

SOME CONSIDERATIONS REGARDING THE MANIFESTATION OF FISCAL FRAUD IN ROMANIA

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Abstract *In our paper we shall try to present two mechanisms of fiscal fraud used by economical agents and also found in the control actions performed by the fiscal organs at different commercial societies from Romania. The presented mechanisms refer to the fiscal fraud resulted from fictitious acquisitions of goods and services done by Romanian firms which have as beneficiaries other commercial societies which are fiscally registered in Romania. Being empirically examined, the fiscal fraud will be presented through the use of some figures which will describe the detailed operations step by step. For the cases we have chosen to present we will describe the real circuit of goods and money according to the documents. We will also refer to the possibility of identifying the risk of fiscal fraud that results from the reports provided by the economic agents for different state institutions. We will also consider the information provide by the books of prime entry and bookkeeping, documents which have to be written by the commercial societies according to the Law accountancy nr. 82/199, with further modifications and completions. The mechanisms of fiscal fraud in use can be identical with the ones presented in this paper or they can be different as „new elements” can appear; these „new elements” depend on the type of activity performed, the modifications the legislative framework, the performers’ creativity or other external or internal factors which are not identified by the fiscal organs. By identifying the fiscal fraud mechanisms and the way in which they function, the fiscal organs will be given the opportunity to take the necessary measures so that the fiscal resources of the state consolidated budget should not be affected by such operations. It is will known that we can speak of fiscal fraud and shadow economy in any country but ,according to the reports and statistics published by different international institutions, Romania’s shadow economy represent almost 30% from the Gross Domestic Product. The Romanian authorities should carefully think about this phenomenon as it requires strict measures to reduced it.*

Keywords: *fiscal fraud, mechanisms, control, fiscal organs, fiscal resources*

JEL classification: *H 26*

Introduction

The tax payers creativity „to diminish” the fiscal obligations which have to paid to the consolidated state budget is beyond imagination as the tax payer considers his personal interest over the general one. The diminution of the fiscal obligations in Romania can be regarded from two perspectives: one subjective and the other more objective. *The subjective component* implies that the person who chooses not to pay the fiscal obligations analyses the risks he is exposed to. If he considers that the result has a minimum level of risk he decides to avoid paying the taxes. According

to *the objective perspective* the present society offers just a few personal examples out of which a fiscal honest behavior is appreciated so that the tax payer could perceive the social benefits returned by the state as a result of his contribution. The avoidance of paying taxes is a consequence of the fact that up to the present moment there haven't been taken measures to correlate the income of a given person with his/her actual expenses in a given period of time although the Governmental Prescript nr.117(2010), was adopted in December 2010. According to this document: "any income identified by the fiscal organs, under the conditions of the Code of fiscal procedure, income with an unidentified source requires a 16 % quota applied to the adjusted taxable basis according to the indirect procedures and measures of reconstructing incomes or expenses".

The fiscal fraud regarding the source of goods or their fictitious consumption

In his mission letter addressed at Bruxelles by the Chairman of the European Commission, José Manuel Barroso (2009), refers to the efficient European and international fight against fiscal fraud in the mandate of the designated commissioner (Algirdas Šemeta) for taxation, customs union, audit and anti-fraud in the period 2010-2014. According to the action plan for an efficient fight against tax evasion and fiscal fraud presented at Bruxelles commissioner Algirdas Šemeta (2012) stated that: „approximately one thousand billion Euro are annually lost in EU because of the tax evasion and fiscal fraud. This sum of money is not just an outrageous lost of useful income, but also a threat to fair taxation. Among the measures recommended in the action plan there is one that mentions that all the member states should be encouraged to adopt a basic rule according to which: „they could ignore any artificial agreement set in order to undergo the fiscal fraud and establish taxes on the basis of the actual economic activity.”

The British lawyer, Templeman (2001), stated: "A tax avoidance scheme includes one or more interlinked steps which have no commercial purpose except for the avoidance of tax otherwise payable, and can conveniently be described as artificial steps. A tax avoidance scheme does not leave the taxpayer any better or worse off but leaves the Revenue worse off". According to the information provided in the European Parliament by the tax researcher Murphy (2012), Romania annually loses over 10 billion Euro from the manifestation of the shadow economy.

