

# THE PHENOMENON OF TAX EVASION AND THE NEED TO COMBAT TAX EVASION

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**Abstract:** *Lately, there has been talk of tax pressure on taxpayers. Changes in the field of taxation at national level can have a negative effect on the business environment. In these circumstances, the process of tax evasion is more and more current, which has led us to carry out the present research. The main objective of the scientific research is to define this phenomenon, to present the causes and forms of tax evasion, as well as to identify the ways of preventing and combating it, aiming finally to draw some conclusions regarding the effects of the evasion phenomenon at the national level. The methodology used to accomplish the article is the theoretical research of the relevant legislation and of the speciality papers, based on the empirical research of the information presented by the National Agency for Fiscal Administration performance reports.*

**Keywords:** *taxes, tax evasion, taxpayers, tax reports.*

**JEL Classification:** *H26.*

## 1. Introduction

At the international level, in the context of the globalization of the economy, one can observe the existence of the competitiveness between the economic agents operating on the same market; is a battle for supremacy, for customers and sales, for profit.

Obtaining additional advantages over competition is sometimes determined by the use of legalized or even legacy methods. And, sometimes, these methods inevitably lead to what we call tax evasion or avoidance of the payment of contributions to the state budget.

Tax evasion is a complex economic and social phenomenon, a "scourge" that attacks all the world's economies, for which this field has been and still is the subject of many scientific research. The main purpose of knowing the mechanisms of tax fraud is to prevent and combat it, and the eradication of evasion is a dream that is more and more difficult to fulfill.

## 2. The concept of tax evasion

Tax evasion is the avoidance of taxing a smaller or larger part of the taxable material (Văcărel et al., 2004, p.431), being at the same time a way for taxpayers to meet tax constraints when they exceed certain limits considered acceptable for their economic activity.

A taxpayer is any natural or legal person or any entity without legal personality who owes taxes, duties, contributions and other amounts to the consolidated general state budget. (Law No. 241/2005 on the prevention and combating of tax evasion, updated and republished, article 2, point b.)

The tax evasion phenomenon is encountered both nationally and globally; being a practice that has seen an upward trend in recent decades, which is also recognized by public finance authorities. In the context of the amplification of the evasion phenomenon, the practice of economic agents who manage to remove from the tax law some of the income obtained was the object of the concerns of many scientists over time.

Definitions given to the concept of tax evasion are abundant in the specialty literature. We will continue to present two of these, the most complex ones, which, in our opinion, best capture the essence of the concept of tax evasion.

The first definition belongs to Professor Oreste Atanasiu, who defines tax evasion as "the total of licit and illicit procedures by means of which the interested persons evade, in whole or in part, their wealth, the obligations established by the fiscal laws" (Anastasiu quoted by Bistriceanu and Badea, 2010, p. 292).

Law no. 87/1994 on the fight against tax evasion (abrogated and replaced in 2005 by Law 241) defines the evasion phenomenon as "the stealing by all means, in whole or in part, from the payment of taxes, duties and other amounts owed to the state budget, local budgets, state social insurance budget and special extrabudgetary funds, by Romanian and foreign natural and legal persons, having the status of taxpayers".

Tax evasion therefore consists in avoiding in part or in whole, by using different ways, the payment of tax liabilities owed by a natural or legal person. Also, tax evasion can be seen as taxpayer's response to fiscal pressure from the state.

Fiscal pressure is the percentage of revenue to which taxpayers are forced to give up in favor of the state. This percentage takes the form of direct and indirect taxes, taxes and contributions due to the state budget and / or local budgets.

Tax pressure can be calculated at both national and individual levels. The last one is calculated as the ratio between the taxes and duties payable by each taxpayer and his tax base, resulting in the following formula:

$$Pfi = \frac{IT \times 100}{Bi}$$

where: Pfi = individual tax pressure

IT = taxes and duties owed

Bi = tax base

The level of taxation has direct consequences on the activity of taxpayers, so if the fiscal pressure is high, there is a negative influence: the taxpayer is discouraged from working, saving and investing; the temptation to reduce the taxable base and the attempt to avoid payment of taxes and duties, the idea of tax evasion appears.

