

TAX EVASION VS. FISCAL FRAUD

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Abstract

For the good functioning of a state, the said state, through the levers it has available, collects taxes and fees. Sometimes, these taxes and fees put a higher pressure on the contributors and they end up not paying those taxes and fees. At that moment we may speak about tax evasion perpetrated by those contributors. At the same time, the fiscal fraud phenomenon may appear and this can be deliberate or involuntary. In both situations we may speak about an avoidance of taxes payment which is wrong from a legal point of view. In order to lower the fiscal pressure on the contributors, the state grants certain fiscal facilities to stimulate the collection of the amounts representing taxes and fees to the state budget. The fiscal pressure signifies how heavy taxes and fees are or how big is the fiscal burden which pushes down on the contributors' shoulders.

Key Words: *tax evasion, fiscal fraud, fiscal pressure.*

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1. Introduction

Taxes are the fiscal revenue of the state. The understanding of the problems related to them assumes a prior understanding of the notions: tax authorities and taxation system, disclosing their etymology and semantic determinations.

The word tax authorities (fisc – fr., fisco – it.) draws its origin from Latin, being a direct inheritance of the Roman Empire. In classic Latin, *fiscus* had the initial meaning of basket or reed or osier creel used for grapes, olives or cheese pressing. Then it received the meaning of creel for collecting and keeping the money dedicated to the prince's maintenance or the national or state treasury. (Tulai & Șerbu, 2005:14)

In our economic literature there is the present meaning of the word, the fisc being a state entity vested with the right to settle, collect and survey the payment of the taxes and fees owed to the state by the contributors. (Bistriceanu, 2001:161)

From the derivate forms of the word fisc, there is one which has a special importance for us and that is the notion of taxation system.

The Fiscality (i.e. taxation system) – thus as it is defined by the Explicative Dictionary of the Romanian Language – it is the system of taxes and fees collection through the fiscus (tax authorities) and the tax authorities are the state entities which set up and collect the contributions to the state and goes for those who did not pay those contributions. (Georoceanu, 2012:5)

It is then when fiscality is high that the premises are created for the

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appearance of tax evasion and fiscal fraud.

2. Tax evasion

Tax evasion is an avoidance of the payment of the contributor's fiscal obligations, both natural and legal person. Given the fact that, usually, the fiscal obligations becoming to the contributor natural person are deducted and transferred to the state budget by the contributor legal person, in what follows we will refer to the tax evasion in the case of legal persons.

Hence, then when a company does not pay its compulsory obligations to the state it can be said that the said entity avoids making the said payment and that we are indeed speaking about tax evasion. In exchange, when a company avoids making payments to a business partner (supplier) we cannot speak about tax evasion.

Besides, we need to look at the definition of the tax evasion thus as it is stipulated by Law no.87/1994: "total or partial avoidance by any means of the payment of taxes and other amounts owed to the state budget, to local budgets, to the state social security budget and extrabudgetary special funds by Romanian and foreign natural and legal persons called contributors...".

3. Legal and illegal tax evasion

In judicial and economic practice, a delimitation as close to reality as possible was looked for between legal and illegal tax evasion, although, tax evasion once invoked it does not mean anything else but breaching the law.

Legal tax evasion is that tax evasion which succeeds to avoid, totally or partially, the payment of budgetary liabilities due to certain legislation stipulations. It is interesting the fact that this leads to the decrease of incomings to the state but, at the same time, it does not mean it is a defeat of the law, i.e. this evasion does appear due to law breaking but to its observance.

It can be said that the legal tax evasion is due to a conjunction between a competence, respectively of the contributor who may chose the most advantageous part of the law and an incompetence, respectively, of the legislator who provided certain "doors" which allow for this type of tax evasion. From the legal point of view, this evasion is not incriminated directly but, if it appears as a result of an act of corruption from the part of the legislator, then this act is incriminated and punished according to law.

The illegal tax evasion, unlike the legal one, appears then when a breach of the fiscal standard occurs which may bring damages to the financial interests of the state and is the result of the defeat of the fiscal laws. (Hoanță, 1997: 189-190)

4. Causes of the tax evasion appearance

There are some main causes which lead to the tax evasion appearance:

- a) *Fiscal pressure* – when the fiscal pressure in a field to which the contributor takes interest is at the average level and has increase tendencies, the chances

that the said contributor perpetrates tax evasion are very high if the contributor may avoid the payment of the obligations to the state. The contributor makes this decision, without being set up, from the legal point of view, a threshold from the level of which the avoidance of the obligations payment becomes evasion and, implicitly, criminal offence. The threshold is chosen in an arbitrary manner by the contributor and it depends, most of the times, on the activity sector in which the contributor runs its activity. A high fiscal pressure leads, implicitly, to a decrease of the fiscal revenues because a high fiscal pressure has as a result the tax evasion which leads to the decrease of incomings to the budget. (Dinga, 2008: 25-26)

b) *The weakness of the entities assigned with the collection of taxes and fees –*