Starting from here we shall present in detail two mechanisms of fiscal fraud by which the participants simulate operations of acquisition and trading goods and services, the only real purpose being that of avoiding the payment of the fiscal obligations and the desire to create a certain pretended legality for the operations mentioned in the documents.

The two mechanisms of fiscal fraud are based on real cases which have been analysed by one of the authors during his everyday activity as a Financial Guard commissioner. Such cases are often found in the activity fields of different commercial societies: trade, production, domestic services and constructions.

The main purpose of this paper is „to sensitize” all the decisional factors with responsibilities in the economical field since all the sums of money resulted from such operations are huge according to the information held by the Public Finance Ministry. According to the research performed by the authors, there have been identified cases when thousands of commercial societies declared, through 394 form, acquisitions of goods and services whose value worth millions Euro. Such

acquisitions are made from only one supplier even though he is not aware of them and he has not declared deliveries to those clients. The only purpose of declaring these as acquisitions is to create a source to the suppliers. In many cases, „the final beneficiary” is the state and consequently the value of different works is increased without a real support and the state budget is prejudiced.

The presented fiscal fraud schemes are widely spread on the Romanian territory; these schemes are made of different links which are presented in detail in Figure nr. 1 „Fiscal fraud when the beneficiary fictitiously introduces in usage different goods to obtain some fiscal advantage” and in Figure nr. 2 „Fiscal fraud when the beneficiary has different goods for which he doesn't have legal documents”

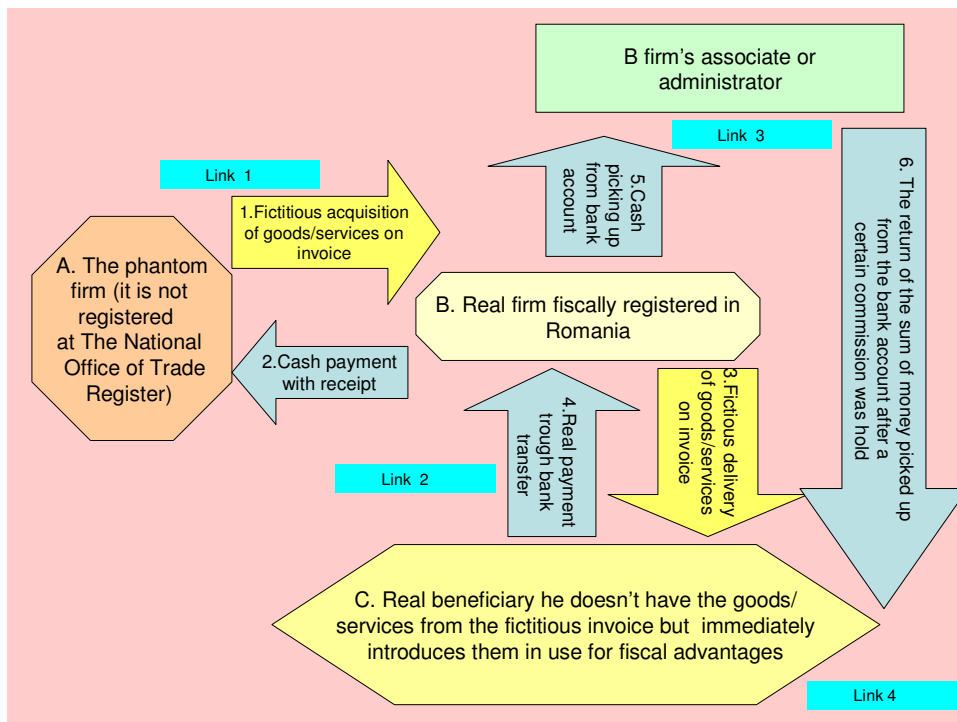


Figure nr. 1 „Fiscal fraud when the beneficiary fictitiously introduces in usage different goods to obtain some fiscal advantage”

