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TAX EVASION IN ROMANIA THROUGH THE EYES OF THE CONTROL BODIES

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Abstract: *Tax evasion does not have any temporal and spatial limits. It is a powerful enemy, making its destructive effects felt both upon the national economy, as well as upon that of the European Union's, but also upon each of us, as individuals. This is why reducing tax evasion and the underground economy is one of the most important objectives included in the National Agency of Fiscal Administration's (NAFA) strategy. The manner in which this major objective can be reached at a maximum is influenced by various endogenous and exogenous factors, such as: the transparency of the activity with the purpose of increasing the degree of confidence and increasing the fiscal morality of the taxpayer which influences the degree of conformity, self-improvement and the professionalism of the employees, the identification of new methods of risk analysis and investigation that could exceed the inventiveness of the tax dodgers. The study takes a current photograph of the level of evasion and the fields with a high risk from our country through the control actions performed by the NAFA competent bodies and the results of these actions, for identifying the sensitive fields and certain efficient ways for combating the tax evasion phenomenon.*

Keywords: tax evasion, Romania, NAFA

1. Introduction

The tax evasion phenomenon is not characteristic only to Romania or only to the states in which the market economy is growing, in a process of formation. Tax evasion does not know any boundaries in time and space. Regarded from the perspective of the phenomenon's spread, as well as that of its oldness, its magnitude can be noted, since, practically, there is no territory that remained untouched by this virus. Nevertheless, certain differences can be noted among the states. The most affected countries are the ones in which the economy is unstable, dominated by chaos, the ones in which other phenomena are manifested, such as corruption and money laundering. These phenomena contribute to the amplification of the underground economy and fiscal fraud. Considered as a main component of financial criminality, it gravely affects both the business environment, as well as the national and the European budgets, through the prejudices it creates.

Tax evasion strongly erodes the taxable base, by drastically lowering the income to the State Budget, having effects of most destructive kind upon each segment of the economy and upon its development. All these directly reflect upon the day to day living of each individual from the society. The fiscal moral ground of the individual affected by unfair competition, by lacks and the burden of taxes, of the individual that lives in a corrupt society and one that is warped by inequities, has no way of being high and stable, it cannot grant

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priority to the voluntary compliance and to observe the competition and the state. This generates, once again, evasion. What is there to be done in such a situation? The state, through its empowered institutions (starting from the undergraduate and higher educational system, but also through the levers of the continuous professional training organized within the ministries and the structures subordinated thereto) must take important and urgent measures in several directions, in accordance with the EU measures and norms, and they must oversee their implementation through its institutions, through its people. The state must create professionals, it must motivate them and it must consolidate their authority. The image the institutions have in the eyes of the taxpayer is built in time, through trust and professionalism. It is a matter of reciprocity, to offer and to request in an equal measure both on the part of the state, as well as on the part of the taxpayer. It is a matter to invest and to grow together. This fight with the tax evasion can only be won together, through an effort to educate ourselves, the effort to be honest, the effort to build together through work and mutual respect.

By restraining the spectrum of the objectives that the state must achieve in its fight with the tax evasion phenomenon we have in view, throughout the contents of the article, specifically the activity of control, namely the one of the Fiscal Anti-Fraud General Directorate, an institution that is on the front lines in the battle with evasion. In this context, institutional experience proved the fact that tax evasion is a phenomenon in which, in general, several taxpayers are involved and individuals that conceive, apply and orchestrate the operations, real financial schemes that are extremely laborious and complex, with the purpose of withdrawing important amounts from the payment to the state's general consolidated budget and/or to entail several fiscal advantages without these amounts of money to ever be able to be recovered and without enabling the identification of the real beneficiaries of these amounts/advantages and without having the possibility to hold them liable from a civil, material and criminal perspective.

2. The NAFA Strategy Concerning Tax Evasion

As of the year 2013, Romania consolidated its fight against tax evasion by reorganizing the Fiscal Administration, respectively by regionalisation, the normative document regulating these amendments being the Government Emergency Ordinance no. 74/2013 [1]. The establishment of new structures for fighting tax and customs fraud is one of the major modifications provided by Government Emergency Ordinance 74/2013. The new structure that was borne is called the Fiscal Anti-fraud general Directorate. The duties of this institutions concern directly the prevention and the combating of fiscal and customs fraud.

