

WAREHOUSE TRANSFERS AND FISCAL FRAUD

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Abstract: *The fraud and fiscal evasion phenomenon generate indisputable negative effects, which are felt directly on the level of fiscal receipts earnings, determining major distortions in the market's functioning mechanism. If in the European Union, the contribution of the three large tax categories (direct tax, indirect and social contributions) in forming revenue are relatively close, in Romania, fiscal and budget revenue are directly dependent on the indirect tax and duties, especially on VAT and various sales taxes. If there is reductions in the fiscal evasion as to what these taxes are concerned, the premises for creating budget resource needed to fund the economic growth are created. In judicial literature, tax evasion is considered as being the logic result of all defects and inadvertencies of an imperfect legislation, of broken application methods, as well as a lack of foreseeing and lack of skill on the law-maker's side, with their excessive tax system is as guilty as those who contribute in creating it. Regardless of how this phenomenon is defined, fiscal evasion represents the lack of fulfillment by the taxpayer of his fiscal obligation. The field in which tax evasion acts is as widespread as the different taxes, manifesting especially in the direct and indirect taxes, influencing their efficiency.*

Keywords: *tax evasion, fiscal fraud, sales tax, VAT, over the border operations.*

JEL classification: E62, H21

1. Introduction

In Romania as well as in the European Union, tax evasion and fiscal fraud have a negative impact on the budgets of member states and their system of resources, leading to violations of the correct and transparent taxation principle. It also affects the functionality of the internal market, by distorting competition.

Tax evasion has a direct and instant effect on tax revenue, which leads to imbalances in the market's mechanism, as well as to the illicit gathering of wealth by those who practice these fraud methods, which affect the state but also the tax payers.

Tax evasion is defined by the Law nr. 87/1994 as being "embezzling, by any means, in its entire sum or in part, from paying taxes or other sums owed to the state budget, local budgets, social security budgets and special extra-budget funds, by natural and legal persons, Romanian or foreign, named taxpayers" (<http://www.legex.ro/Legea-87-1994-5073.aspx> , <http://codfiscal.net/21775/legea-2412005-prevenirea-si-combaterea-evaziunii-fiscale>). Some elements that were lacking from this law have been corrected by the Law nr. 241/2005

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The most well-known sense given to tax evasion is "the art of avoiding falling into the field of attraction of the fiscal law"

(http://www.revistapentrupatrie.ro/index.php?option=com_content&view=article&id=1222:e_vaziunea-fiscal-sau-fuga-de-impozite&catid=2:actualitate&Itemid=52)- a concept which belongs to M. C. de Brie and P. Charpentier. Tax evasion is fraudulent when the taxpayer who is obliged to give data in support of his fiscal declaration, resorts to forging the taxable object, under evaluating the quantum of its taxable value or using ways of not paying the taxes that are due. In general, it is hard to determine all tax evasions of this type.

The economic globalization tendencies, social and political, have led, in the last decade, to the encouragement and support of fiscal dispositions avoiding actions, actions which have moved more and more from the interior of the national tax system, to the exterior, outside the field of action of the national tax law. In this new context, one of the most important criteria in this new context, one of the most important criteria after which the manifestation forms of tax evasion is represented by the reference space, based on which national level tax evasion and international level tax evasion can be identified.

2. The transfer of good between two tax warehouses

For the goods that come from internal production or from import, especially ethylic alcohol, wine, beer, other fermented drinks, intermediary products, processed tobacco, energetic products and electric energy, sales tax are due.

These are special taxes levied directly or indirectly on the alcohol consumption and alcoholic drinks, processed tobacco, energetic products and electricity. These taxes become payable when the goods are put on sale and in the country where they are put on sale. The payable conditions and level of taxation which is to be levied are those applicable at the date at which they can be paid in the member state in which the goods are put on sale. The moving of taxable goods from one tax warehouse to another one from Romania or in a member state is not considered putting these goods on sale.

According to the specific law for taxable products, these cannot be kept outside a tax warehouse, only after paying the sales taxes.

The authorized tax warehouse representative is the natural or legal person authorized by a competent authority, which during its activity, can produce, transform, own, receive or send taxable products in a way that could halt the sales tax in a tax warehouse.

During the moving of the taxable goods, the sales tax can be suspended, if the conditions of the law are respected.

