

TAX EVASION AND REPARATION THROUGH MONETARY TERMS

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Abstract *The harmonization of the Romanian national fiscal system and that of the European Union member states generated fundamental changes in the way of settlement and levying taxes in Romania. Instruments such as fiscal good management approach, both at state level institutions and private structures with responsibilities in tax, must correspond to the requirements of the European Union. In this context, the theoretical and practical components of the effectiveness of the tax system in Romania in general, the economic and social impact on payers of taxes in particular, constitute a major challenge for fiscal management practiced at all levels. The actualization and importance of this article is illustrated by the fact that the process of integration into the European Union continues to be the main strategic direction for the entire Romanian society. In this context, the indispensable role of public institutions returned. Tax evasion is suffering because of the monitoring sector, public transparency, limitation and restriction. It is a phenomenon manifesting itself increasingly in Romanian society, aided by corruption and bureaucracy of the public, but also the behavior of tax inspectors.*

Keywords: Tax evasion, compensation, customs code, fiscal instrument.

JEL Classification: H26, H30

1. Introduction

The evolution of the relationship between state and individual currently occurring in Romania, and in the former socialist territory, involves the changing circumstances of manifestation of the human personality and the drive to achieve the social mission for businesses. The European Union today has 27 member states and over 460 million inhabitants. Despite the differences between Member States, the basis of the entire European mission stood willingness to pursue and implement common policies and joint programs. In the fiscal area, the body with the role of initiating and tracking the application of fiscal legislation is the European Commission established by the Treaty of Maastricht - Netherlands signed in 1992 and entered into force in 1993.

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The main objective of the European Economic Community Treaty is the creation of a common market based on fair competition with the similar characteristics of a national market. In this context, the reformation of the tax system in Romania, as a necessity of harmonizing European fiscal systems, caused frequent changes in legal regulations in this area. However, the basic concepts used in the field of taxation (taxation, fiscal institutions, fiscal system, etc.) have not fundamentally changed, which related mainly to finding, fixing, tracking and collection of taxes, charges and other categories of public financial resources, which constitute the current revenues of the general budget implemented.

2. Tax Evasion

Tax Evasion represents, according to law no.87 from 1994 and to its further amendments, theft by natural or legal persons, Romanian or foreign, in content of the law contributed to the imposition or payment of taxes, fees, contributions and / or other amounts owed to the state budget, local budgets, state social security budget and / or special funds.

Tax evasion is found both internationally and on the national territory, as it is one of the most widespread economic offenses. The offense of tax evasion is found in various forms [1], [2] such as:

- fabrication of documents for fictitious payment;
- willful destruction of documents which may reveal true prices, commodity supplies, fees, receipts, etc;
- fabrication of false customs declarations on export or import of products;
- unjustified changes brought to transportation costs, supply prices, storage costs and costs deriving from the handling of goods;
- false accounting record keeping;
- preparation of false tax returns by failing to mention a portion of incomes.

According to Law no. 241 2005 to prevent and combat tax evasion, tax evasion offenses are only offenses under art. 3 - 9 [3]. According to Law no. 241 of 2005, what constitutes an offense punishable with imprisonment from 2 to 8 years and removal of rights, is a series of seven acts committed in order to escape tax obligations (points a to g).

These describe the objective side of each tax evasion offenses separately. In addition to this there is also subjective side, qualified by the legislature for regulating the special purpose of these crimes, mainly evading tax obligations.

3. Tax evasion and reparation

Article 10 of Law no. 241 of 2005 provides that:

(1) When an offense of tax evasion under this Law is made and during prosecution or trial (until the first hearing) the accused or defendant fully covers the damage, the punishment, provided by the law limits for the offense committed, is reduced by half. If the damage caused and recovered in the same conditions is up to 100,000 euro (or its equivalent in the national currency), a fine is applied. If the damage caused and recovered under the same conditions is up to 50,000 euro, (or its equivalent in the national currency) an administrative sanction will be applied, which will be recorded in the criminal record of the individual.