The case in which the punishment for tax evasion is small there are high chances that a contributor perpetrates an evasion all the more that the probability of being identified is also small. This may also happen in the case of a low fiscal pressure or a taxation reduced rate. This cause may usually appear when inside the entities assigned with the taxes and fees collection there is corruption or an incapacity of the logistics or personnel working for such entities. The weakness of the said entities to collect taxes and fees, both objective and subjective, has as its main effect a scanty collection of the amounts necessary to the state “to function” and this clearly leads to damages brought to the state interests. (Dinga, 2008: 27)

c) *Fiscal facilities –* their effect is a decrease of the fiscal liability either by the grant of exemptions or fiscal debts cancellation or by granting a fiscal support of any other form. Due to such facilities, contributors who benefited of fiscal facilities have expectations for other fiscal facilities and act accordingly, i.e. to avoid the fiscal liability by receiving other facilities. The grant of fiscal facilities is nothing else than a damage brought to the interests of the state by the state which, in fact, are detrimental to the state not only for a short term but also for a long one because it leads to a specifically tax evasion culture as well as to the contributors’ expectations to benefit of (other) fiscal facilities. (Dinga, 2008: 29)

d) *Contagion (imitation) –* it is a cause which becomes more and more difficult to control. If a contributor notices that other contributors, tax evaders, did not bear high costs or even at all for the fact that they breached the law, he will have a similar fiscal behavior with them in the hope that he will be treated likewise. Unfortunately, such a cause is more and more present on the market because contributors observe each other in the process of economic competition and thus, they may be “taken ill” one from another with a tax evader behavior. The force of contagion in the generation or extension of a tax evading phenomenon may be consistent and it depends on both cultural and institutional factors. One thing is obvious: the force of the taxation administration is inversely proportional to the contagion force and so that a state may become strong it has to have the necessary resources for functioning, resources which may be procured by diminishing the

contagion force. (Dinga, 2008: 29-30)

From the specification of these causes it may be construed that they are interconnected and cannot function independently: thus, an increase of the fiscal pressure may lead to the granting of certain fiscal facilities, a thing which may even lead to an increase of those facilities and a weakness of the entities assigned with the collection of taxes and fees may be followed by an increase of the fiscal pressure in order to counteract the decrease of the incomings to the state budget. The tax represents the compulsory takeoff, without immediate counter performance, direct and not-refundable, for the satisfaction of general interest necessities. (Roş, 2015: 348)

5. Fiscal fraud

The fiscal fraud is represented by the illegal or lawless tax evasion. The fiscal fraud is in direct connection with the underground economy, corruption and fiscal immorality. However, it may be distinguished between the tax evasion and the fiscal fraud through the prism of the phenomenon intentionality/subjectivity. In this sense, in the contributor's day to day activity there are two distinct situations which can be met and, though they do not eliminate tax evasion, may give certain indications with reference to the amplexity with which evasion happens, with reference to the impact on the fiscal behavior in general or even on the budgetary balance.

1. The first situation refers to the fact that a contributor who becomes a tax evader arrives to that situation due to wrong entries in the accounting books which lead to the avoidance of budgetary obligations payment, only that those wrong entries may be owed to a negligence, to the accounting staff incompetence. In this situation, the contributor may be accused of tax evasion because he broke the law and produced a damage to the state. But, if those entries were made knowingly then we may speak about fiscal fraud. Of course, the question which appears is how can we distinguish these two phenomena? A good separation criterion of the two phenomena is that of the phenomenon repeatability: if, in this case, the situation is singular and it did not repeat subsequently, we may speak about tax evasion, in exchange, in the case of a repetition of the situation we face a fiscal fraud.

2. The second situation refers to the situation when a monetary arrear appears between two contributors. In this situation, a contributor does not pay his debt to the second contributor and, the latter, in his turn, cannot pay his budgetary liabilities to the state budget. This situation shows an incapacity of the second contributor to pay his obligations, incapacity which is not due to him, it is not deliberate nor is it owed to some negligence or incompetence. In this situation we may speak about a tax evasion but under no circumstances may we speak about a fiscal fraud. In exchange, if it may be proved that the debtor contributor did not pay the debt upon the suggestion of the creditor contributor then the act of the second contributor is considered a fiscal fraud. (Tulai, 2003: 145-147)

Hence, we may consider that tax evasion may be the same as fiscal fraud only

then when the intentionality does not exist or it cannot be proved and then we speak about tax evasion, otherwise it is fiscal fraud. Though the law does not make a difference between the two situations, everything resting up to the auditor who performs the audit, we may consider that it would be useful to distinguish those acts as to their criminal character.

Conclusion

With our scientific approach we have tried to mention certain things about tax evasion and fiscal fraud. It is certain that the tax evasion phenomenon tends to be more and more present in our days, particularly in the area of human resources, i.e. the liabilities afferent to personnel salaries are paid deferred or not at all, though, during the last years, the fiscal burden of the salary rights decreased but, there are contributor who complain that this burden is still too big.

During the last years, labor legislation suffered modifications, especially as fiscal facilities were and are stipulated for certain fields of activity, like IT and constructions, exactly in order to determine the personnel working in this fields to refrain from temptations to leave the country. If this was achieved we will see in some years when we may speak about a consolidation of the activity in this two fields of activity.

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