Given that most of the country's revenue is represented by tax revenue, overwhelming fiscal legislation should be avoided because the result obtained will be the opposite of the desired effect, namely the fall in budget revenue. Thus, a "fertile ground" is formed for the emergence of the so dangerous and damaging phenomenon of a nation's economic and financial environment.

### 3. The causes of tax evasion

Tax evasion is a phenomenon that negatively affects the economy of any democratic state and, in order to prevent and combat it, it is necessary to know the causes that determine it. The causes of tax evasion occurring and amplifying are numerous, may be general or specific to a particular economic period, may be of an economic, social, moral or political nature.

Fiscal pressure plays a decisive role in the occurrence of tax evasion: when the tax burden is hard on taxpayers, they tend to shrink their taxable assets and avoid paying taxes that they consider too high and overwhelming .

Fiscal pressure arises in the context in which tax legislation does not reflect the country's economic reality: under conditions of economic growth, the level of taxation may have a slightly upward trend, with the taxpayer more easily tolerable a higher tax burden.

An incomplete tax system with ambiguities and contradictions can influence the behavior of individuals and legal entities in the sense that there is a general psychological

inclination of taxpayers that derives from the fact that man is, by his nature, preoccupied with putting his individual interests above his or her own, than the general interest of society.

An interpretative tax legislation offers a chance for a tax evasionist to carry out various operations that lead to tax evasion and tax avoidance. At the same time, the frequent amendments of the tax legislation, combined with the voluminous and difficult to understand tax laws, but also the legislative loopholes that create confusion regarding the way of calculating and paying the duties, taxes and social contributions owed by companies to the state budget or the social security budget, favors tax evasion behavior.

Tax evasion is the logical result of defects and inappropriateness of imperfect fiscal legislation, of defective methods of enforcement, as well as the failure of the legislator, whose excessive taxation is as guilty as those who practice tax evasion (Bistriceanu and Badea, 2010, p.292).

Another reason for the rise and increase of tax evasion is the lack of adequate and well-organized financial control, carried out by qualified, well trained and incorruptible staff. The intransigent and consistent financial control, resulting in severe civil and criminal sanctions, can be a way of preventing and combating tax evasion.

The above causes give rise to different interpretations of the tax law, leading to wrong calculations and fictitious tax statements. Whether it is ignorance, whether it is bad intention, taxpayers who turn to tax avoidance mechanisms jeopardize the optimal functioning of the democratic state.

#### **4. Forms of tax evasion**

Financial theorists and practitioners confirm that some individuals and legal entities are proposing and sometimes manage to escape from paying taxes and duties owed to the state budget.

In practice, there are multiple ways of avoiding payment of the amounts owed to the state; these means being grouped into two broad categories: tax evasion and tax repercussions.

The financial doctrine defines the repercussions of taxes as the transfer of the tax burden from the taxable person to the person who is to bear and actually pay the tax. Normally, the person paying the tax is the one who owes it (direct incidence), exceptions occur when the tax payer recovers him from the people he interacts with in the economic activity (indirect incidence).

The obvious difference between tax repercussions and tax evasion is that in the first case, taxpayers try to pass on their tax burden to each other, but on the scene of tax evasion the actors are others: on the one hand taxpayers and on the other hand the state.

In the specialty literature, tax evasion takes many forms, its classification being made according to different criteria.

Depending on the criterion of compliance or non-compliance with tax legislation in force, tax evasion may be:

- a) tax avoidance (legal tax evasion, tolerated)
- b) tax evasion (tax fraud)

Legal tax evasion is a practice by which a natural or legal person escapes from the payment of taxes, taxes and contributions by taking advantage of the gaps in the legislation. In our opinion, the term of legal tax evasion is a contradiction of terms, so we will replace this phrase with the tolerated tax evasion. Why tolerated? Because state authorities know about it and allow it, but at the same time fight against it by modifying and improving financial and accounting legislation by creating a fair, coherent, complete, and fair fiscal system for all taxpayers.

