



## Analysis of Tax Evasion in Romania in the Period 2009 – 2012

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**Abstract** *Tax evasion is one of the most complex social - economic phenomena of an utmost importance that the states are facing today and whose unintended consequences seek to limit as much as possible and whose eradication being basically impossible to fulfill.*

**Key words:**

Tax evasion, taxpayer, tax regulations, tax audit

**JEL Codes:**

H26

### 1. Introduction

The multitude obligations that tax laws impose to payers or especially the burden of these obligations, made to foster, at all times, the taxpayers' ingenuity in inventing various methods to elucidate the tax obligations. "Tax evasion has always been especially active and ingenious for the reason that the taxation authorities, by hitting individuals in their wealth, touches the most sensitive interest: cash interest"<sup>1</sup>. Tax evasion is the most studied section of the tax law, both by technicians, as well as academics or journalists. However, and in spite of everything written about the causes, methods, scope, control or sanctions regarding tax evasion, words that designate this phenomenon are impressions and and the domain they explore is uncertain. As such, tax evasion is a very complex concept to define, moreover, there is no legal definition of tax evasion.

Tax evasion is one of the most complex social - economic phenomena of an utmost importance, that states face today and whose unintended consequences seek to limit as much as possible, its eradication being practically impossible. Most often, tax fraud designates „strictly” an offense to the law and is distinguished from tax evasion which is defined as a skillful use of the opportunities provided by law.

Tax evasion has a direct impact on tax revenues, distorts the market mechanism, it even contributes to

the creation of social inequalities due to the propensity of taxpayers to tax evasion<sup>2</sup>.

I consider that it is important to know the importance of tax evasion. This has a direct and immediately effect on levels of tax revenue, which leads directly to imbalances in market mechanisms, as well as enrichment, unlawful, of practitioners of this cheating method that affect the state and ultimately each of us, honest taxpayers. Hence the importance of knowing the tax evasion phenomenon.

In legal terms, tax evasion is stipulated in Law no. 87 of October 18, 1994, published in the Official Gazette no. 299 of October 24, 1994. In its first article, it is considered as "theft by any means, in whole or in part from taxes, fees and other amounts due to social security and extrabudgetary special funds by individuals and legal Romanian or foreign people".

The tax evasion phenomenon has an evolution determined by the specific action of factors such as: the dynamics of the real economy, legislative and institutional size, level of fiscality, other internal and external factors. International tax practice shows that a modern tax system must have components that allow prompt education and information of taxpayers about their obligations regarding the proper preparation of tax

<sup>1</sup> Hoanta N., (1997). *Tax Evasion*, Ec. Tribune Ed., Bucharest, p.214.

<sup>2</sup> Penu D. (2011). *Indirect taxation and tax evasion in Romania*, International Scientific Session of Christian University "Dimitrie Cantemir": "Dimensions of the contemporary society crisis".

returns, of keeping an accurate evidence of income and expenses incurred connected for the work performed, penalties and sanctions applicable to those who violate the law.

Law no. 87 from 1994 for combating the tax evasion provides a range of penalties and fines applied to individuals and legal persons ; finding violations and applying penalties is underdone by the Financial Controllor of the Ministry of Finance and territorial units subordinated, financial Guard and other organs authorized by law.

In Article 3 of this law there are provided taxpayer obligations, namely:

- Declaration within 5 days of recording data about the subunits formed in subsidiaries, branches, outlets, warehouses, stores and any other places where are developed the income-producing activities, banks and bank accounts in ron or foreign currency wherever they operate, both in the country and abroad;
- Declaration of goods supervisory body or taxable values stored in any other places;
- Declaration of any changes regarding the headquarters, branch offices, warehouses, bank accounts within 15 days from the data when they occurred. Statement will be communicated to the competent tax authorities;
- Highlighting realised revenues and incurred expenditures from developed activities by drawing registers or any other documents required by law;
- Term payment of the amounts owed to the state as a result of obtaining income, possession of movable or immovable property or the conduct of activities subject to taxes.

It must be said that tax evasion is undoubtedly one of the most studied phenomena in the tax Law and Taxation both theoretically and practically. Nevertheless, there is not a fairly precise definition of the studied phenomenon. We can talk about some inaccuracies in defining the terms of tax evasion, tax fraud, economic crime, inaccuracies arising mainly from the use of a set of terms to define essentially the same thing: willful failure to tax obligations by taxpayers.