(2) The dispositions offered by par. (1) shall not apply if the offender has committed another offense under this Act within the past 5 years from the commission of the offense which benefited from the provisions of par. (1). Regarding the constitutionality of Art. 10 of Law no. 241/2005, The Constitutional Court ruled in Decision No. 802/2008, published in the Official Gazette of Romania, Part I, no. 580, on 1 August 2008, that the legislature is free to assess both social risk and the conditions of legal responsibility when establishing the legal nature of the offense. The principle of equal treatment that does not involve legal uniform for all offenses, and regulation of a sanction regime based on cover damage caused by the offense is a natural expression, said constitutional principle requires that the same legal conditions apply the same treatment and for different legal situations to apply differentiated legal treatment. In justifying the exception of unconstitutionality of the impugned provisions of the law they are found discriminatory because it would apply only in cases where the damage was covered by the defendant. By regulating the causes of punishment and sentence discount for some people depending on the state in which the criminal proceedings, would establish a privilege for those who have money and can cover immediate damage. The provisions of the law at issue infringes the presumption of innocence, because to receive no punishment or reducing the sentence, the defendant is forced to plead guilty and accept unconditionally civil party claims. By Decision no. 932 of 2006 published in the Official Gazette of Romania, Part I, no. 42 of 19 January 2007, the Court held that under art. 73 para.

(3) h) Constitution, Parliament is empowered to regulate by organic law offenses penalties and their execution thereof. Under this constitutional provision, the legislature is free to determine both the social danger according to which they establish the legal nature of the offense charged and the conditions for legal liability. From Decision no. 318 of 2006 published in the Official Gazette of Romania, Part I, no. 400 of 9 May 2006, it appears that the reduction of limits of the punishment provided by law, that only the accused/defendant that fully covers the damages, during prosecution or trial, until the first hearing, benefits from, does

not imply the restriction of free access to justice. The concerned has the possibility to appeal to the courts if they consider that the rights, freedoms or legitimate interests have been violated and to enjoy all the procedural guarantees provided by the law, including the civil side of the case, fully consistent with the imperatives of the right to a fair trial. Regarding the plea of the author of the exception on infringement of Art. 23 para. (11) of the Constitution, the Court held that they were unfounded, because if the condition of the text criticized "the limits of the punishment provided by law for the offense committed is reduced by half", following the court shall, in case of conviction, set punishment within those limits. Therefore, it is arguable that the defendant is required to plead guilty, thus buck the presumption of innocence and unconditionally accept civil part's demands. The Court held that under art. 73 para. (3) h) of the Basic Law, that "organic law shall regulate: [...] offenses, penalties and the execution", the legislature is free to establish a sanctions regime in order to recover damages caused by the acts as criminal offenses. In applying this constitutional text, the legislature has regulated the art. 10 para. (1) first sentence of Law no. 241/2005 to prevent and combat tax evasion, a question of reduction of sentence provided by law for the offense committed, where during prosecution or judgment until the first hearing, the accused or defendant fully cover damage. This is a criminal policy as determined by the specific tax fraud or the need for recovery, expeditiously, to amounts owed to the general consolidated budget, and is likely to prejudice the right to a fair trial and the rules on the implementation of constitutional justice.

The fact that the reduction of sentence provided by law benefit limits only the accused or defendants, who fully cover the damage, during criminal prosecution or trial until the first hearing, does not mean containment to free access to justice. The concerned has the opportunity to apply to the courts if the court considers that the rights, freedoms or legitimate interests of the individual are violated and for him to benefit from all the procedural safeguards provided by law, including regarding the civil side of the case, in full compliance with the imperatives of law to a fair trial. That being so, the authors exception can't be accepted because the law text would result in a censorship failure of court decisions taken by the prosecution, regarding the civil side of the case, creating the possibility of undue payments to the state budget (Court Constitutional Decision no. 1053 of 9 October 2008, published in the Official Gazette Romania, Part I, no. 767 of 14 November 2008).

