

CRIMINAL LIABILITY FOR CERTAIN ECONOMIC ACTIVITIES-TAX EVASIOAN

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Evasion is equivalent to the offense or crime, and what is civil or criminal depending on the seriousness and rufnesse. Reasons for this phenomenon in Romania is difficult to quantify and are prevented complex and numerous, among them may be mentioned: many imperfections and speculiarities in the tax laws, the business tax accounting method, not using the national macroeconomic record, massive tax evasion carried out by various interest groups and economic agents only appear to take advantage of loopholes laws lack of a tax code, the principle of confidentiality.

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As the development of capitalism the technique of settlement and collecting taxes has also continuously improved, but was not able to ensure the universality of imposition because it remained in practice in one form or another to circumvent the imposition of the taxpayer.

Evasion is a form of circumvention of the tax effects together with the repercussion.

Tax evasion is at present an economical and complex social phenomenon. It is imperative for all the world, that the result of this phenomenon have to be limited, reduced, to lose the scale, where it became clear to everyone that they can not be eradicated. Tax evasion has a direct and instant effect on the levels of tax collections, which leads directly to imbalances in market mechanisms and the enrichment, in illicit ways, of the practitioners of this method of deception affecting the state and ultimately each of us , honest taxpayers. There are many interpretations and names of this phenomenon, so it is normal for it to be hard to define. There are used phrases like "fraud, illegal fraud, international evasion, legal fraud, fraud by law, the underground economy". Terminology is not the only element of confusion, but also the ambiguous law, the boundary between licit and illicit being very fragile.

The Law no. 87 of 18 October 1994, published in the Official Gazette nr.299 of 24.10.1994, in its first article, considers tax evasion as "circumvent by any means, in whole or in part, from taxes, fees and other amounts due to state social insurance budget and special extra-budgetary funds by individuals and legal persons of Romanian or foreign ...".

Evasion is the flight from taxation, which means that trough the tax evasion the state loses, the amount that should get in its cashiers. Depending on the relationship with the phenomenon regulations, tax evasion is of two kinds: non-fraudulent and fraudulent.

In Romania you can not say that tax evasion was imported, but this phenomenon is a result of the economic situation, the passiveness of the authorities, interest groups that pursue their own affairs under the endorsement of past or present governance, the living standards of most citizens, the degree of civilization, culture and civic consciousness, and especially the aggressive fiscal policies, and even exaggerated sometimes taken by the authorities. Not for nothing was found, over time, through experience, that a tax system is not effective or appropriate in light of the big revenue, but the extent to which it is accepted by the taxpayer, whether natural person or legal entity. In time there have been developed numerous ways to circumvent the payment of tax liability, but those who use them can be divided into two categories: those who exploit the shortcomings of the normative acts in the field and those who use illegal methods. Legal tax evasion is an action by the taxpayer to circumvent the law, recourse to an unforeseen combination of law and therefore "tolerated" by the slip of memory. The legal support that is given to the principle is that what the law does not forbid is allowed. Art.983 of the Civil Code

Romanian example states: "Conventions should be interpreted in the sense most favorable to the debtor."

Non-fraudulent evasion occurs in two situations, when there is such an organization of tax collection and settlement that allows certain categories of taxpayers to not pay or pay less tax. Carefully studying the law, some taxpayers may find the shortcomings and use them to remove the subject of a tax matter fully or partially. By non-fraudulent evasion, the law is not violated. Non-fraudulent evasion, involves interpretation of the favorable tax laws, so cases of legal tax avoidance, for example:

1. The formation of the depreciation funds or reserves in an amount greater than what is justified from an economic point of view, lowering the taxable income.
2. Family associations and societies of his wife and children and the entrepreneur. The result of such maneuvers is imposing separate their income distribution associated with each leading to lowering the tax burden. By such solutions there are speculated the legal provisions governing the tax rate or lower set of reductions or exemptions for income tax up to a particular ceiling.
3. The use within certain limits of legal proceedings on philanthropic donations, whether they occurred or not, lead to the unlawful removal of part of the revenue realized from taxation.
4. A taxpayer has the option to opt either for income tax of individuals, either for the applicable income taxes of legal persons (system comprising numerous tax incentives).
5. The decrease in taxable income of the protocol costs, and advertising services, whether made or not.