Source: the author

Link 1 – fictitious acquisition of goods and services and unreal payment using a receipt

- the firms fiscally registered in Romania realizes fictitious acquisitions of goods and services based on invoices from phantom firms which don't function at the declared address, may be erased from the evidence N.O.T.R. or the firm's administrators can't be reached;

- the cash payment of the suppliers is done by using a receipt, exceeding the limit of payment imposed for juridical persons by the Governmental Order

nr.15/1996, with modifications; in this case the establish limit is of 5.000 lei/juridical person/day

Link 2- unreal delivery of goods and services by using false invoice and real payment through bank transfer

- the goods and services fictitiously acquired are now traded using fictitious invoices from firms which are registered in Romania and effectively function at the social centre or the fiscal residence.

The two fraud mechanisms can be differentiated according to the purpose and implications they create at the beneficiary of goods and services:

-in the first case, presented in the Figure nr.1 „Fiscal fraud when the beneficiary fictitiously introduces in usage different goods to obtain some fiscal advantage”, the goods and services are neither delivered by the supplier, nor do they exist at the beneficiary the whole operation having as the main purpose the diminution of the fiscal obligations as well as the removal of sums of money from the beneficiary’s firm.

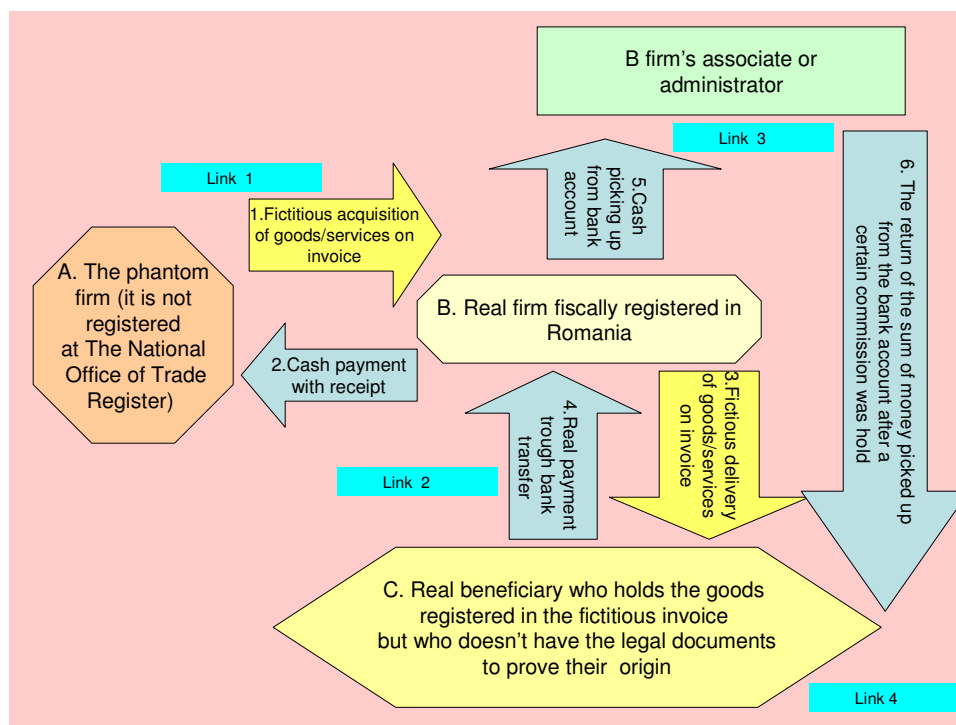


Figure 2 „Fiscal fraud when the beneficiary has different goods for which he doesn't have legal documents”

Source: the author

- in the second case presented in Figure nr. 2 „Fiscal fraud when the beneficiary has different goods for which he doesn't have legal documents”, the

goods and services are not delivered by the supplier but the beneficiary needs some legal documents to prove their origin. When it comes to services, these have been performed for the beneficiary by a different supplier who is not mentioned in the documents so that the final beneficiary has documents from another supplier who has not really performed the services. The fundamental difference between the two mechanisms resides in the fact that in the second case, for a certain good that really exists, the beneficiary gets a document to prove its origin and this document „demonstrates“ his property right.

