Cooperation between EU Member States to prevent international tax evasion and fraud

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Abstract : EU single market is affected by tax evasion and tax fraud in the Member States, given that economic scourge extends beyond the borders of Member States generating budget losses and violations of conditions of competition and the principle of fair taxation. In this paper we proposed to analyze cooperative measures that EU Member States have adopted fiscal policy to combat tax evasion and tax fraud at EU and national level, addressing both forms of evasion and factors of influence, the issue of economy as the main manifestation of tax evasion, along with means and methods of preventing and combating tax evasion.

Key Words : tax evasion, control, tax evasion, underground economy, direct taxation, fiscal policy

1. Introduction

Theme of tax evasion and tax fraud is an actual theme for any state, at any time, either economic crisis or the economic recovery, due to its legal and economic mechanisms through which negative affect state revenues generating major market imbalances and indirectly affecting honest taxpayers, in favor of deception, practitioners of this method.

Topicality and its importance is magnified in the context of intensifying international economic cooperation and development of relations between states with different tax systems, for the interest of lawyers and economists in any European country is to identify the dimensions and implications of complex social and economic phenomenon at national level and international, and on this basis, to determine actions and legal and economic measures most effective in preventing and combating the scourge of taxation.

We must recognize, at the first row, that tax evasion is one of the most socio-economic phenomena studied in the tax law and taxation, both from theoretical and especially practical, and here we consider relevant and appropriate legislative measures to be taken in the tax laws. However, there also will not find a precise and unitary definition for the phenomenon or for the area in which tax evasion takes place, but we will definitely find a lot of terms to define the same social behavior: failure of the taxpayer to tax consciously and voluntary.

Notions of tax evasion and tax fraud are inextricably bound to one another, differing is, however, that legal content, although the period between the two world wars have been authors who have included the notion of avoidance in the fraud, giving the following definition concept of avoidance: *the art of avoiding the fall into the attraction field of tax law* (MC Brie and P. Charpentier).

Other authors of the postwar period, such as Maurice Duverger, giving the notion of a wider tax evasion, tax fraud were embedded in the concept of tax evasion. The author takes the view that *tax evasion is a generic term and means the manifestation of fleeing from taxes.*

Based on social behavior and to pursue their own interests at the expense of the general interests, we find that human beings are

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inclined to consider taxes and fees that state revenues are more like self harm by being deprived of a sum of money related to budgetary contributions and not as a legitimate contribution to public expenditure which are not directly felt by the taxpayer.

Whatever the tax rate set by tax law to impute, daughter evasion spirit comes from self-interest game. Since ancient times, with the advent of the instrument of taxation, taxpayers have sought the most varied and ingenious ways to reduce tax liabilities, and that because to defraud the IRS is found in human mentality, a test of skill and not a crime.

In the face of such social behavior, self-interest and justified by the taxpayer to psychology than what you never can not pay, under an oppressive tax (high tax rates and the high level of taxable income), Fiscal fines imposed by tax legislation is not likely to induce the taxpayer to review its own behavior, but on the contrary, we will determine measures to seek to circumvent its payment obligations towards the state in larger proportion: *Tax evasion has always been especially active and ingenious individuals hitting the ground that the taxation authorities in their wealth, touches the most sensitive interest: interest money*[1].

At present, neither in literature nor in the legal regulation there is no unified definition of tax evasion, tax fraud, and no, because often meet in the same context the notions of legal and illegal tax evasion, fraud and those legitimate or illegal, in this last case being in the presence of redundancy : *If indeed speaking of fraud, is spoken in the same measure of legal or legitimate fraud, illegal fraud, international tax evasion, the evasion of legal, illegal tax evasion, tax havens or shelters, the abuse of the right to run tax front, the freedom to choose the path less impressive or underestimation of fiscal fraud law or underground economy.* [2].

Fiscal policy is the whole concept of decisions taken at the state level in order to obtain the desired final goal of structural modeling in the economic system of the tax system, or said another way, fiscal policy is a component of the state financial policy that includes legal regulations on the establishment and the amount of taxes, on the one hand, on the other hand, materialized social policy options and decisions taken in the monetary costs funded from the state budget.

In view of modern economic, fiscal policy involves the conscious use of revenue from the state budget for social spending and the economy with serious consequences on the evolution of the whole society. In turn, national fiscal policy is conditioned by the economic environment, through a series of factors such as: state of the national economy, the relationship between public and private sector, citizens income levels.

2. Definition and classification of tax evasion.

Concern to define the phenomenon of tax evasion dating to the early twentieth century, legal and economic specialist works from that period is a proof in this regard. Lack of a universally accepted definition for the phenomenon escapist doctrine is due to the fact that some authors defining the concept relates to tax evasion for tax evasion, putting an equal sign between the two concepts, while other authors separate these two notions.