If the second form of tax evasion - fraudulent evasion - taxpayers violate legal provisions on taxation or falsely stating not certain amount of income which means that the wrong therefore rule against them take very serious. Some of the forms of tax fraud, like the preparation of false statements, preparation of documents for fictitious payments, setting up accounting books unreal, non-tax matter, the declaration of taxable income below the actual register double record, a real copy another fictional, made without a sales invoice, falsifying balance sheets.

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Forms banks to eliminate tax evasion:

- Among the measures that may be taken or items that might be contained in future acts in the field can apply: The correlation of the fiscal system with socio-economic realities and appropriate tax strategies for at least 4 years, the period for which the word order to be stability.
- The application of a differential tax, adapted to each sector of economic activity, also under the strategy, this measure is very useful in terms of lack of initial capital.
- Following these strategies under the principle of publicity, to be followed the development of each area of social interest, by application of low levels of taxation for that area.
- Decrease the number of non-deductible expenses when calculating taxable profit, gradually.
- Resizing tax base in terms of contributions to special funds that currently creates difficulties in targeting tax reform, because they are numerous and do not take into account the economic situation of the payer.

- The use of more efficient modalities for the reimbursement of VAT for sales of goods and services for non-individuals.
- Elimination of preferential treatment regarding payment obligations to the state budget and any other tax liability.
- Distribution of the payment of excise duty between producers and retailers of alcoholic beverages and cigarettes, so that final traders are more responsible when it comes both on the origin of products sold and the payment of contributions to the state.
- Organizing an integrated information system on taxpayers of any kind and their history (including previous employment, wages, taxes paid, the tax staff).
- Introducing the same information system able to link the activities of fundraising by the treasuries, the preparation required to implement file tax for individuals, all these measures will lead to discourage undeclared work.
- Cancellation facilities for real or so-called revolutionaries.
- Providing a system of punishment/reward for all those working in state tax and a payroll system and sufficient enough to remove the temptations.
- Establishment of an administrative body, under the supervision of Parliament, who has sufficient powers and logistics so that it can detect and send directly prosecute anyone has done a fraud.

As a measure to eliminate tax evasion, since 1 January 2005, was introduced single tax rate, tax on such companies' profits will be reduced from 25% to 16%, and the system overall, the income tax individuals will be replaced with a quota of 16%. People have more jobs they will hold a tax of 16% of income (after less social contributions), without the need to complete statements of income in 2006 for income earned in 2005. To not be registered losses by employees as a consequence of flat, a deduction system, whose value depends on the number of persons in the maintenance and salary. Deduction amount will increase if the number of dependents within is greater, and will decrease as salary increases. Personal deductions will be granted once only for income derived from salaries to workplace rules.

In conclusion, adoption and implementation of a modern legal framework and transparent, with enhanced motivation of personnel in these institutions would lessen the harmful effects of the true economic scourge of the contemporary world and to create preconditions for better cooperation with the taxpayer but also for the development of civic consciousness in the obligations to which the State must charge him as a protector and not as a despoiler.

Criminal liability is one of the fundamental institutions of the criminal law. It's a form of legal liability, along with civil, administrative, and disciplinary patrimony. Criminal liability is the most serious form of legal liability. It consists in the obligation of people who break the rules to bear the criminal legal consequences of criminal deed sale. Criminal liability as long time as she could for effective recovery and referral of offenders.

