

MANIFESTATION FORMS OF TAX EVASION IN ROMANIA

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Abstract. *This paper tries to present in a more explicit way all the forms of manifestation included in tax evasion. Tax evasion is one of the most complex economic and social phenomenon that takes place in today's economy, as an unwanted consequence of crisis. Hence, this phenomenon leads to distortions of the market and social inequalities. Tax evasion is an important problem of the current Romanian economy.*

Tax evasion is an acute problem of the Romanian tax system and has become even more acute with the appearance of the economic crisis due to the increase of the budget deficit and the fact that people are much more inclined to tax evasion because of the reduction of profits and income.

Keywords: *tax evasion, fraud, economic growth, taxes, fiscal system, tax, jobbers.*

JEL Classification: *H2, H20, H26, K3, E2, E26*

1. Introduction

Political talk around the world condemns tax evasion unanimously. However, the prospects for this phenomenon have not changed over time. It persists in all countries and all times, despite sanctions. Moreover, it leads to indifference for many people.

The effects of tax evasion have a direct impact on tax revenue levels, this leads to distortions in the market mechanism and may contribute to social inequities due to different "access" and "inclination" to tax evasion on the part of the taxpayers.

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Tax evasion therefore consists of all the legal or illegal procedures through which taxpayers, individuals or legal entities, partially or entirely escape their taxable items from the payment of the obligations established by the law, violating not only an ordinary normative act but also the Constitution of Romania, that states that "citizens have an obligation to contribute, through taxes and fees, to public spending."

Depending on how it can be done, tax evasion knows two forms of manifestation: evasion that can be done using the law (legal evasion) and evasion that is done in violation of the law, and is therefore illicit or fraudulent.

"Tax evasion has always been active and ingenious because tax affects individuals in their wealth, that is the most sensitive interest: money."²[1].

Tax evasion is known as "the art of avoiding tax law ". We understand by lawful evasion, the action of taxpayers to circumvent the law, resorting to a combination, unforeseen by the legislator and thus tolerated by omission. It can only be possible due to inadequacy or gaps in the law, and is more frequent in times when new forms of business or new taxes arise.

By illicit tax evasion "we understand the action of the taxpayer that violates the legal prescription in order to not pay de due tax "³[2].

The definition of legal or illegal tax evasion is necessary and useful because it offers at least the possibility of estimating the theoretical magnitude of the phenomenon on the two forms of manifestation. Since there is a difference between legal evasion and illegal one, we have to draw a line in order to separate these two areas. In practice, the delimitation operation is as uncertain as the distinction between fraud and evasion. The uncertainty comes from two factors: the interpretation of the terms legal and illegal, and the contradictions of the comparative law solutions.

From the fiscal and criminal point of view, the tax fraud consists of three classic elements: legal, material and intentional.

The legal element is an obvious necessity. The principle of the lawfulness of incriminations provides the taxpayer with a guarantee against the possible abuse of the state. The conviction for tax fraud is only possible on the basis of an appropriate legislative text (according to Article 9 of the

² Virgil Cordescu – "Evaziunea fiscală în România", teză de doctorat în Științe economice, 1936.

³ Virgil Cordescu – "Evaziunea fiscală în România", teză de doctorat în Științe economice, 1936.

Romanian Anti-Tax Evasion Act)⁴.

The material element implies that fraud should not be considered latent. In order to be convicted, an external fact must be proven. In our legislation, as in other countries, the attempted fraud is punished. This extension, raises the question: what is the line between attempted fraud and fraud. The latter manifests itself through omission (which is very common and can take on two forms, the omission of the declaration or the omission of an asset) and by action involving the concealment of the taxable material.

The intentional element is the most delicate dimension of tax fraud, because a common view is not yet established between doctrine and positive law. However, in order to prove the intention, the taxpayer must first have been aware that he was violating a legal tax provision; then that he acted knowingly. Therefore, it must be demonstrated that the act of tax fraud was committed freely, without constraint.

2. Forms of manifestations of tax evasion and fraud

2.1. Sociological manifestations of tax evasion and fraud

The generalization of the phenomenon on a planetary scale depends on the psychological nature of the human condition, the selfishness of its nature, the feeling of confiscation of work results without receiving the equivalent of payment in another form (public services"). There is a taxpayer psychology to not pay what he cannot pay." Human nature always has the tendency to put the general interest behind individual interest, and is inclined to consider taxes as damage than as a legitimate contribution to public spending, and to always see with bad eyes the one who wants to diminish his patrimony "⁵.

Socio-professional categories are not equal to the possibilities of tax evasion. So there is a sociology of tax evasion. Fiscal clearance can depend on social categories in relation to the nature and source of income or wealth subject to taxation, through the quantification of the taxable matter, the way tax institutions are organized, etc.