- the payments to the supplier firms which have provided fictitious invoices are done by the beneficiary firms „of the documents“ through bank transfer; these payments try to provide a veil of legality to the operations

Link 3 – the effective cash withdrawal from the bank account by the administrator or associat of B firm; the sum of money which is withdrawn is ecquivalent to the invoice value minus the bank’s commission;

- in order to withdraw the sums of money resulted from operations that have not been really performed and to enable the benficiary firm of the documents to take back the money paid for „documents“, the bank is informed by the firm who provides the fictitious invoices that the sums of money are withdrawn to perform operations with natural persons; the sums of money are neded for „the acquisition of scrap“, „copper“ or even „salaries“; these operations are not under strict limit imposed by GO 15/1996, being consider exceptions (according to the given GO, a firm can withdraw up to 10.000 lei/day cash from the bank account).

Link 4 – B firm’s administrator returns in cash the value of the invoice after he has hold a commission; the cash is paid to the C firm’s administrator

- later „the documents’ beneficiary“ retrieves in cash the sums of money paid though bank account to the “supplier” after he has paid a commission between 2 and 10% from the operations’ value. These operations also result from the account extracts of B firm out of which we can observe that between the moment of cash collection through bank transfer to B firm from C firm and the moment of cash withdrawal by the B firm’s administrator there is a short period of time reduced to several minutes.

The fiscal implications of such operations consist in:

- the diminution of the obligations for VAT payment at the beneficiary firm;
- the diminution of the obligation for paying the profit tax at the beneficiary society;
- the attempt to confer a vail of legality for the withdrawal of different sums of money from the beneficiary firm by an associate or administrator.

The fictitious character of the operations also results from the fact that:

- the firms which provide „documents“ don’t possess any means of transport, inventory objects or any other fixed means;
- they haven’t got any employees;
- for the reporting periods, the mentioned firms register losses in order not to pay a profit tax, so from economic point of view owning such a firm is not profitable;
- the firms are registered as VAT payers but in fact they don’t do that and moreover ,at the end of the reporting period, the state has to give them the VAT back;

- the associates introduce big sums of money in the firms but they can't prove the money's origin.

The identification of the fraud risk results from the information provided by the reporting documents declared by B firm. According to this information we observe that:

- the declared fiscal vector mentions just two obligations: the profit tax and VAT, that leads us to the conclusion that the investigated economic agent doesn't have any employees;

- the economic agent has not declared any working points at the National Office of Trade Register;

- in the annual balance sheet or semestrial reports we can't find any fixed means or, when they are mentioned, their value is insignificant as compared to the volume of activity performed by that firm

- the firm registers huge turnover according to the declarations on profit tax (101 form), without registering any profit or sometimes, when it appears, the profit is very small;

- the firm registers successive VAT deductions (300 form) for the acquisitions of goods and services, which are bigger than the deliveries of goods and services, so that at the end of the fiscal reporting periods the firm has VAT to reclaim from the state budget;

- in the legal papers they fill in, these firms do not put a tick for the option „require VAT return”, even though they would have the legal right to do so but this will consequently prove that their operations are illegal in the case of a fiscal control;

- from the informative declarations regarding the acquisitions and deliveries on the Romanian territory (form 394) made by B firm we identify major discrepancies between the acquisitions reported by B as being done from A firm.

The fiscal fraud also results from the information provided by the accountant evidence of B firm:

- in the accountant evidence we cannot find accounts from the following groups: 20 „Intangible assets”, 21 „Tangible assets”, 23 „On the process assets”, 26 „Financial assets” and group 28 „Depreciations of assets”;

- the value registered in „Total of the -in-the-red and in-the-black sums” for the accounts 37 „Merchandise” are very high; this proves that there is a certain „movement of merchandise stocks” in the sense that there are performed different successive operations for merchandise acquisitions and trading; sometimes at the end of the month there seems to appear a registration of high balance for the merchandise accounts; this demonstrates that the merchandise should be deposited in a warehouse. In order to avoid the registration of a high balance at the end of the month in the account 371 „Merchandise” (which implies the existence of a place where the merchandise is stocked and the presence of the person responsible for this) the firm uses the account in group 35 „Stocks held by others”, out of which we understand that the investigated economic agent doesn't possess the stocks and they are in the custody of another person.

