

THE EXCISE DUTY FRAUD IN THE CASE OF CROSSBORDER OPERATIONS WITH PETROLEUM PRODUCTS

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Abstract: *I appreciated that the work can be divided into five chapters designed to explain, if possible, the negative effects of fraud and tax evasion, being serious social and economic phenomena that the countries of the world are facing. The indisputable negative effects that the phenomenon of fraud and tax evasion generates are felt directly on the level of tax revenue receipts, causing major distortions in the functioning of the market mechanism. In Romania, the fiscal and budgetary revenues are dependent on the revenues from indirect taxes (VAT, excises, customs duties etc.), while, in the European Union, the contributions of the three major categories of taxes (direct and indirect taxes, social contributions) to the formation of revenues are closely related. Fiscal policy, using taxes, generates psychological, financial, economic, social effects on the social-economic environment. The public power that realizes the reality of the consequences of the tax action adopts as a solution changes in the structure of the tax system in order to modulate the effects consistent with the expected outcomes. Therefore, the extent of the outcomes pursued influences the technical characteristics of the taxes, and these on the micro and macroeconomic effects. In this regard I will show that reducing tax evasion allows the creation of budgetary resources necessary to the allocation of funds for economic growth. Tax settlement strategies based on state taxation policy, the influence of fiscal discipline to combat the underground economy and tax evasion, the improvement of methods and procedures used by the tax system in the tax settlement, perception and control are issues of utmost importance to ensure the feeding of the state budget systems with minimal resources required. In Romania, one of the basic economic problems is the lack of investment resources allocated, these being the main contributor to economic growth, in which the reduction of fraud and tax evasion is the solution to increase this allocation which can be rated as one of the priority tasks of the state.*

Keywords: *tax evasion; tax fraud; excises; VAT; crossborder operations.*

JEL classification: E62; H21;

1. Introduction

Although tax evasion is one of the aspects which specialized doctrine attaches special attention in studying the discipline of tax law, the terminology used to describe this phenomenon is unclear, and the area it explores, particularly in cross-border activities, is uncertain. (Hoanță, 2010)

There are several interpretations, names and meanings of this phenomenon, therefore it is normal for it to be difficult to define. They use phrases like "fraud, illegal fraud, international tax evasion, legal fraud, statutory fraud in law, underground economy". Not only the terminology is an element of confusion, but also the ambiguous law, the boundary between licit and illicit being very fragile.

In Romania the tax evasion phenomenon has taken in the last twenty years a special amplitude, seriously affecting economic growth of the country. However, tax evasion is still very difficult to control and quantify. This is due to several factors, among which I mention the imperfections and particularities of tax law, low living standards of the majority

of the population, low level of civilization, culture and civic consciousness, aggressive fiscal policies that the state promotes and not least the corruption which is present in the structures of the bodies with responsibilities in fighting against the tax evasion phenomenon.

Tax evasion and fraud are one of the most studied chapters both by theorists and technocrats regarding tax matters, they are complex socio-economic phenomena particularly important that all states are currently facing and whose undesirable consequences seek to limit them as much as possible, their eradication being actually impossible. The states should be systematically and effectively concerned to prevent and limit these phenomena.

In Romania and at the level of European Union, tax evasion and fraud have serious consequences on the budgets of the Member States and on their own resource system, leading to violations of the principle of fair and transparent taxation, and it can distort competition thus impairing the functioning of the domestic market.

According to art. 1 of Law no. 87/1994, tax evasion is "elusion by any means, in whole or in part, from taxes and other amounts owed to the state social insurance budget and extra-budgetary special funds by natural or legal persons, Romanian or foreign, hereinafter taxpayers". The new Law no. 241/2005 on preventing and fighting against tax evasion does not yet give us a definition of the notion of tax evasion.