In the case of entities, tolerated tax evasion is achieved by using creative accounting. Creative accounting is the result of accounting "spinning", indicating information practices and communication techniques, often at the limit of law and lawlessness, where accounting information is somewhat obscured, beautified and adjusted by professionals (accountants, financial auditors, tax consultants etc.) so as to better meet the interests of their users.

The tax evasion (tax fraud) consists of knowingly hiding the taxable object, underestimating the amount of taxable material, or using other means of avoiding taxes and duties (Bistriceanu and Badea, 2010, p.295).

The amplification of the tax evasion phenomenon revealed a variety of procedures used by taxpayers to evade the tax payable, thus, following the study of the fraud mechanisms used, the following forms of tax evasion were identified: accounting tax evasion, traditional tax evasion, legal tax evasion (by law) and tax evasion by evaluation.

Another classification (Florescu et al., 2005, p.129) of tax fraud implies its division into three main categories:

- the conduct of clandestine, undeclared activities at the tax authorities for taxation both by natural persons and by legal entities;
- not registering and declaring in full the revenues realized by the taxpayer, in order to reduce the taxable amount;
- oversize the production costs or the expenses generated by the activity, in order to reduce the taxable income.

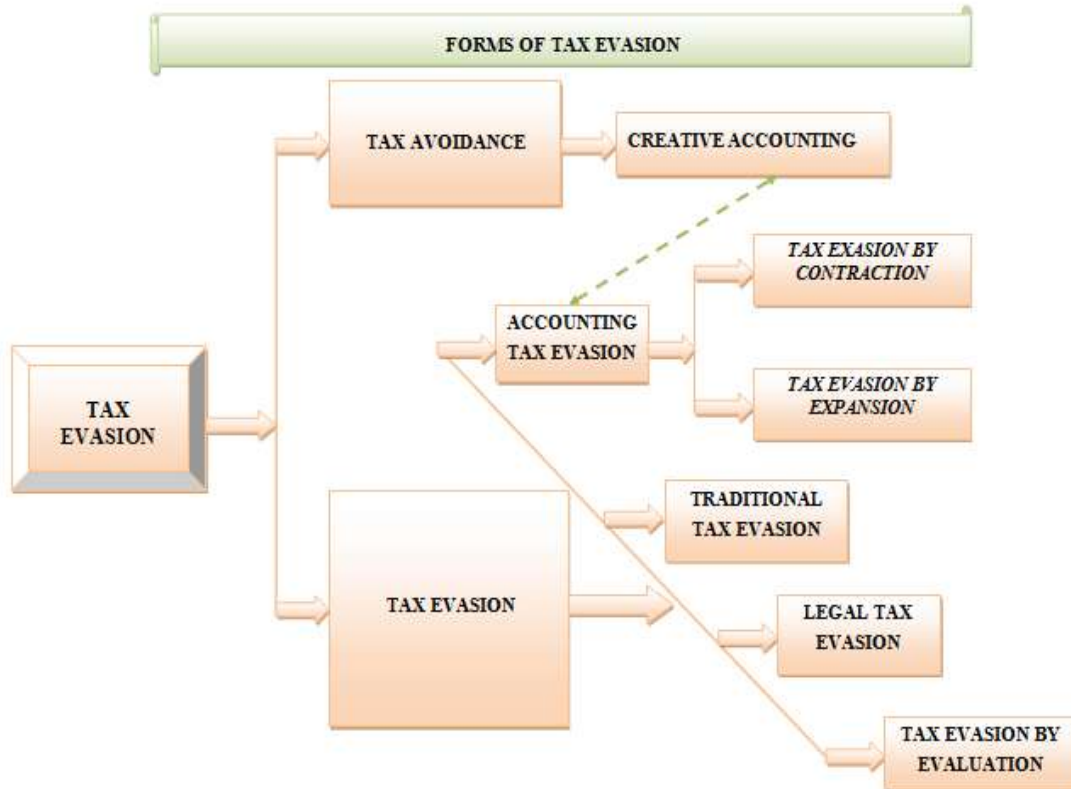
Emil Dinga, in the paper "*Studii de economie. Contribuții de analiză logică, epistemologică și metodologică*", has analyzed the link between accounting and tax evasion and concluded that the tax evasion accounting mechanism will seek to reduce the tax base to which tax rules apply (gross final result). Therefore, it has been found that the tax base can be reduced in two ways:

- either by reducing taxable income - tax evasion by contraction;
- either by increasing deductible expenses - tax evasion by expansion.

