pedagogică, București, 1997.
Legea nr. 500/11.07.2002 privind finanțele publice, publicată în Monitorul Oficial nr. 597/13.08.2002.
Legea nr. 571/2003 privind Codul Fiscal, publicată în Monitorul Oficial nr. 927/23.12.2003.
Legea nr. 241/2005 privind prevenirea și combaterea evaziunii fiscale, publicată în Monitorul Oficial nr. 672/27.07.2005.