I believe that, no matter how this phenomenon is defined, tax evasion is, ultimately, failure, the non-compliance in bad faith by the taxpayer, with the tax liability. Regarding crimes of tax evasion, they include facts alleged as such in the criminal law. (Florescu, 2013)

Tax evasion has a direct and immediate effect on levels of tax revenue, which leads directly to imbalances in market mechanisms and unlawful enrichment of the practitioners of this method of cheating that affects the state and ultimately, each of us, honest taxpayers.

Due to the Romanian legislation in the field, supporting the existence of a legitimate (or legal) tax avoidance and of an illicit (or illegal) tax avoidance lacks legal basis.

2.Excises

Excises are special consumption tax that are due to the state budget for the following products from domestic production or which are imported: alcohol, wine, beer and other fermented beverages, intermediate products, processed tobacco, energy products and electricity.

According to the legal norms applicable in Romania, the keeping of an excisable product outside a fiscal warehouse, if the excise duty has not been paid for that product.

Outside the customs warehouse may be held only products for which excise duty has been paid and, on the economic cycle, it can be demonstrated that they come from an authorized warehouse keeper, from an operator registered, from a non-registered operator or from an importer.

In the case of energy, they are treated as such when they are intended for use, offered for sale or used as heating fuel or motor fuel. Excise duty is set depending on the destination, to the level that applies to the period of heating fuel or motor equivalent.

Besides clearly defined energy products, any product intended for use, offered for sale or used as motor fuel or as an additive or to increase the final volume of motor fuel will be subject to the excise applicable to the fuel for motor equivalent.

For products for which the economic operator does not fulfill the obligations set out in the case of motor fuel and additives, is due the excise applicable to leaded gasoline and in the case of heating fuel, the excise duty is that for diesel.

Energy products are subject to excise duty where: products are made in order to be used as heating fuel or motor fuel, the products are sold as heating fuel or motor fuel.

Where, on the economic cycle, an operator cannot prove that the excise goods in its possession for commercial purposes, come from an authorized warehouse keeper, from a registered operator, from a non-registered operator or from an importer, this one owes excise duty on them, within 5 days from the date of discovery.

The movement of excise goods from a tax warehouse to a recipient is based on the accompanying administrative document (AAD).

During the movement of excise goods under suspension, the duty may be suspended if the conditions provided by law are complied with. Thus, if the movement of excise goods in duty suspension from a tax warehouse in Romania to a Member State, including if the move is made by a customs office of exit from the EU, and between a customs office of entry into the EU and a fiscal warehouse in Romania, the containers in which the products are must be sealed by the competent tax authorities and accompanied by the accompanying administrative document.

Excise goods under suspension which are displaced, the excise will be further suspended on receipt if the goods are placed in a tax warehouse or dispatched to another tax warehouse, the receiving tax warehouse the obligation to write on the accompanying administrative document the type and quantity of each product and any possible discrepancies, in this case the accompanying document must be certified by the competent tax authority.

For all excise goods, at the time of release for consumption in Romania, the duty becomes payable. (www.mfinante.ro)

3. Tax fraud in the case of excise goods

With the integration of our country into the European Union, some operators in Romania quickly assimilated criminal fraud practices of tax obligations used successfully for many years in the Community. The mechanism itself is structured in the current transitional arrangements for the taxation of intra-Community trade, which requires, as a general rule, the taxation of intra-Community goods carried between taxable persons, in the Member State of destination. (www.mfinante.ro)

Regarding excise goods, the current legislative framework creates problems both in their storage duty suspension, leading to the postponement of the incurrance of excise duty payment to the state budget and the transfer from a tax warehouse to another warehouse. This situation often leads only to achieving the document writing circuit.

Tax fraud in excise goods is reflected mainly in:

- Use of excise duties lower than those legal;
- Production of excise goods outside the authorized tax warehouses;
- Failure to include in the tax base of all the taxable amounts of money;
- Failure to include excises in the sale prices of the excise goods;
- Failure to record the obligation to pay excises in the accounting records.