The two modes are used in practice, either simultaneously or separately. They are most often encountered simultaneously in complex accounting engineers designed to best hide the wrongdoing in order to avoid paying taxes and duties.

In the financial doctrine there are different opinions regarding the notions of tax evasion, namely tax fraud: some authors consider that the two concepts are similar, others make a clear distinction between them.

To emphasize the difference between the two notions, tax avoidance is used in the Anglo-Saxon states to identify tax evasion, which is legal and involves the reduction of tax liabilities following the study and application of the possibilities offered by the legislation in force and the term "tax evasion" to define tax fraud, this being an offense, a circumspect circumvention of tax regulations. Analyzing the two concepts, it is noted that the main difference between them is a legality: avoidance is tolerated and fraud is sanctioned. However, the boundaries are not always accurate and there is a gray area called "avoision" (avoidance + evasion) (Lewis, 1982 - quoted by Munteanu et al., 2012, p.216).



**Figure no.1. Forms of tax evasion - own projection**

Source: own processing.

The forms of tax evasion vary from country to country, depending on the particularities of each country's tax system. Regardless of the way in which the tax evasion is classified, the economic reality demonstrates that the scope of tax evasion is constantly expanding, and therefore the efforts of the authorities to step up and combat this damaging mechanism affecting the international economic environment should be stepped up.

### **5. The effects of tax evasion phenomenon and the need to prevent and combat tax evasion**

In the market economy, economic and financial crime has comprised all sectors of activity, and tax fraud is one of the most important forms of business crime. The number of evasion has reached alarming levels, and the effects of circumventing the tax law are increasingly difficult to avoid. There is no doubt that the evasion phenomenon brings significant damage to the state budget.

The effects of tax evasion are always negative and are directly and immediately felt in budgetary revenues and, indeed, indirectly and gradually on the economic, social and political side (Bîrle, 2009).

The evasion of tax liabilities entails the reduction of the budgetary revenues, which leads to the impossibility of fulfilling the functions of the state; social goals and government programs can no longer be achieved, social inequity deepens and people lose confidence in the country's institutions.

To overcome the effects of tax evasion, a continuous struggle is needed, focusing on removing the causes that favor the emergence of the evasion phenomenon. It is a struggle to prevent and combat the negative implications of tax fraud on the economic and social environment.

Tax authorities have the task of ensuring the proper functioning of the tax system and of avoiding evasion of the obligations owed by taxpayers. For this, it is necessary to apply a set of legislative, administrative, economic and social measures.

Preventing and combating tax evasion implies the existence of a tax apparatus with well-trained employees who know all the fraud-proofing mechanisms and demonstrate irreproachable and incorruptible behavior. Under these circumstances, it is necessary for all governments of the world to invest significant resources for the salaries of the staff with fiscal control duties and for the material endowment of the control bodies. Also, there is a need for cooperation between the tax specialists and those in related fields: lawyers, computer scientists, engineers, prosecutors, secret service employees.

Fighting and preventing tax evasion requires the development of legislation that is permanently adapted to existing realities with sanctions, which firstly allows the recovery of state budget receivables, the drastic sanctioning of the guilty ones, and the withdrawal of some rights to carry out commercial activities on the territory of the country. (Bistriceanu and Badea, 2010, p. 301).

The specialized literature identifies the means of preventing and combating tax evasion and draws attention to the need for research carried out at the level of financial practice, researched in published papers to facilitate the homogeneous interpretation of the legislative framework.