2.1 Definition of tax evasion

Fiscal Fraud, appoints most often a crime to law, so this concept is always used in a negative way and is different from that designates a legal tax avoidance possibilities offered by clever use to mitigate or even circumvent the law to tax.

Thus, the concept of authors, tax evasion is reorganizing its business in order to legally minimize tax liabilities and tax fraud (Tax Evasion) is illegal rearranging business to achieve the same objective of minimizing taxes.

Starting from the boundaries mentioned above, we deduce that designates a felony tax fraud in tax law, a willful violation of applicable law and tax evasion is clearly distinguishable bid, which is a clever use of the possibilities provided by law, the legal interpretations, to minimize taxation.

There are views that the evasion phenomenon is blamed on inadequacies and loopholes in the tax laws. Thus, Professor PhD. DD Saguna defines tax evasion as follows: *Tax evasion is the result of logical flaws and inconsistencies imperfect legislation, poor methods of application and not providing for a legislature whose incompetence and excessive taxation is as guilty as those that cause them thereby to evasion*.

Literature of Romania has established, based on criteria of legality, compliance or tax legislation, two words to describe forms of tax evasion: tax evasion licit (legal) and illegal tax evasion (fraudulent tax evasion) (Corduneanu, 1998) [3].

Classification of tax evasion

Delimitation of the unlawful and lawful tax avoidance is necessary and useful, because it gives the possibility, at least theoretically, to estimate the size of the phenomenon, the two forms. In practice, however, is very difficult to delimit the fraudulent evasion of lawful, so that between legal and illegal is not a rupture but rather a continuous, successive attempts to exploit loopholes in the law resulting from the legal to the taxpayer illegal.

Depending on how you can be committed, tax evasion, there are two forms of manifestation: the avoidance that can be done under cover of law (legal evasion, tolerated) and evasion that is done in violation of law, is, therefore, unlawful or fraudulent.

Avoidance of legal action means the taxpayer to circumvent the law, resorting to a random and unexpected interpretation of laws and so the *"*tolerated*"*;. Legal evasion for waiving a portion of the taxable field, without this behavior be considered as a willful violation of law by the taxpayer (or felony offense).

We are in the presence of legal tax evasion when income is determined according to some external criteria, and determines the taxable income lower than the real. In the practice of countries with market economy, aiming at the interpretation of the facts favorable tax laws, so legal tax avoidance cases, the most frequent are:

1. establishment of reserve funds or depreciation in an amount greater than is economically justified, thus reducing taxable income;
2. practice of companies to invest a portion of profits made in procurement of machinery and machinery for which the state provides income tax reductions, a move that is intended to stimulate accumulation;
3. establishment of warehouses for the storage and management by the parent or guardian of funds for minor children. Although the repository is subject to income taxation, tax paid is less compared with what would be due on such income redistribution;
4. use, within certain limits, the legal provisions on charitable donations, whether or not they took place, leading to theft of part of income from taxation;
5. consideration of legal facilities on the exclusion of the mass of living labor taxable expenditure - expenditure on training and practice in production, research contracts paid for that tackle priority programs of national interest;
6. decrease in taxable income the costs of the Protocol, and advertising, whether made or not;
7. favorable interpretation of legislation which will provide important incentives (exemptions, rebates) for contributions to support the social, cultural, scientific and sports;
8. establishing headquarters or domicile abroad, in tax havens.

Unlike legal tax avoidance, tax evasion is committed fraudulent flagrant violation of the law, taking advantage of the specific mode is made to impose. Forms and ways by which the fraudulent tax evasion are practically limitless. Mention some of them more often encountered in tax:

a. drawing up false statements (tax returns are submitted on the taxpayer liability)

b. drawing up fake payment documents

c. the composition of false accounting records and the records double

d. taxable withholding material

e. declaration of taxable income lower than actual realized;

f. reducing taxable material from reduced turnover by the recording unit costs of employers personal expenses or charges outstanding record reality;

g. sales made without an invoice and sales invoices without charge, conceal taxable real operations;

h. falsification of accounts, as a means to defraud the tax authorities, which involves an agreement between the owner and chief accountant, who shall balance own responsibilities and being otherwise held jointly and severally liable for the amounts claimed.

Underground Economy

One of the most frequently-used definitions presents underground economy as "*the totality of economic activities that are not recorded as such and contribute to the gross national product (GDP) that is calculated officially*" [4]. Also, Roger S. Smith (1994) defines underground economy as production of goods and services, legal or illegal, which escape control in official estimates for the gross domestic product (GDP).