In the case of energy products the most used methods of fraud are:

- Intra-community acquisitions or imports of goods poorly excised (fuel, Light Fuel Oil, etc.) with physical-chemical characteristics similar to those of some fuels (gasoline) and the subsequent sale of as diesel;
- Intra-community acquisitions or registered imports of low excised products (fuel, Light Fuel Oil, etc.), but in fact the product is fuel (diesel) and the subsequent sale at the selling price of diesel;
- Intra-community acquisitions or registered imports of low excised goods (fuel, Light Fuel Oil, etc.) but in fact the product is fuel (diesel) and the subsequent sale at the selling price of diesel ;

- Fictitious production of low excised products (fuel, Light Fuel Oil etc.) in authorized tax warehouses, using diesel as a raw material under suspension of payment of excise duty, in reality the final product actually being harnessed being diesel;
- Trade of fuels (petrol, diesel) produced by the mixture of products derived by non-excised products;
- Trade of heavily excised fuel (petrol, diesel) directly from the warehouses without payment of excise duty;
- Unlawful trade of heavily excised fuel (petrol, diesel) resulting from management pluses created in oil terminals;
- Unlawful trade of heavily excised fuel (petrol, diesel) with reduced excise duty rate for special purposes: agriculture, other activities stipulated by law;
- Fictitious exports of weak excised products previously purchased from the EU Member States or obtained from domestic production, with physical-chemical characteristics similar to those of some fuels (diesel), the merchandise being capitalized in Romania.

This type of fraud involves a chain of successive selling-buying operations made within the Community market and in Romania, made by a group of operators who sometimes seek to exploit, in an apparent hint of legality, and the differences between the tax rates applied by the EU Member States, in order to "cheapen" goods subject to such transactions and, as a consequence, to create a comparative advantage in the market, in terms of selling price, resorting to the use of some "phantom" type firms in the documentary and banking circuit. (Cristuș, 2011)

The practice has shown that phantom companies are major players in the tax evasion, being established with the help of forged documents or genuine documents belonging to unidentifiable foreign citizens. The establishment and operation of phantom firms mainly aim to circumvent the tax legislation by trading of illegal business, after which they disappear from the world of "business", after they previously accumulate large debts to the state budget, thereof tax authorities being unable to execute them.

Most times they do not work in the declared headquarters and are an important "supplier" of fiscal documents which record unreal transactions, the amounts of money being taken from accounts through successive withdrawals in cash or through ATMs, by controlled persons. Registering false transactions or false expenses means preparing some false documents for expenses, in that they were not made, or their level is much lower. The regulatory framework defines fictitious operations as "the concealment of reality by creating the apparent existence of an operation which, in fact, does not exist."

4. Excise fraud for cross-border operations with petroleum products

In Romania, since the early days of 1990, there were interest groups specialized in smuggling operations for both export and import operations, in speculation operations with critical products, highly taxed products, in supply of services, etc.

Tax fraud related to intra-community transactions is an undeniable presence within intra-community, estimates of its size being worrying. With the integration of our country into the European Union, some operators in Romania quickly assimilated criminal practices to fraud tax obligations, used successfully for many years in the Community, the carousel type fraud on value added tax related to intra-community transactions being an undeniable presence within intra-community, estimates of its size being worrying. The mechanism of this type of fraud is divided into the current transitional arrangements for the taxation of intra-community trade, which requires, as a general rule, taxation of intra-community goods carried out between taxable persons, in the Member State of destination.

This type of fraud is based on a fairly simple mechanism, namely the home trader invoices without VAT and the trader in the country of destination shall apply the reverse charge system for this operation.

Besides classical fraud for the VAT related to cross-border transactions, since 2008 the excise fraud on alcohol and tobacco products has become an undeniable presence, culminating with petroleum products, in 2010.

As noted above, the methods are many, but the most used are those relating to intra-community acquisitions of weakly excised oil products (registered) and mimicking the production of such products in authorized warehouses, in which this paper analyzed public data on such situations, they having the largest share in the petroleum products fraud.