The following measures can be used to prevent and combat tax evasion:

- ✓ creating a stable fiscal framework, correlated with the realities of the economy;
- ✓ the existence of administrative, civil and criminal sanctions provided for by the tax law in order to discourage tax evasion;
- ✓ implementation of financial controls by sampling at the expense of permanent and excessive control;
- ✓ reduce fiscal pressure and create a fair tax system for all taxpayers;
- ✓ informing the taxpayers about amendments to the normative acts in order to facilitate the unitary interpretation of the law;
- ✓ creating a powerful fiscal control, stimulated to fight tax evasion;
- ✓ raising awareness of taxpayers by popularizing the negative effects of tax evasion and deterring them from abandoning the immoral behavior that causes them to escape from paying taxes.

## **6. Tax evasion in Romania**

The tax evasion phenomenon also meets in our country at a fairly high level. All forms of tax evasion affect different categories of taxpayers, reduce state revenues, affect government programs, create inequalities among the members of society, and sometimes social tensions occur.

Degrading the business environment followed by diminishing the attractiveness of the Romanian economy for foreign investments are consequences of tax evasion; is a problem that has been facing for many years in Romania and which, unfortunately, our country has not found a solution to it.

In the fight against tax evasion, the Romanian authorities have adopted measures aimed at reducing the scale of the phenomenon, creating a legal framework in the fiscal field being the first step.

In 1994, the law 87 on combating tax evasion, which was repealed and replaced by Law 241/2005, was approved. By adopting Law 241/2005 on the prevention and combating of tax evasion, with the subsequent amendments, the Romanian state decided to exclusively regulate the criminal offenses of evasion tax and other offenses related to it.

Unfortunately, Law 241/2005 does not fully cover the diversity of tax evasion, but sanctions for tax evasion are also provided by the Accounting Law no. 82/1991, the Fiscal Procedure Code or the Customs Code.

Further legislation is needed to combat tax evasion as the state must have a punitive response to the violation of tax rules, depending on the seriousness of the offense committed. The contravention and criminal sanctioning of tax evasion is more appropriate to their recovery. Also, the recovery of the damage to the state budget is necessary in the context of reducing the negative effects of the evasion phenomenon on the economic and social environment in Romania.

A further measure for combating and preventing tax evasion is the establishment of new structures to fight against economic crime: the National Anticorruption Directorate and the General Anti-Fraud Directorate.

The General Anti-Fraud Directorate was established within the National Agency for Fiscal Administration, based on GEO no. 74 / 26.06.2013 and GD no. 520 / 24.07.2013 with the attributions of preventing, discovering and combating the acts and the facts of tax evasion and tax and customs fraud (Performance Report, National Agency for Fiscal Administration, 2013, p.14).

Another tool used in preventing and combating tax evasion is the fiscal record, a means of recording and monitoring compliance with fiscal, accounting and financial discipline by taxpayers, which records the natural, legal and non-legal entities that have committed acts punishable by fiscal, accounting, customs, and financial discipline.

The tax record is used to prevent and combat tax evasion, as well as to streamline tax administration, taxes, contributions, and other revenue of the consolidated general government tax payable by taxpayers by providing tax authorities with access to information that reveals the way of tax compliance, accounting, customs and financial discipline by taxpayers (Government Ordinance No. 39/2015 on the tax record, art.1-2).

In order to see if the measures taken by our country so far have been effective in preventing, detecting and combating tax evasion, we continue to analyze the figures published by the National Agency for Fiscal Administration (ANAF) in the years 2014, 2015 and 2016.

In the National Agency for Fiscal Administration (ANAF) performance reports, in the chapter "Fighting tax evasion" it is noticed that the fight against the phenomenon of evasion takes place on three levels:

- ✓ *tax anti-fraud activity;*
- ✓ *tax inspection activity;*
- ✓ *customs activity.*

Particular attention is also paid to the work of large taxpayers.