Romania actively participates in the fight against fiscal fraud on a European level, as well, through the EuroFisc exchange of information. Established by way of the Council's Regulation 904/2010 (OJ L268 dated 12.10.2010, p. 1) and beginning its activity according to the European Commission "Taxation: Anti-fraud network EUROFISC starts operational work" [2], this mechanism reunites anti-fraud experts from all of the EU member countries, pursuing to give the possibility to the member states to improve their administration and the cooperation with the purpose to combat fraud in the VAT sphere, facilitating the informational exchange between the member states.

Thus, Romania aligns with the measures agreed upon by the EU Council concerning the consolidation of the administrative cooperation, in view of making the prevention of fraud in the VAT sphere more efficient. The measures provide for making more efficient the exchange and for improving the methods employed for the analysis of the information common to the fiscal administrations from the EU member countries and the bodies empowered to apply the law, the Eurofisc consolidation, introducing certain cooperation instruments that are easier and more efficient, such as the administrative investigations performed through the collaboration of the anti-fraud experts from the member states. These measures concern the most widespread forms of cross-border fraud: the "carousel" fraud or the "missing trader"- which implies the purchase and the reselling of goods by avoiding the payment of VAT; fraud in the trade with second-hand vehicles; the fraudulent abuse through schemes for importing goods without VAT.

The activity of the anti-fraud structure is subsumed into the objectives of the current NAFA strategy, respectively, for the firm combat of tax evasion and the improvement of the voluntary compliance. One of NAFA's most important objectives included in the 2017-2020 Strategy, [3] concerns specifically the "Reduction of the tax evasion and the underground economy" Worthy of mentioning is the fact that this objective can be realized in several steps that materialize in sub-objectives, such as "*Defining the governance of implementing the European model of non-compliance risk management*", which implies the analysis and the modification of the legislative provisions, of the roles and the apparatus under the responsibility of which falls the administration of the non-compliance risk management system. Another step that NAFA must take and observe concerns the development of the activity concerning the analysis of the tax gap in Romania. The determination of the public perception regarding the phenomenon of evasion, in relation with the unbalanced competition from some of the fields of activity, as well as in view of a better efficiency in combating fraud and tax evasion, can be realized with the help of certain studies realized periodically among the economic operators that activate throughout the market.

One of the most important sub-objectives of the NAFA strategy represents the revision of the anti-fraud procedures, in accordance with the European model of non-compliance risk management. This imposes measures such as the extension, the integration and the improvement of the risk analysis in the field of fiscal fraud and the establishment of a legal basis for a gradual system of sanctions for the deviations/crimes, varying in accordance with the materiality and the level of voluntary declaration before the control.

The 4th sub-objective refers to "Combating Customs Fraud" and it can be realized by a much-detailed surveillance performed by the mobile teams, in the free movement area, on the European transport routes and passageways. In compliance with these matters, NAFA has the mission to ensure the security and the safety of the EU's external border against illicit traffic of goods and to act so as to eliminate, to the greatest extent possible, the phenomenon of evasion from the sphere of the products that can bear excise duties by using the material and human resources with a maximum of efficiency [4]. Thus, in view of the efficient monitoring of the intra-community acquisitions, as of the year 2016, a service for the monitoring and controlling of the intra-community acquisitions was established within the Fiscal Anti-Fraud General Directorate.

At the same time, within the context of fulfilling the NAFA objectives, the recalibration and re-prioritizing of the actions for anti-fraud control were imposed, so that they can contribute as efficiently as possible to the common effort of combating and reducing tax evasion and the underground economy, but also to the stimulation of the voluntary compliance. For achieving this purpose, the institutional resources were allocated according to two coordinates:

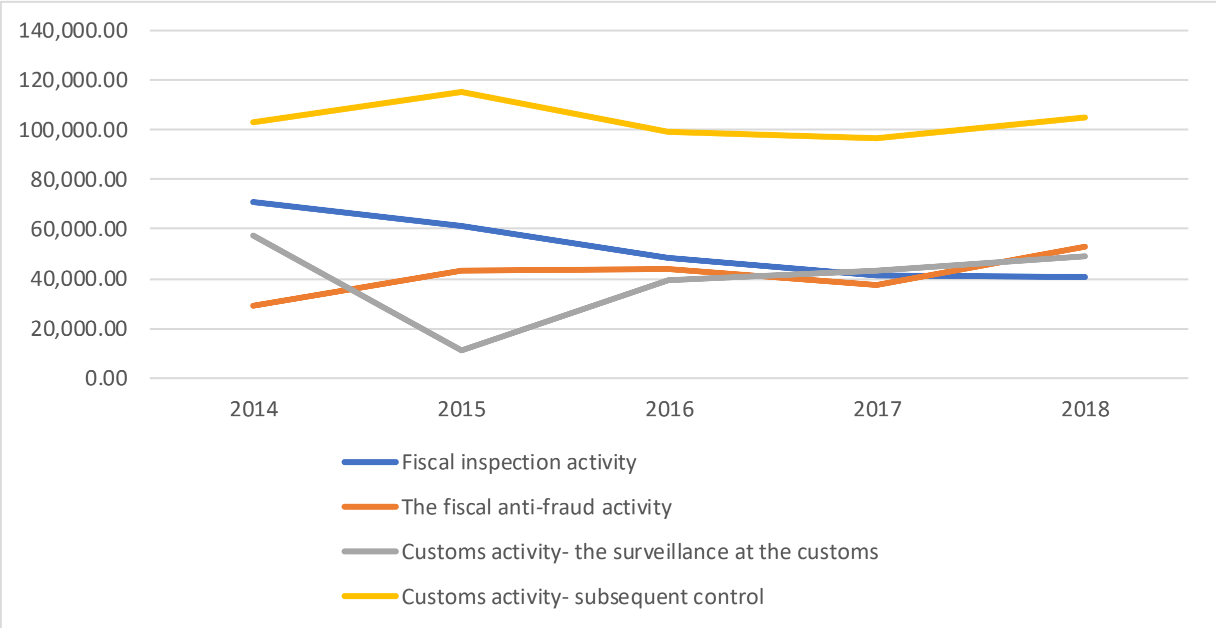
- the performance of actions with a permanent character and as a priority that concerns the analysis, the investigation and the examination of the complex tax evasion cases, with the purpose of increasing the weight of the verifications meant to destructure the fraudulent chains and to eliminate from the system as many artificial fraudulent schemes as possible, including the ghost companies, as well.

- realizing actions of monitoring and control, whose theme concerns areas and fields from the economy where the phenomenon of evasion manifests itself in an aggressive manner and gains an ever more significant magnitude or where a serious financial indiscipline or a weak voluntary compliance is manifested. This type of actions has as primary purpose increasing the degree of compliance by raising the taxpayers' awareness about the presence of the control bodies in certain areas.

3. Evasion and the Activity of Fiscal Control in Romania

The easiest way to measure the magnitude of the phenomenon of evasion is through the lens of the results obtained by the control bodies in this field. Thus, according to the data available at the NAFA level [5] for each year, the activity of the competent bodies is reflected within the following graph as such:

Graph 1 The evolution of the number of NAFA control actions in the 2014-2018 period in Romania



Source: Graph realized by the author based on the data available at NAFA level

Analyzing the above graph, it is noted that during the first year of activity since its establishment, the Fiscal Anti-fraud General Directorate realized the smallest number of verifications, the number of taxpayers verified having an ascending trend, in 2018 exceeding 53000 control actions. The increase of the number of verifications is based on several factors. First, it was achieved against a backdrop of the institution's development both from a professional perspective, as well as from the point of view of the number of inspectors, since in that period personnel recruitment contests were organized. Secondly, the increase of the number of controls was based on the identification of the risk areas/ fields of activity in which the phenomenon of evasion had greatly developed. Last, but not least, the increase in the number of verifications was also due to the change in the institution's decisionmakers' vision about the manner in which the taxpayers are verified, a large number of controls being requested with minimal objectives, enabling the institution, through its representatives, to be as visible as possible and to influence the voluntary compliance, weakening the emphasis upon complex controls and the ones focusing on large companies or on chains of transactions.