In this view, a company X in an EU Member State delivers oil products to a company Y in Romania. In the period 2009-2012 most of the transactions of this kind focused on the sale of oil and other industrial oils (lower excised products between 14.4 and 15 Euro /ton). These mineral oils were received by companies in Romania, invoices being recorded in the accounting system and their value was paid abroad, mainly through bank transfer. Also, companies in Romania recorded in accounting invoices for petroleum products, this time diesel or petrol (products with excise between 283 and 330 Euro / liter), the quantities of mineral oils purchased being close to those of diesel or gasoline, representing the value of such invoices, the payments being generally made through bank transfer (in the beginning appeared as being cash payments). Subsequently both mineral oils and diesel / gasoline were recorded as being delivered to other companies in Romania or EU / (Z) or the company (Q) in Romania which have as their object the trade with heavily excised petroleum products, in general automotive fuel, through the pump. It can be noted that two circuits were created, one for weakly excised products and one for diesel, the first circuit having a fictitious trade and the second having fictitious purchases. Generally, the intra-community oil acquisitions were made from partners from Slovakia and Austria, while the intra-community deliveries were made to partners in Bulgaria and Belgium.

For the intra-community acquisitions and deliveries of goods made by companies involved in this fraud were made purchase invoices, receipt notes, bills of sale, purchase and sales journals, trial balances and Bill of Lading /AWB.

The mention in the transport documents of the same transport companies (even if the shipments were made on the same day) and the method of payment or receipt of the value of the goods (payment in cash, based on documents that do not meet the substantive and the form of basic accounting documents) are obvious clues as to the veracity of operations performed. However, the failure to confirm the intra-community supplies of goods by the partners could be established by competent authorities that the goods purchased were sold in Romania, causing the state budget a damage consisting of excises and value added tax

Based on the data provided by the National Institute of Statistics, it is clear that tax evasion is at a very high level in Romania, accounting for 13.8% of GDP in 2012. The NIS data show that about 60% of tax evasion is generated from VAT, in 2010 representing 9.6% of GDP, the same level as in 1996. It is worth noting that in 2010, tax evasion increased from 8% to 9.6% of GDP, while in 2010 the rate of VAT increased from 19% to 24%, in which case, normally, the levels should have lowered. The evolution of tax evasion is shown in Table 1.

Table 1. Evolution of tax evasion on the main taxes (% of GDP).

Year	2007/% of GDP	2008/% of GDP	2009/% of GDP	2010/% of GDP	2011/% of GDP	2012/% of GDP
Income tax	0.57	0.58	0.87	0.97	0.98	1.01
Profit tax	0.87	0.96	0.71	0.83	0.84	0.85
HIC	1.93	1.82	2.8	3.13	3.15	3.24
VAT	7.1	7.4	8.0	9.6	8.4	8.3
Excises	0.74	0.42	0.55	0.67	0.45	0.39

Source: NIS

Recording the growth for the majority of revenue stations in 2012 and 2013, shows that Romania continues to rely on large indirect taxes, on high social contributions, but very poorly collected. Little still are discussed the effects, positive or negative, which different fiscal policies induce in economy, but also in shaping the behavior of taxpayers. And not to talk about the implications that such measures have on the costs of administration, bureaucracy inevitably associated with the collection of any tax.

Level of excise duties during 2008 - 2013, for diesel and fuel products that are being analyzed in this report is shown below:

Table 2. Evolution of excise duties for diesel and fuel products

Type product	UM	Excise		Euro/UM			
		2008	2009	2010	2011	2012	2013
<i>Diesel</i>	<i>1000 liters</i>	274.625	283.92	293.215	302.51	316.03	330.395
<i>Fuel</i>	<i>1000 kg</i>	13.7	14.4	15	15	15	15

Source: Processing author from www.insse.ro, www.mfinante.ro.

The exchange rate used for the excise computation is presented below:

Table 3. The exchange rate of excise

Period	Exchange rate lei/Euro
2008	3.3565
2009	3.7364
2010	4.2688
2011	4.2655
2012	4.3001
2013	4.5223

Source: Processing author from www.insse.ro, www.mfinante.ro.