The data published by the main anti-tax evasion agency in the performance reports of 2014, 2015 and 2016 do not reflect the sustained struggle that the Romanian authorities report to fraudsters. Although a new anti-fraud strategy was set up at the end of 2013, and with it, an ample process of reorganization of the National Agency for Fiscal Administration, the expected results (reduction of tax evasion) have not yet been reached.

**Table no. 1. Tax evasion in Romania - promising figures for the period 2014-2016**

<i>Tax anti-fraud activity</i>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Total attracted amounts (respectively the amount of contravention fines, the estimated value of confiscations and the value of damages related to criminal offenses)	3,84 bln lei	5,09 bln lei	3,5 bln lei
<b>Discovering and fighting tax evasion</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Acts of initiation of criminal prosecution bodies	714	810	705
Total damage related to criminal offense referrals	3,47 bln lei	4,70 bln lei	3,30 bln lei
Precautionary measures (total value)	2,48 bln lei	2,59 bln lei	2 bln lei
Number of precautionary measures	1302	1666	1366
<b>Prevention of tax evasion</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Total sanctions for minor offenses	373,1 mln lei	389,6 mln lei	221,5 mln lei
Contravention fines in total value	93,3 mil lei	145,7 mil lei	141,8 mln lei
Confiscation of cash, income from illicit activities and goods	279,8 mln lei	243,9 mln lei	79,7 mln lei
Number of contravention fines applied	19429	30835	22463
Number of taxpayers checked	24160	-	-
Economic operators suspended	1628	849	498
Economic operators proposed to declare tax inactivity	592	-	359

Source: own projection based on data from the NAFA performance reports

The years 2014 and 2015 were a tour of force for the Romanian tax authorities, with all the anti-tax evasion indicators rising. Unfortunately, everything that was achieved in the first two years of reorganization of the fight against evasion was lost a year later when there was a decrease in the total sums attracted to the state budget as a result of the anti-fraud activity.

The fiscal relaxation proposed by the Romanian authorities by reducing VAT on food from 24% to 9% from 2015 did not have the expected effect, first of all the VAT receipts continued to increase, reaching 8 billion euros in 2017 - the largest difference between the VAT due and VAT collected at the European Union level. Secondly, the premise behind the adoption of this measure - the reduction in VAT evasion due to the reduction of fiscal pressure - was not supported by other measures to prevent and combat the tax evasion, such as: intensifying fiscal controls, economic agents and the determination of their moral behavior.

The fact that 2016 was a step back by the Romanian tax authorities in the fight against this scourge that attacks the national economy is still reflected in the increase of tax evasion reflecting the state's incapacity to collect the taxes and duties owed by taxpayers. The consequences are obviously negative, and the economic growth of our country is shadowed by the failure of the fiscal system to meet the challenges it faces.



In the period 2017-2020, the National Agency for Fiscal Administration proposed a strategy based on clearly defined objectives such as: increasing the rate of revenue collection, improving the relations with the taxpayers, their determination to comply with the fiscal obligations - declaration and payment - on a voluntary basis, the restructuring of the institution in order to increase the quality of the provided services, increase the activity of guiding and preventing the illegalities in the field of taxation, etc.

For the time being, these targets are far from being achieved, with figures for 2017 highlighting the authorities' inability to tax "engineering" thought by taxpayers eager to avoid paying taxes and, why not, overcome the system.

## 7. Conclusions

Organize an effective control system, based on coherent legislation, with clear provisions on sanctions for taxpayers who resort to evasion of taxes and duties; the avoidance of frequent changes in tax legislation, the increase of the personal conscience of those who choose the illegal and immoral behavior of circumventing the tax regulations in force are some of the measures that Romania must adopt in order to continue the fight against the evasion phenomenon.

Based on the scientific research, we defined the evasion phenomenon, presented the causes and forms of tax evasion, we focused on identifying the ways of preventing and combating it, and highlighted the negative effects this phenomenon has on the economic and social environment of Romania.

As a final conclusion, we can say that there is still a need for a profound analysis of the tax evasion mechanisms, an analysis that needs to be done both at national and international level to identify the necessary measures to prevent, detect and combat tax fraud.

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