4. Improving the management of fiscal instruments according to the requirements of the European Union

The enlargement of the European Union has shifted Europe's economic center from the Northwestern area to Central Europe. It is expected to continue moving eastward as the countries of Central and Eastern Europe experience economic development, and trade relations with the countries of Eastern Europe and Central and Eastern Asia intensify. Trade (and transport) revolves around "the easiest access route" and, because of this factor, it is clear that the economic development of this region will require the emergence of new modernized transport and logistics corridors [4]. According to international studies, when identifying an attractive International location, there are 10 key factors that are taken into account (Fig. 1.):

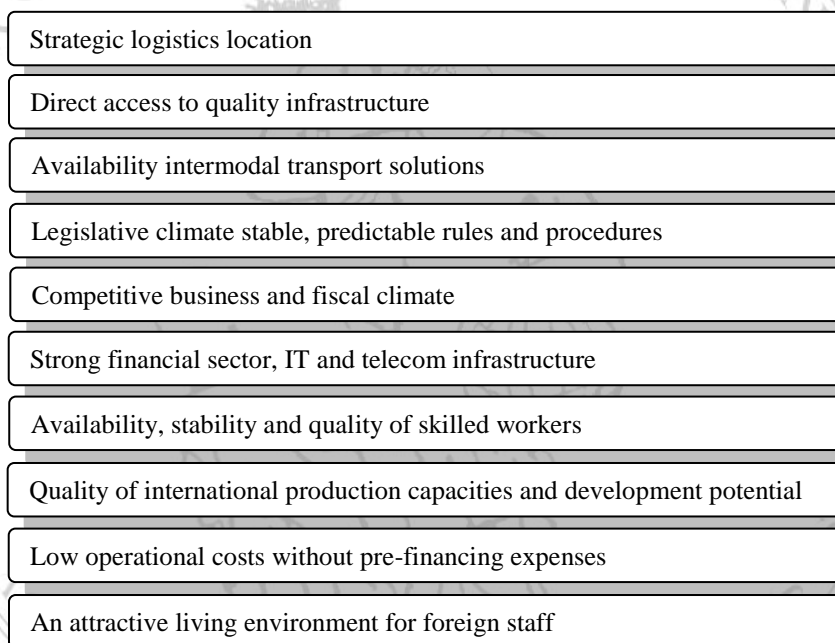


Fig. 1. Key identification of attractive locations

In this respect, Romania should adopt and implement a set of measures that provide as much benefits, predictability and competitiveness found at EU level, which are key elements for Romania to be perceived as an attractive location for investments and new business. They cover all 10 criteria listed above.

Given the current situation in Romania, reported to the competitors in EU, emphasizing the key tools necessary for increasing Romania's competitive position in Europe are the following fiscal and legislative instruments: - Deferral of VAT at customs clearance; - The overall tax representation for VAT purposes;

- Implementation of real benefits for AEO approved companies; - Introduction of "extended customs gates"; - Stable and predictable governmental behavior. In terms of physical infrastructure, it requires a combination of port development in Constanta and main river ports (ports on the Danube and interior ports), that have multiple accessibility. However, the existence of high quality supply chains, education and training in the field, are indispensable elements. The whole strategy could be integrated into strategic project of national importance "Logistic Center for Re-export in Central and Eastern Europe". More, the project structure could follow the example of The European Gateway Platform. In principle, financing of this project can be ensured by European structural funds. Experience in other countries has shown that increasing commercial traffic volume leads to financing from private sources, for example through public-private partnerships. An argument that can be used is the reduction of CO₂ that Romania would provide for the rest of Europe. This is a potential advantage that Romania can sustain in Brussels. This document presents the key measures that could be included (and should be from the perspective of the business community) in such a program. The issues are listed below and further elaborated in this document (Fig. 2.).