The value in RON of excise was determined by converting the amounts expressed in euro equivalent, based on the exchange rate set on the first working day of October of the previous year, published in the Official Journal of the Union, in accordance with Art. 218 of Law no. 571/2003 regarding the Fiscal Code.

The public data processed and analyzed in this paper showed that during 2010 - 2011 there were several operators involved in rigging the state budget in terms of excise duty. In this regard, I will provide as an example the situations in which, as noted above, the

initiators of the fraudulent group (operator A) created a fictitious procurement circuit involving 26 companies, which issued bills of diesel, and fictitious circuit of weakly excised products. Thus, operator A delivered diesel without paying the excise duty and goods and deducted expenses with the merchandise based on documents that do not reflect real commercial operations, diminishing the tax base in terms of income tax, thus deducting also VAT in an unjustified manner and avoiding the calculation of VAT on excise duty not included in the VAT tax base.

The calculation of tax obligations which the economic operator A, based in Romania, had to pay to the state budget, is shown in Table 4.

Table 4. Calculation of tax obligations for the economic operator A.

No	Name	Excises	VAT	Tax profit	Total damage
1	SC 1	476,802	479,935	327,868	1,284,605
2	SC 2	182,506	257,368	187,530	627,404
No	Name	Excises	VAT	Tax profit	Total damage
3	SC 3	561,866	463,563	300,470	1,325,899
4	SC 4	268,249	172,717	102,526	543,492
5	SC 5	36,388	33,504	16,514	86,406
6	SC 6	387,087	349,025	170,750	906,862
7	SC 7	1,005,422	972,486	487,456	2,465,364
8	SC 8	591,767	937,901	530,585	2,060,253
9	SC 9	104,626	150,244	83,423	338,293
10	SC 10	3,071	46,018	30,187	79,276
11	SC 11	620,179	574,595	384,641	1,579,415
12	SC 12	2,954,759	1,996,600	1,208,586	6,159,945
13	SC 13	833,732	624,062	392,129	1,849,923
14	SC 14	1,733,684	1,531,839	1,012,581	4,278,104
15	SC 15	1,239,908	798,843	467,129	2,505,880
16	SC 16	2,473,104	2,199,819	1,070,849	5,743,772
17	SC 17	2,190,911	2,358,491	1,221,782	5,771,184
18	SC 18	2,152,810	2,129,621	1,075,298	5,357,729
19	SC 19	599,260	622,061	427,959	1,649,280
20	SC 20	2,266,648	1,693,247	953,802	4,913,697
21	SC 21	205,964	220,391	113,973	540,328
22	SC 22	912,162	598,678	358,204	1,869,044
23	SC 23	2,949,161	2,169,550	1,351,790	6,470,501
24	SC 24	1,061,536	1,165,210	811,384	3,038,130
25	SC 25	252,523	256,180	130,383	639,086
26	SC 26	0	441,540	294,360	735,900
	Total	5,811,788	5,182,841	3,012,946	14,007,575

Source: Processing author from www.insse.ro, www.mfinante.ro, [eurojust romania](http://eurojust.romania.ro), www.just.ro

By holding and sale of excisable products outside a fiscal warehouse for which it could not be established that they originate from an authorized warehouse, from a registered

consignee or importer and that the excise duty payment was recorded as well as the entry in the accounting record of some documents attesting unreal operations, the *company A* has defrauded the consolidated state budget amounting to Euro 14,007,575, as follows:

- 5,811,788 Euro – Excises;
- 5,182,841 Euro – VAT;
- 3,012,946 Euro – tax profit.

As seen, the excise fraud leads to a chain reaction regarding tax obligations, leading finally to a total fraud of about 3 times higher than the initial amount.

In addition to this case, there were identified in 2009-2010 other operations similar as operating mode and situations where operators prepared delivery documents of diesel to Poland (operator B) to Slovakia (operator C) and mimicking production of weakly excised products in diesel warehouse (operator D), where this product has been released for free circulation as diesel, without paying the excise duties.