According to the Fiscal Code, during the moving of a taxable product, the sales tax is suspended if the following requirements are completed: moving takes place between two tax warehouses, between a tax warehouse and a registered operator, between a tax warehouse and a non-registered operator. The moving of the products without the sales tax being issued is allowed only when the goods have an administrative document, based on the model in the EC Regulation nr. 2719/1992, in regards to the administrative document for the circulation of goods without sales tax, with later modifications.

The administrative document is an instrument for checking the origin, the transport, the delivery and admission of such taxable products without the added sales tax from one tax warehouse to another, or to a registered/non-registered operator. When the products arrive in the receiving tax warehouse or at the registered/non-registered operator, they must fill in all administrative document copies in the fields reserved for the receiver. Before de-sealing and unloading the products, the receiver must inform the fiscal territorial authority from the area they activate it, so that the fiscal authority can provide a representative who, in 48 hours from receiving the notice, will check and certify the data recorded in the administrative document. During the moving of the products, the sales tax can be suppressed if the conditions mentioned in the law are observed, including in the case when the taxable products are moved from a tax warehouse in Romania to another member state.

3. Fiscal Evasion when the transfer between authorized warehouses takes place, through over the border activities

When Romania became a part of the European Union, a part of the economic agents in Romania have quickly assimilated the criminal evasion practices from fiscal obligations, used for many years in the European economic space. The mechanism is structured on the present transitory regime of intra-community exchanges, which sets as a general rule, the taxation of intra-community good exchanges, made by taxable persons, in the destination state.

- As to what taxable goods are concerned, the actual laws create problems when it comes to storing them in a non-taxable regime, a fact that leads to the postponing of the moment the payable tax obligation to the state budget arises, as well as the transfer from one tax warehouse to another. This situation, in most cases, leads to creating a written document circuit. The legal aspects referring to taxes are stated in the methodological application norms of Law 571/2003 regarding the Fiscal Code:
- Outside the tax warehouse, only those taxable products can be kept for which the sales tax has been registered as a payment obligation, and through the economic circuit, it can be seen (by the control authorities) that the products come from an authorized tax warehouse, from a registered sender or from an importer.
- When for taxable products kept outside a tax warehouse the sales tax cannot be settled as registered as a payable obligation, then the tax is exigible, the payment obligation falling on the person who cannot justify the legal source of the products.
- Owning taxable products and the exigibility of products is mentioned in the Law 571/2003 regarding the Fiscal Code:
- Owning taxable products outside the tax warehouse, for which proof of tax payment cannot be made, brings the obligation of paying the due taxes;
- It is forbidden to own a taxable product outside the tax warehouse, if the sales tax for that product has not been paid.

According to Law 571/2003, the sales taxes become exigible when the goods are sent for consumption, this meaning owning said products outside a non-taxable regime, for which taxes have not been collected, according to the law.

The level of harmonized sales tax is the level mentioned in Annex 1, Title VII of Law 571/2003, art. 176 paragraph 1.

Diesel deliveries, without determining and charging VAT have been mentioned at art. 144 paragraph 1, letter a, point 8 from the 571/2003 Law, meaning that: "the goods that are to be stored in a VAT tax warehouse, are exempt from the sales tax as follows: for taxable products, any location situated in Romania which is defined as a tax warehouse in the meaning of art.4 letter (b) from the 92/12/CEE Directive, modified and completed (Legea nr.571/2003, regarding the Fiscal Code).

The level of sales tax for 2009, for diesel fuel, which is the subject of our analysis, has been of 336 euro/ton and the exchange rate used to calculate the tax in 2009 has been of 3,7364 RON/euro. The value in RON of the tax is determined by transforming the expressed sums into euro equivalents, based on the exchange rate set on the first working day of October, last year, published in the Official Union Journal, according to the regulations of Law 571/2003, regarding the Fiscal Code.

This type of fraud needs a chain of successive selling and buying operations to work, made on the territory of Romania and on the commune market, made by a group of economic operators, with the purpose of "reducing" the price of the goods that are the object of such transactions. As a consequence, they are creating a comparative advantage on the market, because of the selling price. They usually use "ghost" companies in the banking and document circuit.

Most of the times, the "ghost" companies do not function from their declared social headquarters and are an important supplier of fiscal documents in which unreal commercial operations are written, the sums being taken out of accounts through

successive operations for cash, or through ATM, by controlled persons. The normative framework defined these fake operations as being “the dissimulation of reality by creating the apparent existence of an operation which actually does not exist”.

4. Fraud regarding intra-communitarian deliveries

Starting with 2007, fiscal evasion related to intra-communitarian deliveries has become a presence that cannot be ignored in the EU space. Its dimensions are worrying, according to specialists in the field.

