

## Forms of Manifestation regarding Tax Evasion: New Approaches

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*Abstract: Tax evasion has existed, exists and will exist as long as the state and the tax will continue to exist, but the forms and ways of achievement are perfectly in time. In terms of how can be committed, the ratio that exists between this phenomenon and the current legislation, tax evasion, there are two manifestations: the lawful tax avoidance (performed at the shelter law); unlawful tax evasion (fraudulent) or fraud. In terms of space can be identified: tax evasion and tax avoidance at national and international level. In recent years circumvention actions are transferred, increasingly more inside from national tax systems across state borders, action driven by trends economic globalization, political and social.*

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### 1. Tax Evasion in Romanian Legal Doctrines

#### ➤ Lawful Tax Evasion<sup>1</sup>

Although no law against tax evasion does not refer to a lawful tax avoidance (but not unlawful) expression is common in the literature, and this practice is more common. Tax evasion is evading lawful part of the taxable matter, without this being considered offense or a crime. It involves exploiting existing regulatory framework within the meaning of smart recovery inconsistencies, contradictions or legal provisions equivocation in order to avoid legal obligations to the state.

In some cases the intentionality of the action supported by the fact that it seeks to avoid paying tax obligations leads to the conclusion that this form of tax evasion attracts culpa economic issues involved. However, it does not apply the system of penalties accompanying tax fraud given the fact that it has not broken any laws, but basically took advantage of the existing legislation (or lack of it), “utilizing a combination unintended by the legislature and therefore tolerated by dropping sight”<sup>2</sup>, so that the only “guilty” of producing legal tax evasion is so the legislator. Talking about it, Adam Smith stressed in about 230 years ago in his famous work “The Wealth of Nations” that “as long as everyone breaks the law, is entitled fully deal with his own personal profits in the manner that suits them.” This remark, which became a true maximum, an axiomatic truth is subsequently acquired by British and American judges – “Every citizen has the right to arrange things in such a way as to minimize tax

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<sup>1</sup> In some papers it used the expression “legal tax evasion” on the use of the term ‘legally’ to describe this form of tax evasion, Nicolae Hoanta in his “Tax evasion” that it would be more correct to use the term “tax evasion lawful” (ie permitted by law), because as DEX, legal means something “that exists or is under a law that required by law, complies with the law”.

<sup>2</sup> Șaguna Drosu Dan, Tutungiu Mihaela – Evaziunea fiscală (Tax evasion), Ed. Oscar Print, București, 1995, p.22

liabilities. Nobody should plan their income and expenses depending on the requirements of the Ministry of Finance maximum; no citizen has a patriotic duty to pay maximum charges”<sup>3</sup>.

Avoiding tax obligations within the law usually requires the assistance of accountants or lawyers specializing in tax matters. These costs are borne avoidance and justifiable only for high-income taxpayers, while taxpayers with modest incomes go to when evade tax on tax fraud because it does not require a specialized consultancy costs. Its frequency is higher in periods when changes or new laws are introduced and when used intentionally State tax incentive to promote policies towards certain socio-professional categories or specific fields.

In practice, the facts of tax evasion lawful, based on favourable interpretation of the law are very diverse, depending on the taxpayer's inventiveness and breadth of the law.

Lawful tax evasion favored by various factors, based on favorable interpretation of the law and the most significant are:

- granting tax incentives in the form of exemptions, partial exemptions, rebates, deductions etc.
- granting temporary exemptions bounded to the establishment of new companies;
- removing tax revenue under bank deposits and those from investments in bonds issued by the state;
- imposing income of certain categories of individuals based on average income rules, creates conditions for taxpayers who earn incomes higher than average pay no tax on the difference;
- the failure to general expenses of companies, thus creating temptation overvalued by increasing their economically unjustified;
- exploiting loopholes of the law etc.

#### ➤ Tax Fraud

Fraudulent tax evasion (tax evasion) is a form of circumvention aggravating, being studied, analyzed, legislated and punishable by pecuniary and custodial measures, whenever it is discovered. It is therefore illegal to conceal all or part of the taxable matter by taxpayers to reduce or eliminate tax obligations incumbent on them. In this respect the doctrines tax appreciated that this is a “cancer” affecting civil and political society and which, according to some opinions, it would be about 25% of the budget of developed countries, reaching percent impressive in developing countries development<sup>4</sup>.