The activity of criminal liability is not carried out at random, but is organized by specialized organs. These bodies act according to rules established in advance, called rules of procedure. Based on these rules to the discovery of acts of crime, identifying perpetrators, to determine culpability and criminal liability for them. Activity is integrated in what is called a criminal process.

In order to analyze the criminal liability of legal person, believe it is necessary first to give it a notion.

Legal person is a matter of law, is subject to collective right, meaning a group of people, meeting the conditions required by law, is the proprietor of subjective rights and civil obligations. By a legal person means being an abstract, intellectual fiction created by law in a social and in a purpose of public utility, having a great heritage, capable of rights and duties. Only the legislature has the right to create such persons for any fiction can not exist without law, because only by will

power, which only by laws, institutions and establishes rules to prescribe public order, morality and defend the general interests society.

Criminal liability of legal persons is not a new problem, it goes back to their origins in ancient right, then returns to the end of the XIX century the attention of European criminal doctrine, that today reach one of the central themes of scientific and legal approaches .

The question whether a legal person may see their criminal responsibility engaged in the consideration of its actions or inaction of the subject of a dispute that has marked criminal doctrine throughout the last century. Criminal liability of legal person constituted in the framework of international studies, articles, notes and monographs, devoted to this problem, over time, doctrinal confrontations between partizanii and opponents of this idea.

Legal persons shall enjoy legal recognition capacity in most branches of law, as a patrimony own separate assets which comprise members have rights and obligations distinct from those of members, so their existence is a reality both in the social , and plan juridic¹¹⁸.

Also, people enjoy legal recognition capacity liabilities, including in the sphere of criminal law. When a crime is directed against a legal person, is widely accepted that it is subject to liabilities of the crime, and can act as a party in criminal proceedings by means of its organs. It would be bizarre to at least consider that the person is a legal reality when he was prejudiced in his rights as a result of a crime, but that same person is an imaginary entity, fictional, when it violates the very rights to others.

Taking into account the provisions of international conventions in criminal matters to which Romania became a part, which establishes criminal penalties apply in case of legal persons, as well as commitments made by our country in the negotiations for accession to the European Union has drafted the Law no. 278/2006 - on criminal liability of legal person. Juridical person, except state, public authorities and public institutions to criminal liability in cases stipulated by law for offenses committed in the name or legal interest. The criminal liability of legal person does not exclude criminal liability of the person who participated in committing the same acts.

For crimes and offenses committed, the legal person and may apply penalties and punishments main components.

System of legal punishments include, besides the main penalty fine and penalty complements. Additional penalties are:

- Dissolving the legal person - can be pronounced when the legal person was constituted for the purpose of crime was committed or when the object or activity was diverted for the purpose of crime was committed and has the effect of the opening of winding-up proceedings.

- Suspension of activity or activities of a legal person for a period from one year to three years - is to ban the activity or activities of the same legal person in the exercise of which the crime was committed and can be applied over a period of one year three years.

- Dissolution and suspension can not be applied to political parties, trade unions, employers, religious denominations or organizations of citizens belonging to national minorities, established by law, can not be applied to legal persons who exercise their activity in the press or broadcasting, and also work in press or broadcasting can not be suspended.

- Prohibition to participate in public procurement for a period from one year to 5 years - consists in the prohibition of participating, directly or indirectly, to the procedures for awarding public contracts, provided by law for a period of from one year to five years.

- Prohibiting access to some funds for a period from one year to five years - is to ban to get funds from credit institutions or financial institutions for a duration from one year to five years.

Additional penalties may be applied in a cumulative manner, wholly or partially. Displaying the decision of conviction or disseminate them in the Official Gazette of Romania, through the press or by means of audio-visual communication is achieved at the expense of the legal person

convicted, these charges can not exceed the amount of fine imposed punishment legal. Court may order the display or distribution, in whole or extract a decision of conviction and establishes where and when, can not exceed a period of two months. The identity of the victim or his legal representative shall not be disclosed without their consent.

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