Fraud and tax evasion are complex issues that require a coordinated and multilayered response. Aggressive tax planning is also an issue that needs urgent attention. These are global challenges that no EU country can face alone. Action Plan in fiscal matters governed by the joint statement of the United Kingdom and Germany from november 5, 2012 which requires taking measures on international level to consolidate

tax standards, identifies a number of specific actions that can be developed now and in the future.<sup>3</sup>

Implementation of sustainable fiscal policies is essential for the accumulation of surplus value to the macroeconomic level. Reducing public debt and budget deficits contribute to maintaining low interest rates, helping to keep inflation under control and provide a framework for developing optimal investment.<sup>4</sup>

In the content of the article we identified data of controls made by the competent authorities in Romania, as well as data regarding their fight to combat and limit tax evasion, information analyzed in comparison to a 4-year period (2009-2012).

I have highlighted, based on performance reports during 2009 - 2012 using data from the tax audit work, the results obtained by the Financial Guard and National Customs Authority in the fight against tax evasion and the objectives of the National Agency for Fiscal Administration on medium term from 2013 to 2016.

The article continues with the object and functions of the tax audit, a tool for preventing, detecting and fighting tax evasion and extent of its forms, while being presented the subject and the manner of audit.

## 2. Tax Evasion in Romania

In relation to tax regulations, the behavior of economic agents is contradictory, with trends and motivations to circumvent or limit the impact of the tax burden over their financial results.

Therefore, there is need for implementation and maintenance by state of financial and fiscal control to prevent or reduce the losses of public revenue due to tax evasion behavior of individuals and businesses.

The most important control functions of the evasion phenomenon in terms of permanence, completeness and scope, returns to the National Agency for Fiscal Administration (N.A.F.A.) as representative of the state and the execution of the state budget.

N.A.F.A. was founded by O.G. No. 86/2003, is in operation since 2004 and is under the Ministry of Public Finance (MFP).

Financial Guard operates under its authority, also the National Customs Authority (N.C.A.) general directorates of the public finance county and the

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<sup>3</sup> Radu M.E. (2013). *Financial cooperation mechanisms in the fight against banking fraud in the UE*, Knowledge Horizons- Economics, vol. V (2013), no. 4/2013, ProUniversitaria Publishing House, Bucharest, p. 91.

<sup>4</sup> Radu D. I.(2013). *Tax Competition – economic and financial policy instruments*, Knowledge Horizons- Economics, vol. V (2013), no. 3/2013, ProUniversitaria Publishing House, Bucharest, p. 91.

General Directorate of Public Finance of Bucharest, as public institutions with legal personality:<sup>5</sup>

a) Financial Guard - central unit (Bucharest General Commissariat), 41 county departments and department of Bucharest;

b) National Customs Authority - central office, 8 regional directions, 42 county directions including Excise and Customs Directorate of Bucharest, 46 customs offices (44 inner border and 2 of inside );

c) Tax administration - central office, 42 DGFP's (county and Bucharest DGFP), 42 medium AFP for taxpayers, 221 municipal, city, communal AFP , and districts of Bucharest and the General Administration of Large Taxpayers.

Fighting tax evasion was in the analyzed period 2009-2012, a very important goal for N.A.F.A.

The control carried out by the three structures of N.A.F.A. (tax audit, the Financial Guard and the National Customs Authority) is oriented mainly towards ensuring equality of citizens before their tax obligations and to maintain fair competition between economic agents by reducing supported tax evasion which affects revenues and distorts environment business.

### 3. Tax audit activity

In 2012, the number of fiscal inspection actions that targeted with priority the control of taxpayers with high fiscal risk was growing. The growing internationalization of economic activities has created to multinational companies favorable conditions for fraudulent practices, price manipulation between subsidiaries of the same company being commonly used in order to reduce taxation in the country of production or destination.

Under these circumstances, N.A.F.A. has stepped up the sweeps of transfer pricing to the related taxpayers which records structural losses by transferring profits.

A draft procedure for controls in intra-Community acquisitions was elaborated.

This procedure aims mainly to monitor the goods purchased from the Community in order to reduce the risk of tax evasion and stealing from the correct declaration of tax liabilities, respectively the risk of not collecting the obligations to the consolidated state budget .

It was extended the collaboration with european tax administrations, including participation in the realization of multilateral controls to prevent and combat cross-border fraud, improve and perfect the techniques, methods and skills of control.

From the results obtained by the tax inspection teams, that there are areas where fraud is more frequent or large scale, as follows:

- Construction and building materials;
- Production and sale of food goods;
- Production and marketing of energy products;
- Transportation;
- Wood exploitation and processing;
- Production and sale of tobacco products;
- Black and gray labor-use;
- Production and recovery of alcohol and alcoholic beverages.