Fraudulent tax evasion is presented in the following forms:

- traditional evasion, which consists of partial or total evading tax payment or by completing and submitting incorrect documents or by failure to produce documents required by law;
- legal evasion is to hide the true nature of a body or a contract (for example, when a contract of association is transformed, in secret, in a contract of employment

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<sup>3</sup> Quote of the final repository in the *Helvering vs. Gregory* held at the US Supreme Court, in N. Grigorie-Lăcrița, *Particular cases of tax havens?*, Rev. *Impozite și taxe*, no. 6, June 2005, p.42-43

<sup>4</sup> Dorin Clocotici, Gheorghe Gheorghiu – *Dolul, fraudă și evaziunea fiscală (Undue influence, fraud and tax evasion)*, ed. Lumina Lex, București, 1996, p.56

for its beneficiaries to obtain certain advantages in quality employee or vice versa) to get rid of certain tax consequences;

- accounting evasion, difficult to identify in practice, is to create the impression of a proper accounting records using false documents in order to increase spending, lower income, taxable income and therefore reduce tax liabilities owed to the state;
- evasion by evaluation is to reduce the value of stocks, depreciation and provisions overestimating the purpose of moving profit in the future.

The areas most favorable tax fraud are common to all countries, they are represented in particular by tertiary activities (trade and services) and construction. But trade holds first place in the underground economy generating activities.

Fraud is extremely extensive for income declared by taxpayers, such as personal income tax and corporate income tax (profit). If withholding taxes and if local taxes when tax administration establishes opportunities for fraud are reduced. The categories of taxpayers are deemed the greatest opportunities to defraud taxpayers that their industrial and commercial activities as well as those performing free (lawyers, doctors, architects etc).

In the period after 1989 in Romania a number of companies have implemented various ways and techniques ever developed, which were fraudulently stolen from tax obligations, means and levers of legislative and administrative being insufficient to counter them. In these circumstances, tax fraud has become an alarming both in many cases, and especially by the large amounts of money that has been damaged public budget.

## **2. International tax evasion: a new concept**

International Tax evasion stimulated by the existence of small legal entities with special status or type state called in the twentieth century literature tax heavens or tax oasis that is not a phenomenon of the contemporary world. They have existed since ancient times. Thus, in ancient Greece, the islands in the vicinity of Athens were used by merchants to store goods, thereby avoiding a 2% tax levied by the city on imports and exports. In the sixteenth and seventeenth centuries, Flanders became a tax haven, whereas trade was conducted through its ports subject to tax liability and minor restrictions. In 1889 The Bank of Nova Scotia in Canada, the second largest in the country, opened an office in Jamaica, through which bank customers enjoy the tax advantages granted by this country and for international trade operations.

The moment that marked the growing importance of tax havens was the end of the Second World War when he increased the number of outlets a company - parent company. Initially, these subsidiaries have served overseas expansion parent companies in the country granting tax concessions and as a refuge for the capital to be reinvested or repatriated. Subsequently, foreign affiliates began to be used as a means of tax evasion. To serve this purpose, the branches began to be implanted in countries with stable currency, which did not exercise control over trade, had a banking system reliable and a government that encourage foreign investment in their territories, but imposes weak profits of foreign investors or benefits resident companies and dividends paid to the parent company's subsidiaries.

Member - tax haven (tax heaven) becomes today a resonance increasingly deeper, both in the world of big giants globe and in countries with lower living well below the poverty line, they multiplying and simultaneously the number and complex benefits offered to foreign investors, in the case of multinational corporations. To support the above can present some relevant data. Thus, if in 1978 the American corporations transferred to tax havens in the form of foreign direct investment, equity

amounting to 23 billion dollars, while advancing Western European corporations financial resources estimated at 160 billion USD<sup>5</sup> at the beginning of the XXI century, the volume of transactions conducted in the capital-tax haven countries are valued at USD 1600 billion, as stated by representatives of the UN<sup>6</sup>.

Currently in the world there are more than 40 regions considered tax havens. They are located on archipelagos (ex. The British Virgin Islands), the republic island (ex. The Republic of Nauru) or small countries (ex. Panama). Legislation such countries or territories encourages foreign investors in setting up companies that territory. In most of those areas, operation of companies, foreign investment security and the protection of confidentiality of information are guaranteed by law. For example, in the British Virgin Islands Legislative Assembly passed such a law code in 1984 under the name International Business Companies Ordinance.