One method which has been successfully applied in Romania in avoiding paying sales tax and VAT for petrol products is based on the transfer between an authorized tax warehouse to another warehouse, from a different member state.

Methods of fraud regarding payment obligations for intra-communitarian operations are multiple, but in the 2008-2012 period, among the most used ones, dissimulating sales of energetic products on Romania's territory by transferring from one warehouse in Romania to another warehouse of a member state, following false papers that prove the completion of some trans-border deliveries – was the most common.

For this to work, a company A Srl from Romania buys in 2009, during April and March, a total quantity of diesel of 5.565,71 tons (6.647.626 liters), worth 10.420.275,29 RON, from two companies SC X SRL and SC Y SRL from Romania, being suspended from paying the sale tax and the VAT, by using the cover of two authorized warehouses.

The representatives of SC A SRL have made all necessary steps to authorize the company as a tax warehouse, in order to benefit from buying fuel (especially Euro 5 diesel) without having to pay the sale tax and VAT. Until the start of these activities, the company had little other activity, the situation being the same after the diesel had been bought.

After obtaining the warehouse authorization, during April-May 2009, SC A SRL has bought diesel fuel without paying the sale tax and VAT, based on the administrative documents from the tax warehouse SC X SRL and the SC Y SRL operator.

Following this, SC A SRL has bought between 03.04.2009 – 16.05.2009, based on the receipts, a total quantity of 5.565,71 tons EURO 5 diesel (6.647.986 liters), which have appeared in 27.10.19.41, as such:

- From Sc X Srl, 5.403.144 liters Euro 5 diesel;
- From Sc Y Srl, 1.244.842 liters Euro 5 diesel.

From the paperwork, SC A SRL has proven through its bills and receipts and administrative documents which prove the shipment of the diesel, without the need to pay the sale tax and VAT, to the client SC Z Slovakia, who is declared as a tax warehouse.

Because SC Z SRL Slovakia is an authorized tax warehouse, the goods delivered over the border by SC A SRL will travel without the need of paying the sales tax and VAT. Through this mechanism, the suspects have dissimulated the illegal sale of the entire quantity of fuel on the Romanian territory. Taking into account that the sale tax and VAT was not paid, this gave the opportunity to the company to eliminate good-will commercial agents through practicing a reduced price. This price did not contain the taxes that needed to be paid.

The company owned and sold taxable products outside its tax warehouse, for which there was proof that it originated from another tax warehouse, from a registered sender, but for these products a sale tax and VAT should have been paid. Since it was not paid, the norms and provisions of the Fiscal Code have been broken.

Following these actions, the company has to pay the sale tax for the petrol products from the buying receipts from the two suppliers (SC X SRL and SC Y SRL).

The diesel bought by SC A SRL had not left the Romanian territory, being sold illegally to other commercial entities inside the country. Moreover, following the sums that have been paid for the goods, it was settled that these sums come from the accounts of the beneficiary.

Company A's account has been accredited by companies B and C. these sums of money have been transferred on the same day by the two suppliers, who would proceed to load the diesel wagons only after the money was sent. Referring to companies B and C, it was found out that they did not operate at their declared offices and fiscal checks could not be done for these companies, nor did they have papers which to prove the origin of the goods that were later sold.

Further research have revealed that the diesel that has been bought without paying the taxes has been sold in Romania without legal documents, by the final beneficiary – companies that usually sell highly taxed petrol products, mainly car fuels, in gas stations.

The diesel has been received by SC A SRL, the receipts passing through the accountants, while their value has been paid to the supplier by bank transfer. The sums of money came from companies B and C, during the same day.

SC B SRL was established in 2008, with a single associate, a citizen of a different member state. The company and all the legal needs were done by a lawyer. The company does not show to have filed the 390 Declaration, regarding intra-communitarian buying activities. Although it had not filed Declaration 394, 58 Romanian tax payers have bought or sold something to and from this company during the second semester of 2008 and the second semester of 2010. According to the situation regarding transactions made by card at ATMs nationwide, it has been seen that during January 5 2009 and August 21 2009, the card attached to the account of the company, issued in the name of the person in charge of the company, has been used to make withdrawals from ATMs in Oradea, Bucharest, Cluj-Napoca, Târgu Mureş, Tulcea, Sibiu, Slobozia, Constanţa, but also from abroad, in Hungary and Austria.