- the values registered in „Total for in-the-black sums” at group 40 „Suppliers and assimilated accounts” and also in „Total for in-the-red sums” at group

41 „Clients and assimilated accounts” are very high; this can be interpreted as great sums of money which have to be paid to the suppliers and received from clients

- we don't identify any sums in the account 441 “Profit tax” or if the sums appear they are very small;

- in the VAT accounts 4426 „Deductible VAT” and 4427 „Collected VAT” big sums of money are registered, even though at the end of the month the account 4424 „VAT to get” shows an in-the-red balance; this proves that the economical agent has a claim from the state budget with the same value;

- the value registered in „Total for in-the-black sums” at group 45 „Group and share associates”, account 455 „Sums owed to associates” and group 46 „Debtors and different creditors”, account 462 „Different creditors” are very high because these values try to offer a plausible explanation for the great sums of money brought by the associates or creditors in the firm

- the value registered in „Total for in-the-red and in-the-black sums” at group 53 „Cash” are very high; in this case the debit shows represent the money brought by the associates and creditors while the credit shows the way in which the sums are used for the cash payment of fictitious acquisitions operations;

- the value registered in „Total for in-the-red and in-the-black sums” at group 60 „Stock expenses”, group 61 „Expences for works and services performed by other persons”, group 62 „Expences for other services performed by other persons”, group 65 „Other exploitations expenses” are very big;

- there aren't registered sums of money in the accounts from group 42 “Assimilated personnel and accounts” or in the group 64 “Personnel expenses”

- the value registered in „Total sums” at the income accounts from group 70 „Net turnover” and 75 „Other exploitation income” are very big;

- balance of the account of 121 „Profit or loss” is in-the-red or in some cases is in-the-black with the small value reported to the sums of money registered in the income accounts; this demonstrates us that in the given fiscal year the economic agent has registered losses when the balance is in-the-red or profit when balance is in-the-black;

- balance of the account of 117 „Carried forward result” is in-the-red, i.e. the losses carried forward from the previous years; these losses are to be recovered from the next years' profits

Conclusions:

As a general conclusion of this paper we consider that in order to discover and get more informed on fiscal fraud it is crucial to understand first of all the fraud risk to which an economic agent is exposed to. These risks depend on certain characteristics such as: the activity performed, the types of fiscal obligations he has, the flows of the legislative framework which supervise its activity, the ethic profile of the administrator or associate. *The type of activity* performed by the economic agent who is under investigation could be correlated with the average profit rates obtained by other firms which perform the same type of activity or a similar one. If the economical agent obtains profit rates under the average one or even more if he registers losses along several years this must be an alarm signal for starting a fiscal control to that particular economical agent. *The fiscal obligations* declared through the fiscal vector should be correlated with the declarations offered by the economical agent under investigation. The sums of money registered in the declarations and the reports presented at different state institutions should also be correlated with the

volume of activity and the human and technical capital needed to perform the activity. *The legislative framework and its modifications* also have an important impact on the fraud risk because when the fiscal obligations increase this consequently determines an increase of the fraud risk. We consider that if we want to get a clear picture of the *ethical profile of the administrator or associate* we should consider the sums of money brought by these persons in the firm (through bank account or cash) whether they are considered contribution to the social capital, loan for the firm or other loans. What is more important is to correlate the above sums of money with their source according to the income declarations reported to the fiscal organs. We mention that according to the latest legislative changes The Code of Fiscal Procedure (2013) stipulates that a natural person who is under investigation for income tax has the obligation to make a statement to the fiscal organ with reference to his possessions and incomes. We mention that the possessions and incomes which have to be declared by the investigated person are to be detailed in a new document which is to be released by the Public Finance Ministry in the coming months.

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