A Romanian dictionary of economic terms, published in 1999, defines underground economy as"*the totality of economic activities that are not declared to the institutions that calculate taxes and social securities and that escape statistical recording and national accountancy*" [5].

It is a well-known fact that there are a lot of underground activities that are included in planned economy as well as in market economy, no matter if they are developed or developing. The agents, who are involved in underground activities escape, avoid or are excluded from the institutional system of rules, rights, regulations that officially govern those economic actors that are involved in production and exchange [6]. The different types of underground activities may be distinguished by means of specific institutional rules that are broken[7].

Numerous studies prove that *the fiscal pressure and the increase of contributions for social securities* are major factors for the development of hidden economic activities [8].

They increase the opportunity cost of legal economic activities and finally reduce work profitability in the official sector. The higher is the difference between the total work cost in the official sector and the after tax income, the higher is the desire to avoid this difference and work "on the black market" [9].

3. Preventing and combating tax evasion by EU Member States cooperation

European policy on tax is only intended to ensure a competitive market undistorted by differences in the rates of indirect taxation systems and the Member States. Thus, European policy in the field of taxation has two major components, which are found in European Commission Regulation nr.218/1992, and in Regulation nr.1798/2003 [10].

The two components of fiscal common are direct taxation - which is the responsibility of Member States and indirect taxation, which affects the free movement within the common market of goods and services.

Member States have already taken steps to prevent double taxation and tax evasion, and European policy in this area aims to ensure that domestic competition is not distorted by differences between systems and indirect tax rates. In addition, measures were taken to prevent negative effects of competition in the field of taxation that can occur in case of transfers of funds between Member States of the European Union.

In terms of value added tax there is an agreement between the Member States to set at least 15%. Obviously there are exceptions to this rule, there are goods which are exempt from VAT or apply a lower VAT. Generally goods and services that take advantage of these exceptions are not in direct competition with similar goods and services from other Member States, such as menu prices in restaurants. [11].

Differences in rates of excise duty applied by Member States can easily distort competition and therefore are subject to common rules. Nevertheless, some cultural differences involved (a decision to excise or not alcoholic beverages such as wine and beer) and economic differences - for example, a country that enjoys a healthy public finances can not be required to various taxes apply only for the sake of taxation.

Company tax, the EU has two major objectives: to avoid unfair competition in the field of taxation and to ensure free movement of capital. Union rules prevent Member States to use the tax system to influence investment decisions to the detriment of other Member States. Furthermore, the EU aims to set a common tax base for all EU companies the same kind of transaction that is to undergo a single set of rules, while leaving the Member States to establish rate of taxation. [12].

According nr.1798/2003 Regulation, Member States agreed that the tax authorities of Member States to cooperate on avoiding double taxation and the harmonization of legislation on indirect taxation.

Also, the tax harmonisation measures taken to complete the internal market should therefore include the establishment of a common system for the exchange of information between the Member States whereby the Member States' administrative authorities are to assist each other and cooperate with the Commission in order to ensure the proper application of VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods.

4. Conclusions

Total losses in the European Union value added tax unearned because fraudsters arrived in 2009 to 250 billion euros.

A single authority, EUROFISC, tax agencies will coordinate the 27 European Union countries, after the first step in this direction will be the unification of databases on taxpayers.

This authority is created within the strategy to combat tax evasion and fraud, following the adoption by the European Commission a proposal amending the Regulation on administrative cooperation in the field of value added tax nr.1798/2003. The new joint operational structure will allow Member States to act quickly to combat fraud.

Following this action, the IRS in any state of the union will have real time access to the common basis of tax data to prevent fraud on VAT refunds. Before EUROFISC new authority to become an institution itself, it could be informal name of a cooperative scheme, under which an official from an EU country will be able to consult, in real-time data about a person or company in the online records of the other 26 states.

The author of the proposal - the Commissioner for Taxation and Customs Union, Hungarian Laszlo Kovacs said on EUObserver.com - believed that a state tax authorities should be able to „protect" the financial interests of another state „as effective as one own."

Commissioner idea is that in this way to avoid fraud is committed when someone buys goods exempt from VAT in a state to sell them in another EU country. To avoid paying twice, goods exported from EU countries are exempt from VAT, following the trader - who acts as a tax collector - to pay the tax in the country sell the goods. In practice, networks of evaders, although included in the sale price of imported goods and the percentage of VAT due, they transferred the state money was made selling to final consumers. [13].

"The vicious circle of taxation" creates "pain". State "complain" frequently for low level of public resources, and taxpayers "complain" for the extent of tax liability and the way is spent public money. It can break this vicious circle? The answer is yes, provided that, the rationality level of taxation offers better responsiveness to the taxpayer burden. [14].

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