SC C SRL was established in March 2009, with a single associate, a citizen of a different member state. The company and all the legal needs were done by a lawyer. The company does not show to have filed the 390 Declaration, regarding intra-communitarian buying activities. Although it had not filed Declaration 394, 26 Romanian tax payers have bought or sold something to and from this company during the first semester of 2009 and the second semester of 2010. According to the situation regarding transactions made by card at ATMs nationwide, it has been seen that during April 30 2009 and August 21 2009, the card attached to the account of the company, issued in the name of the person in charge of the company, has been used to make withdrawals from ATMs in Oradea, Bucharest, Cluj-Napoca, Târgu Mureş, Tulcea, Sibiu, Slobozia, Constanţa, but also from abroad, in Hungary and Austria.

As we have shown, although the diesel has been delivered by beneficiary entities from the country, based on receipts issued by SC B SRL and SC C SRL, the diesel was not registered by SC A SRL as being delivered to SC Z SRL Slovakia..

Because SC Z SRL Slovakia did not confirm the receiving of the goods, it has led the authorities to believe that the goods have been sold in Romania. Regarding diesel transports for SC A SRL, the authorities have found that the transports have been made with rented vehicles from three transport companies from Romania, which have taken the diesel from SC X SRL and SC Y SRL to the warehouse of SC A SRL, where, following the confirmation of the administrative papers by the representatives of the supervising authority, the diesel has been transported with the same vehicles, or in some case, after boarding, in other vehicles registered in Hungary, by beneficiaries from Romania who were gas station owners.

Between April 3 2009 and May 16 2009, SC X SRL has delivered 4.522,306 tons of Euro 5 diesel (5.403.144 liters) to SC A SRL, based on receipts, waybills, conformity declarations, trial reports and administrative documents – with a value of 8.489.974 RON.

Energetic products – Euro 5 diesel – delivered by SC X SRL to SC A SRL have been moved from a warehouse to the client, without the need of sale tax and VAT payment, based on the administrative documents, respecting art. 144, paragraph 1, letter a, point 8 from the 571/2003 Law, modified.

SC X SRL has received through bank transfer the sum equal to the value of the receipts for the deliveries of energetic products – Euro 5 diesel, with a total value of 8.489.973,62 RON (not including sale tax and VAT).

Between April 22 2009 and May 8 2009, SC Y SRL has delivered 1.043,402 tons of Euro 5 diesel (1.043,402 liters), based on receipts, waybills, conformity declarations, trial reports and administrative documents – with a value of 1.930.300,50 RON, to SC A SRL, which has paid in full, through bank transfer. In this value, the sale tax and VAT was not included.

The tax level in 2009 for diesel, which is analyzed in this report, was of 336 euro/ton and 283.92 euro/1000 l.

The exchange rate used to calculate the tax in 2009 has been of 3,7364 RON/euro. The value in RON of the tax is determined by transforming the expressed sums into euro equivalents, based on the exchange rate set on the first working day of October, last year. From the public data processed and analyzed in this paper, it turns out that in 2009, economic operators involved in state budget fraud regarding sale tax and VAT, have bought a total quantity of 5.565.71 tons of diesel (6.647.626 liters) worth 10.420.275,29 RON, for which taxes worth 10.294.810 (2.455.921 euros at the exchange rate of BNR on the date in which it should have been paid) out of which sale taxes were equal to 6.987.359 RON (1.666.851 euro) and VAT3.307.451 RON(789.061 euro). The calculation of the fiscal obligations that company A, with its offices in Romania, should have paid to the state budget are presented in the table below:

Table 1. The calculation of fiscal obligations for company A

Nr	Name	Sale tax/lei	VAT/lei	Total damages /lei	Total damages/euro
1	SC X SRL	1.309.919	615.642	1.925.561	458.121
2	SC Y SRL	5.677.440	2.691.809	8.369.249	1.997.791
	TOTAL	6.987.359	3.307.451	10.294.810	2.455.912

Source: made by the author

Through the selling of taxable products that were exempt from tax and VAT, **company A** has induced damages to the budget totaling 10.294.810 RON (2.455.912 euro) as it can be seen in the table above, which in the end made a damage almost equal to the value of the goods. (10.420.275,29 RON). According to data available for 2012, Romania is situated on the 6th position in a list of new European member states regarding the efficiency of VAT collection, with a total efficiency of only 57%, which is still a better position than in 2010, when it was situated on the 9th place and in 2011, when it was situated on the 8th place. But this leap in the list does not mean much, because Romania's VAT collection efficiency has been constant, around 56%-57% (*Fiscal Council, Yearly Report 2013*).