The entire activity was conducted through intermediaries with a low level of education and no training in the development of commercial operations in which there are sums of money of hundreds of millions of euros, being also used base companies to be able to issue entry documents to beneficiaries of diesel exempted from excise duty and VAT, who needed justification if they were controlled, therefore being able to justify the origin of fuels. In the case of operator D, the so-called production being made in the tax warehouse, it basically avoids the payment of excise duty and VAT for the sale of diesel, resulting from the documents that it could produce other types of fuel such as heavy liquid fuel, etc..

The analysis of public data, consisting of tax audits and probate and criminal cases prosecuted, after removal of companies that were nothing but accomplices in the networks formed, made us determine that tax fraud can be attributed to the five groups which conducted the sale of these products on the Romanian territory, without paying the excise duties, the situation being presented in Table 5.

Table 5. Calculation of excise duty for the identified economic operators (2010-2011).

Name	Quantity (t)	Excises	VAT	Tax profit	Total
Op. A1	21,230	5,811,788	5,182,841	3,012,946	14,007,575
Op. A2	17,004	4,654,905	4,151,155	2,413,195	11,219,255
Op. B	5,706	1,562,037	1,392,995	809,791	3,764,823
Op. C	5,565	1,523,438	1,358,573	789,780	3,671,791
Op. D	990,000	271,016,021	241,686,886	140,500,073	653,202,980
Total	1,039,505	284,568,189	253,772,450	147,525,785	685,866,424

Source: Processing author from www.insse.ro, www.mfinante.ro, eurojust.romania.ro, www.just.ro

The data above shows that the excise duty not paid by the five operators, for energy products, is EUR 284,568,189, in case that the excise duty not being paid had negative influences on the budget totaling 685,866,424 Euro.

These data are public but the situation is more serious both for the period 2010 - 2011 and 2012. As noted above, the total excise tax evasion was calculated by the NIS to 0.67% of GDP in 2010, 0.45% of GDP in 2011 and 0.39% of GDP for 2012.

However, in addition to data calculated in table. 5, there are indications that in the period 2010-2011, the amount of petroleum products released into circulation without the payment of excise duty was much higher, over 2,000,000 tons respectively, in which the unpaid excise duty is over 547,507,113 Euro, the total amount that was affected being over 1,319,601,978 Euro.

5. Conclusions and proposals

The Euro zone countries need improving fiscal discipline and community mechanisms which sanction the countries that violate budget rules, in the near future being unrealistic to draw up a common fiscal policy of the euro area, but there can be taken measures to ensure the stability of individual fiscal policies, starting right from the application of sanctions for the countries that violate the budgetary discipline rules.

Taxes do not have to model the behavior of taxpayers, they should be the same regardless of the type of income and should not include distortions. To be reasonable, the tax burden should be distributed as widely as possible.

Those shown lead to the conclusion that it is necessary as soon as possible the restructuring of the Romanian tax and the way in which the administration is made, so that the tax system function more effectively, and lead to a better collection, which would have a major impact on the growth of budgetary resources and in this way it could lead to economic growth.

The changes in fiscal policy should be made public after comprehensive analyses and after it was previously estimated their impact on the economy, the fiscal consolidation should aim at increasing tax revenues and the accelerated absorption of European funds could much alleviate the pro-cyclical nature of tax consolidation.

The tax reform is necessary to balance the budget within European revenues and expenses in relation to PIB. Imposing tough constraints to bad payers and reducing the level of nominal income tax should bring the broadening of the scope and the increase of collection efficiency.

The development and implementation of a modern and predictable tax strategy on medium and long term would be essential in the context of competition that occurs between the European states to attract new investments and create new jobs.

Although they exist and have enough personnel, local tax offices do not have the expected efficiency, in many situations due to the operating system of these institutions, being necessary a consolidation at the local level and due to delays in terms of controlling and improving tax provisions it is necessary to use and improve the IT systems. To improve the collection of taxes it is absolutely necessary a profound reform of the administration of taxes in Romania.

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