In the analyzed period, 2009 -2012, tax audit activity showed the following results (table 1).

Regarding the data presented in Table 1 we notice in Chart 2 that the amount of additional obligations set decreased in 2012 compared to 2011 and 2010 by 23.1% and respectively 25.6%, in contrast to 2009 where there was an increase of 6 8%, in the context where the number of taxpayers inspections (see chart 1) decreased in 2012 by 9.8% compared to 2010 and by 12% compared to 2009, increasing by 1.8% compared to 2011 (the number of checks gradually decreased from 112.170 Ron in 2009 to 109.286ron in 2010, reaching 96.835 Ron in 2011).

Also precautionary measures were prepared (see Chart 3), increasing by 31.9% (compared to 2011), 32% (compared to 2010) and 79% (compared to 2009), with the confiscated goods (see Chart 4) to a smaller percentage with 72.6%, 79.1% and 73.6% compared to previous years (respectively 2011, 2010, 2009) and deficiency.

Fines were applied (see chart 5) less by 49.3% compared to 2011, 58.4% compared to 2010 and a percentage of 46.3% compared to 2009.

To reduce tax evasion, it is necessary to limit the negative effects of taxation on taxpayers. Thus, we consider: tax determination that has the best performance but at the same time, does not create distortions in economy, creation of appropriate legislation in tax evasion, setting up of an effective tax device which can monitor and curb inflationary phenomenon. Tax authorities should adopt a fiscal policy to achieve the maximizing yield, but in the same time should not exist an excessive tax pressure for taxpayers<sup>6</sup>.

<sup>5</sup> Performance report N.A.F.A. 2012

<sup>6</sup> Penu D., Apostol D., Prodan L. (2009). *Tax fraud in the European Union*, National Scientific Session of Christian University "Dimitrie Cantemir", Pro Universitaria Publishing House, Bucharest, pp. 203-207.

Table 1. Tax audit activity in the period 2009 – 2012

Indicator's name	2009	2010	2011	2012	Percentage variation 2012/2009 (%)	Percentage variation 2012/2010 (%)	Percentage variation 2012/2011 (%)
Number of checks from contributors	112.170	109.286	96.835	98.625	88	90,2	101,8
Additional obligations set (mil. of ron)	6.082	8.728	8.454,4	6.498,4	106,8	74,4	76,9
Value precautionary measures (mil. of ron)	1.948,1	2.642,3	2.645,4	3.488	179	132	131,9
Seizures (mil. of ron)	96,9	122,3	92,9	25,6	26,4	20,9	27,6
Value of fines contravention applied (mil. of ron)	43,2	55,8	46	23,2	53,7	41,6	50,3

Source: Performance Report N.A.F.A. 2010 - 2012

Number of checks to contributors (mil. of Ron)

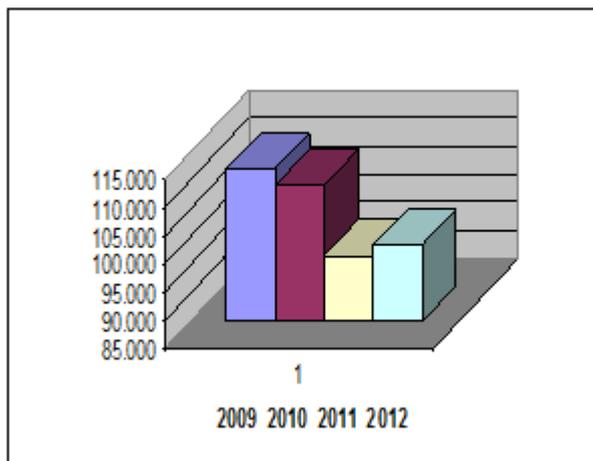


Chart 1

Additional obligations set (mil. of Ron)

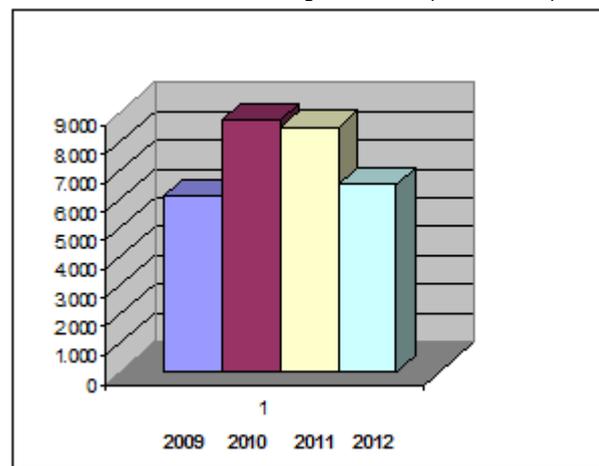


Chart 2

Lien amount (mil. of Ron)