Also, in the same period, a constant decrease of the fiscal inspections is noted, possibly due to the fact that the Anti-Fraud Directorate took over some of the duties, and also due to the collaboration between the two control bodies. The customs activity fluctuated, diminishing the number of the verifications in 2016 and 2017, returning to an upward trend in the year 2018.

From the perspective of the control activity in Romania on the segment of the verified taxpayers, in the year 2018, on the line of action of taxpayers/trading chains where there are indications of large frauds in the VAT field, it was noted that the largest weight in tax evasion was held by the VAT fraud according to the amounts entailed by prejudices on this line of action, respectively 622,237,092 lei (total of the amounts established, including fines and confiscations 628,687,086 lei) with a weight of 50.93% from the total. Thus, regarded from the perspective of the type of fiscal obligation, in the year 2018, the situation of the prejudices estimated by Fiscal Anti-fraud General Directorate as per categories of obligations presents VAT as being the main fiscal obligation evaded, with a proportion of 41.33% from the total of the prejudices, representing 419,797,891 lei. VAT is then followed by the profit tax (292,021,150 lei) and the income tax (152,043,030 lei). The value of the prejudices from excise duties was, in 2018, in amount of 8,993,099 lei, in a percentage of 0.89%.

The fields with an increased risk of tax evasion are multiple, each type of activity having its specificity, its particularities and, of course, for each in part, the inventiveness of the tax payer found the most ingenious methods to elude the legislation, these typologies determining a variety of methods of investigation. It is known that in the field of commerce and transportation of goods there are various methods to commit VAT fraud, last, but not least, fraud appeared also in the field of the excise goods, both in what concerns the energy products, fuels, but also in what regards the production and trading of alcohol.

The most important indicator of tax evasion presented in the NAFA performance reports is given by the number of criminal intimations for fraud, intimations prepared by the three NAFA control bodies. As for the value of the prejudices, in the year 2018, the Anti-Fraud Directorate noted a prejudice in amount of 1015.8 mil. lei, in decline as opposed to the previous year 2017, when the value of the criminal prejudices was 1915.7 mil. lei. At the same time, the value of the prejudices noted by the fiscal inspection in 2018 was that of 1345.4 lei, in decline by approx. 50% as opposed to the previous year, when prejudices in amount of 2969.8 mil. lei were noted.

According to the data reported by Fiscal Anti-Fraud General Directorate, from the perspective of the prejudices noted, the fields presenting the smallest risk of tax evasion are the ones outside the sphere of production and trade of agricultural and foodstuff goods, the field of constructions and the one of transportation, a field followed by the production and trading of energetic products, tourism, the production and the valorization of alcohol, wood processing and the production and trading of tobacco.

4. Conclusions

An overview of the phenomenon of evasion through the lens of the control actions performed may serve as foundation for improving the NAFA investigations and especially, the anti-fraud controls performed on the lines of discovering and combating tax evasion.

We consider that the efficiency of the control actions is influenced both by the level of training/preparation of the direct participants (control bodies/ taxpayers), the complexity of the phenomenon of evasion, as well as the manner in which these actions are directed, respectively the identification of the phenomenon of evasion in the segment in which it produces the greatest prejudices to the state budget. At the same time, is of no little importance that, in order for the control actions to gain closure, it is necessary to gain value from the aspects noted, both from the perspective of recovering the amounts due to the state budget, as well as from the perspective of entailing the material/criminal liability of the ones involved in the phenomenon of tax evasion. This process of entailing the material/criminal requires a long time in view of the final settlement of the causes, time in which the measures for recovering the created prejudice from the assets of the authors of the deeds of tax evasion prove, in many cases, their inefficiency.

The efficiency of directing the control actions is noted by way of a simple analysis of the tax on VAT consumption, thus analyzing the part from the VAT which the state expects to collect in a certain period and by comparing the VAT that is not effectively collected, respectively, which is not reflected in the treasury accounts, results that part of VAT that is defined in the specialized in the so-called VAT GAP.

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