Table 2. Evolution of VAT taxation 2012-2013

Eficiența taxării TVA (2012-2013)						
Țara	Standard VAT amount (%)		Implicit taxation rate (%)		Efficiency (%)	
	2012	2013	2012	2013	2012	2013
Bulgaria	20	20	14,2	14,6	71	73
Czech Republic	20	21	14,2	15,4	71	73
Estonia	20	20	16,9	16,2	84	81
Latvia	21,5	21	11,3	11,6	53	55
Lithuania	21	21	11,8	11,8	56	56

Eficiența taxării TVA (2012-2013)						
Țara	Standard VAT amount (%)		Implicit taxation rate (%)		Efficiency (%)	
	2012	2013	2012	2013	2012	2013
Hungary	27	27	17,0	17,2	63	64
Poland	23	23	11,7	12,0	51	52
Romania	24	24	13,7	13,5	57	56
Slovenia	20	20	14,3	15,4	71	77
Slovakia	20	20	10,4	11,2	52	56

Source: <http://www.consiliulfiscal.ro/ra-2013.pdf>

As an example of bad tax collection in Romania, in 2013 only 8.5% of the GDB came from VAT, as in the case of Estonia. But the standard VAT is higher in Romania (24% compared to 20%). Besides, Bulgaria, with a similar economic structure as Romania and a smaller VAT value (22%) has collected 9.2 of its GDP from its VAT. According to data from the Fiscal Council, based on INS (National Statistics Institute) tax evasion is at a very high level in Romania, equal to 16.2% of the 2013 GDP. If Romania would collect the maximum amount of its taxes, it would have budget revenue (as GDP percent) higher than the European average, given the fact that the main legal level of taxes in Romania is higher than the European average (In Europe, Romania has the third highest standard VAT and is placed 7th in a list of countries that place a burden on the employee through a high value of social contributions; in the same time, Romania has one of the smallest levels of profit and personal revenue taxation from the European Union, but this has a minor role in budget revenues).

Approximately 75% of tax evasion is generated by not paying VAT, reaching a 12,34% of the 2012 GDP, while in 2013 it will be of 12,21% of the GDP (Fiscal Council, *Yearly Report 2013*).

Romania's problem is the contrast between the relatively large legal level and its reduced application, compared to former socialist states which have joined the EU.

Thus, countries like Estonia, with an 89% taxation efficiency or the Czech Republic, Slovenia and Bulgaria – each with a 71% taxation efficiency, which all have a 20% VAT level, have a better collection degree than Romania.

5. Conclusions and propositions

SC A SRL did not respect the laws when it received the taxable products, even though they were in a non-taxable state at that point, meaning that the tax is still suspended when receiving a product of this state, if the norms required by law are respected. In this case, the product has been placed in a tax warehouse and sent to another warehouse, according to art 186, paragraph 2 of the Fiscal Code, but in reality, the goods were sent back to the companies where they came from, within the country. This is an illegal practice, according to article 168, paragraph 2 of the Fiscal Code, if the sale tax has not been paid. The company did not pay this tax but also delivered the goods back to the companies it received them from; it also has made false documents (receipts, administrative papers) from which we could understand that the goods were sent to SC Z SRL Slovakia (warehouse), which would mean they were exempted from the sale tax and VAT.

Fiscal evasion leads to a gathering of less than half of the entire value of VAT for the Romanian budget: instead of 21 billion euros, only 11 billion are collected.

Fiscal evasion is visible in Romania at its microeconomic level, but enormous sums are found in inter-company trade, where the loopholes of the law are exploited and fiscal evasion is being made directly, with the protection of control authorities and political decision factors.

Fiscal Evasion can be reduced if there are laws and, of course, punishments that will scare. The increase of VAT made tax evasion even more profitable, especially on bordering areas with Bulgaria and Hungary. The problem starts from the inside, from the control mechanisms.

The state does not observe the companies from which it should be collecting taxes. It is like a financial institution would no longer manifest interest in the situation of its clients. Although they have enough staff and they exist, local fiscal offices do not have the expected efficiency, in many situations due to the way in which these institutions work, a local level consolidation being needed. Also, because of the delays in control and paperwork efficiency, it is recommended to use and improve informatics systems. In order to increase the level of tax collection, a profound reform of how taxes are administered must be done.

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