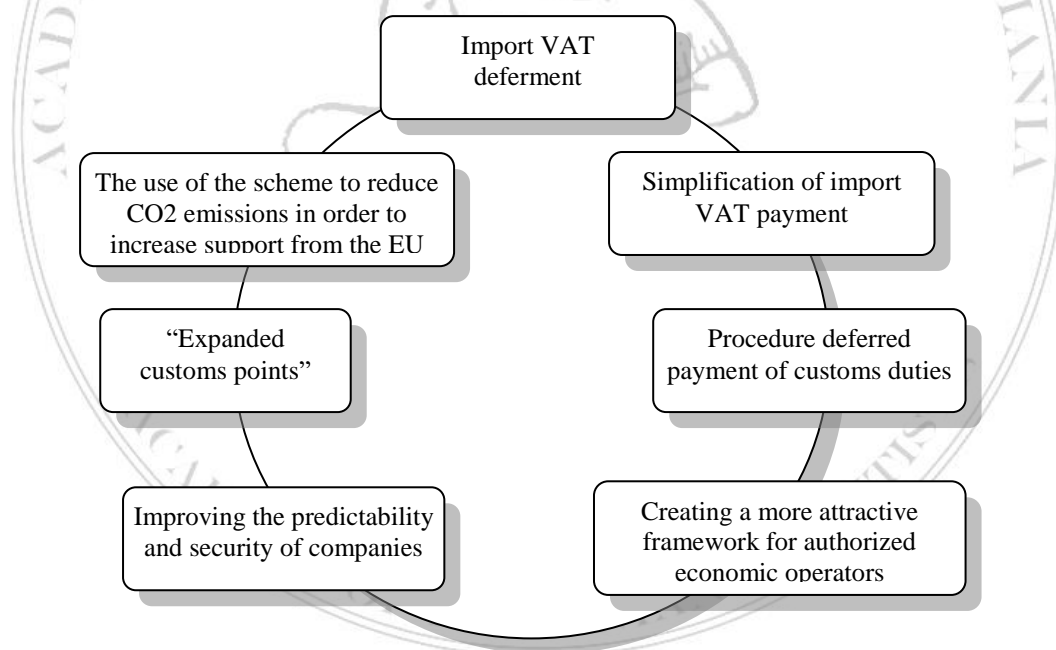


Fig. 2. The key development measures

In accordance with the Modernized Customs Code Committee, the philosophy of control of the customs authorities must change from controlling the physical presence of goods in the customs office where they will be inspected, to an analysis of the safety and security risks associated with that company and the assets that

the company commercializes. Risk analysis will be carried out before those goods enter the territory of the EU. Such an audit conducted beforehand based on risk analysis, by the management of the customs authorities, should allow them to assess whether a company is a trusted partner for customs and for the clients of a particular company. If so, then the company will receive AEO certification from the customs authorities. The widespread use of the AEO concept will reduce the burden on customs authorities (who will not have to check every individual shipment of goods performed by the company, once the company has been certified as a reliable partner). Companies AEO certified will benefit from certain facilities (for example a limited number of customs controls etc). Therefore this provides a benefit for companies to apply for AEO and for customs authorities to grant the status of AEO. However, little interest is being shown among companies in Romania to obtain AEO status mainly because they do not have real benefits in obtaining this status, compared to the investment necessary (both financial and human) required for the authorization procedures. Taking into account the advantages the Romanian Customs Office might gain if more companies became AEO members, they should take into consideration granting additional benefits for companies that obtain AEO status as well. For example, exemption from payment of customs duties to ensure AEO companies (in the case of deferment of payment of customs duties) or defer VAT on imports, could provide additional benefits for AEO companies. Please note that many EU countries have already implemented similar measures or planning on doing so, in order to encourage companies to enter AEO. All these will help reduce the administrative burden on customs authorities encourage companies to apply for AEO status, increase the safety and security of commercial operations, meanwhile reducing tax evasion and facilitating legitimate trade [5].

Conclusions

Thus, in the extensive process of transformation and restructuring that the Romanian economy must go through, a fundamental role occupies the managerial work of public institutions, which is required to be improved effectively, targeting specific conditions for realization.

Romania is a Member State of U.E. with major unresolved issues, including the management of tax evasion and corruption. Tax evasion is suffering in the monitoring sector, public transparency, limitation and restriction. It is a phenomenon manifesting itself increasingly in the Romanian society, aided by corruption and bureaucracy of the public, but also the behavior of tax inspectors.

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