Except that any country can become a tax haven<sup>7</sup> or a day may cease to be regarded as tax havens may be classified into primary and secondary<sup>8</sup>. In the main tax havens can be identified:

- countries where income tax and interest is zero for individuals called Anglo-Saxon "0 Heavens", as applicable: Bahamas, Bermuda, Bahrain, Nauru, the Cayman Islands, Saint-Vincent, Vanuatu and Monaco;

- countries used as "core site" affiliates, subsidiaries and / or divisions of corporate, whose revenues and profits are exempt from tax, under the conduct of investment operations across national borders such as Costa Rica, Hong Kong, Malaysia, Panama, Philippines, Venezuela and UK for even multinational corporations resident;

- countries where tax rates are low or that are set by those States to be reduced by the tax agreements on double taxation. May fall into this category: Liechtenstein, Switzerland, the Netherlands Antilles, Jersey, Isle of Man, Ireland;

- countries where the corporations offshore holding or have a privileged status, such as Luxembourg, the Netherlands, Singapore;

- countries where multinational corporations found other specific advantages, such as: Antigua Barbuda, Anguilla Barbados, Grenada, Jamaica.

Under tax havens secondary include both small countries and industrialized countries, where the level of taxation of certain types of income is high but there are legal provisions with particular character, which can be used in an operation of tax-planning (tax planning) by investors. In the category of small territorial entities following examples are relevant: Vatican, Maltese Republic, French Polynesia, Tonga Islands, Republic of Djibouti, Haiti, Cocos Islands, Christmas Island, Jamaica, Taiwan, Norfolk Islands. With a small area and a small population numbers, these countries did not meet all of havens principal or not apply any taxation or impose

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<sup>5</sup> Beauchamp Andre - Guide mondial des paradis fiscaux (World guide to tax havens), Bernard Grasset, Edition Grasset Pasquelle, Paris, 1989

<sup>6</sup> Ledoran Serge, Rose Philippe – Cyber-Mafia hackerilor, Securitatea site-urilor comerciale (Cyber-Mafia hackers, security business sites), Ed. Antet, București, 1998

<sup>7</sup> Tax haven - territory where individuals and companies deemed that they are less fiscally penalized than elsewhere, definition of R. Brunet, Zones Franches au paradis fiscaux, Fayard – Reclus Publishing, Paris, 1986

<sup>8</sup> M. Antonescu, R. Buziernesu, I.L. Ciora – Tendințe actuale ale unor forme de evaziune fiscală pe plan internațional (Current Trends of Certain Forms of Tax Evasion at an International Level), Public Finance and Accountancy Review, no. 1/2004

certain income earned by natural or legal persons, be granted exemptions to the activities of certain companies or apply very low tax rates.

For their part, developed countries can become an attraction for the activities of some companies where, according to certain interests, they can reduce the level of taxation.

In everyday language, those territories are tax havens that offer a wide range of tax benefits companies of “offshore” developments in these areas, but also individuals who choose their tax domicile there. The traditional tax havens operation of companies is supported by a highly organized legislative mechanism, meaning that in that country the law provides favorable tax conditions for companies registered there (offshore).

In the advantages offered by tax havens (use a company of shore), they can be divided into two distinct categories: the advantages / benefits direct tax (through taxation in the country where it is registered company of shore can provide substantial savings tax payment) independent status and additional benefits such as favorable tax:

- beneficii legate de controlul schimbului valutar – în general, companiile offshore își derulează tranzacțiile financiare în orice monedă de schimb valutar și își pot păstra rezervele financiare în orice monedă, fără o permisiune specială. Astfel, e posibilă reducerea considerabilă a pierderilor de pe urma cursului de schimb valutar, care apar atunci când există restricții privind moneda de schimb;

- benefits of exchange control - generally companies of shore conducts financial transactions in any currency exchange and can keep their financial reserves in any currency without special permission. Thus, it is possible to considerably reduce losses from currency exchange rates that occur when there are restrictions on currency exchange;

- no obligation accounting record keeping – in a large number of tax havens, offshore of companies are not required to prepare accounting records. This leads to substantial savings because companies of similar size conventional (non offshore) annually spend hundreds or even thousands of dollars on accounting services;