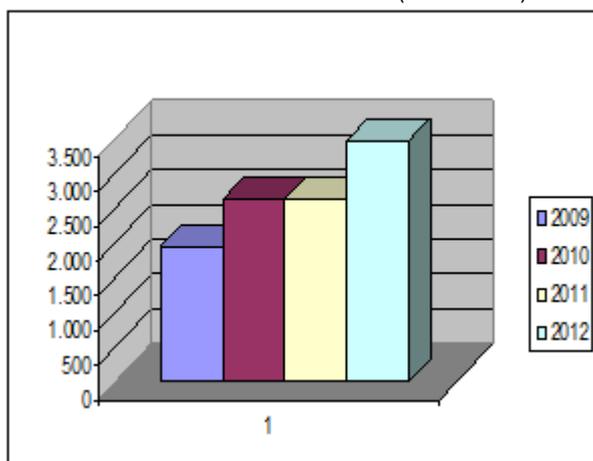


Chart 3

Seizures (mil. of Ron)

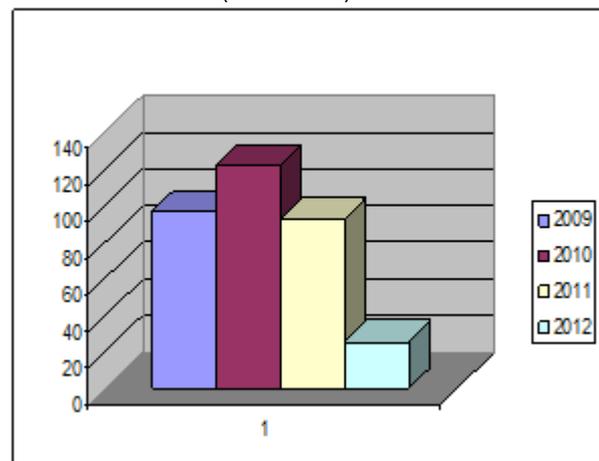


Chart 4

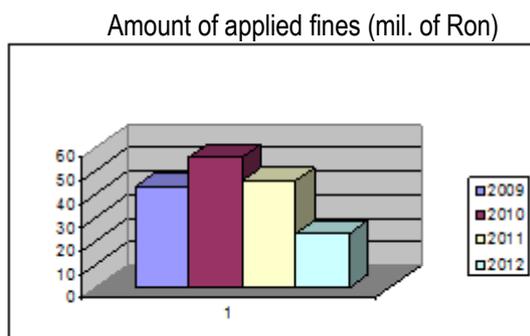


Chart 5

#### 4. Conclusions

Tax evasion has become a ubiquitous phenomenon in the economic and social plan. The magnitude that took it is worrying, because in the absence of stronger measures of control and sanctions on those who carry it out, may close in the future stability of the national economy.

The state, regardless of its organization, has always created a control system whose main objectives were targeted in most cases the activity of tracking and collecting financial obligations of citizens towards the institutions.

To combat tax evasion in addition to severe sanctions imposed on those who violate the law, there should be done an effective fiscal control, a viable legislative system and perhaps not least an adequate fiscal education of citizens through the development of information services and their fiscal support.

Analyzing the data obtained after controls made in the the analyzed period, respectively 2009-2012 we note that Romania, every year is trying to blur the renewal evasion methods, by investing in technology and equipment, trying to overcome economic issues (economic crisis), and by strengthening controls although the number of employees decreased significantly compared to previous years, applying a large number of fines, this pointing the taxpayer to respect the law and pay the contributions to the state.

To limit evasion laws (No. 87/1994 and no. 241/15 July 2005), related to fighting tax evasion, it must be simpler, clearer, more precise and relatively stable, for authorities to succeed in clarifying the differences between cases where laws are violated with fraud intention, or are violated without fault, by negligence, or by causes beyond the control of the taxpayer. It is also necessary to reorganize control and tax checks, to pay more attention to the training of tax inspectors in order like interventions and their results to be more efficient and a by better quality. Another solution would be for the National Bank of Romania to develop clear rules concerning the conditions to be met and the documents

to be completed and submitted to individuals as well as legal ones.

To obtain favorable results in a short time, the authorities who fight for eradication of tax evasion should elaborate laws without gaps that would not allow taxpayers to evade their due contributions.

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