- banking secrecy – unlike most countries in the world where bank secrecy is not fully ensured, especially if an investigation requested by a foreign government when they are based on a bilateral or multilateral legal assistance, countries - tax havens refuses to disclose banking and commercial secrecy, even when it comes to committing a serious violation of the law of a country. The degrees of secrecy and scale restrictions vary from country to country. Some maintain a distinction between tax evasion and other offenses cooperating when it comes to investigating criminal cases in the sphere of taxes, but refusing to cooperate in cases of tax evasion. In others, the degree of confidentiality is directly correlated with the type of license or operating permit;

- considerations of prestige - It may be that in certain business situations a foreign company can offer more favorable terms and conditions. The participation of a foreign investor in a common enterprise creates confidence sometimes considerably higher potential business partner or ensuring, in some cases, exemption from customs duties.

Areas of offshore companies' registrations apply some principles of taxation, including:

- in countries where the company can get only foreign income, this income will be entirely exempt from tax. In this case the company is obliged to pay a fixed annual fee, independent of turnover and profit of the company. Such territories are: Bahamas, British Virgin Islands, Belize, etc.

- tax does not depend on turnover, but the registered capital of the company. For example, in Liechtenstein foundations are required to pay 0.1% annual State of the share capital (or at least 1,000 Swiss francs);

- they are exempt from tax only income earned abroad; for example, in countries like Panama and Hong Kong companies can conduct commercial activities and internal revenues from taxing is based on a linear rate, while revenues from abroad are exempt from tax. In this case, the company must state domestic revenues separately in the annual report;

- taxation based on a linear rate: one of the best known locations is Cyprus where offshore companies pay a tax of 4.25% of their profits (in these locations, without exception, accounting and preparation of annual reports are required).

It should be emphasized that payment of tax by the company did not violate the law, on the contrary, it is under partial or total exemption from taxes.

On the issue of international tax evasion, Professor JCL Hiscamp from Erasmus University in Rotterdam concluded in a colloquium that "fault" lies with the Government that improving tax legislation allows taxpayers to use tax evasion in order to reduce payments of taxes<sup>9</sup>. Therefore, if the tax obligations of taxpayers are determined by the legislation developed in each country or entity legal and administrative independent if no one is required to pay what the law did not oblige that anyone can seek solutions to defend against taxation which it considers excessive. International tax evasion is therefore a lawful form of tax evasion and tax havens a solution to its realization.

### 3. Conclusion

Tax evasion is a controversial phenomenon, particularly known for millennia as "escaping from tax" has evolved sinuous, transferring, and under the impact of globalization, the effects beyond state borders, the implications of the increasingly harmful.

But what is truly serious about the existence of tax havens, is that taking advantage of the benefits offered by these companies of shore resort to money laundering and tax fraud national, very often tax evasion, developed through offshore companies of intertwining harmonious with fraudulent bankruptcy, smuggling and like I said, money laundering. In Romania also businessmen are "scared" by oversized certain taxes and especially importers and exporters have registered a dizzying pace in recent years offshore companies, through which the Romanian state is prejudiced important funds money.

### References

Beauchamp Andre - Guide mondial des paradis fiscaux (World guide to tax havens), Bernard Grasset, Edition Grasset Pasquelle, Paris, 1989.

Dan, Tutungiu Mihaela – Evaziunea fiscală (Tax evasion), Ed. Oscar Print, București, 1995.

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<sup>9</sup> Paul Diaconu – Cum fac bani contabilii? – Evaziune fiscală – Paradisuri fiscale – Contabilitate creativă (How to make money accountants? - Tax evasion - Tax havens - Creative Accounting), Ed. Economică, București, 2004, p.64

Dorin Clocotici, Gheorghe Gheorghiu – Dolul, fraudă și evaziunea fiscală (Undue influence, fraud and tax evasion), ed. Lumina Lex, București, 1996.

Ledoran Serge, Rose Philippe – Cyber-Mafia hackerilor, Securitatea site-urilor comerciale (Cyber-Mafia hackers, security business sites), Ed. Antet, București, 1998.

M. Antonescu, R. Buziernescu, I.L. Ciora – Tendințe actuale ale unor forme de evaziune fiscală pe plan internațional (Current Trends of Certain Forms of Tax Evasion at an International Level), Public Finance and Accountancy Review, no. 1/2004.

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