The international geography of fraud demonstrates the planetary

⁴ <https://lege5.ro/Gratuit/gy4tenju/legea-nr-241-2005-pentru-prevenirea-si-combaterea-evaziunii-fiscale>.

⁵ Jean Claude Martinez – “Le fraude fiscale”, PUF, Paris, 1990.

spread of the phenomenon that encompasses all countries, either highly developed or in development, located north or south, east or west.

As far as tax fraud is concerned, all studies confirm that fraud is a reverse function of income or turnover. In other words, it is proportionally more important for small taxpayers than for large ones.

Small businesses resort to fraud more than large ones, because of both facilities and necessity. The facility is often secured by the family's business character. A family business benefits from a secret of its management that is not at the fingertips of large businesses.

2.2. Technical manifestations of tax evasion and fraud

a) Legal tax evasion

In the practice of market-economy states, the facts which take into consideration the favorable interpretation of tax legislation, like the cases of legal tax evasion, are the following:

- Creation of depreciation of reserve funds in a higher amount than is economically justifiable, thus reducing the taxable income;
- the practice of some companies to invest a portion of the profit in purchases of machinery and equipment for which the state grants income tax cuts, a measure designed to stimulate the build-up. Reinvested earnings should be used to develop profitable activity;
- family associations as well as occult societies between the wife and children of the entrepreneur and himself. The result of such maneuvers is their separate taxation, the distribution of revenues to each associate leading to the reduction of tax burden;
- the total income of the members of the family can be divided equally between them, regardless of their contribution to their realization, thus reducing the amount of income tax owed to the state;
- the establishment of custody and custody facilities by the parent or guardian of funds in favor of the minor child. The income for the deposit, although subject to taxation, is higher because the tax paid is lower compared to what would be due to the income thus divided;

- the use, within certain limits, of legal provisions on philanthropic donations, whether or not they have taken place, leads to stealing some of the revenue from taxation;
- a taxpayer has the choice either to opt for income tax for individuals or for the corporate income tax system. By opting for the second tax regime, the taxpayer undergoes a significant evasion of taxable income because the corporate tax system includes many facilities that lead to a substantial reduction in tax burden;
- taking into consideration the legal facilities for the exclusion of living expenses from the taxable mass – costs of professional training and practice in production, the amounts paid for research contracts which have as their object priority programs of national interest;
- the benefits in kind (service machines, stock options, that is, rights to subscribe to shares of the enterprise attributed to management in completing the salary, more than generous allowances as professional expenses, loans as holiday residences, participation in schooling expenses for children, etc.) attributed by employers to their best paid employees to escape high income tax rates;
- the deduction from taxable income of protocol expenses, advertising expenses, whether or not they existed;
- the favorable interpretation of legal provisions providing important facilities (exemptions, reductions) for contributions to support social, cultural, scientific and sports activities;
- tax incentives granted to economic agents in certain branches of the economy at the time of establishment or in the course of their activity in the form of tax exemptions or reductions allow also that, under the law, part of the income escape from taxation;
- residencies abroad, in tax havens (financial centers) that offer more favorable tax conditions than they enjoy in their countries, for residents who invest here for individuals and companies, etc.

b) Technical manifestations of tax fraud

Fraud techniques can be categorized by different criteria. A first criterion is the fiscal one, which distinguishes fraud based on income tax

and tax evasion.

The first one is more frequent. It consists in diminishing the taxable base by either minimizing revenues, profits or turnover, or by increasing tax deductible expenses, fraud that takes place once the tax obligations have to be paid, relating more to customs duties and VAT.

The existence of multiple tax rates incites the passage of a commodity from a field imposed more heavily to a less required field. Thus, by making a false customs declaration on the characteristics and use of the imported products, a tax reduction can be achieved by applying a lower rate than that owed to the State Budget.

Another classification criterion is the material one which distinguishes two major fraud techniques: fraud through the concealment of taxable material and the increase in deductible expenses. Depending on the same material criterion, we distinguish frauds by action and omissions. The former implies an active behavior, for example the use of a fictitious document, while others restrict themselves to abstinence, such as not declaring an income.

Depending on the authors of the fraud, we distinguish frauds made by individuals and frauds made by legal persons. This distinction is interesting in terms of sanctions in particular.

Fraud can also be viewed from a geographic point of view when it comes to national and international tax fraud.

c) National fiscal fraud

National tax fraud occurs between the borders of a state, both in its craft form and in its industrial form.

Craft tax fraud has as a major characteristic that it is defined less by the technical means of achieving it or the magnitude of tax evasion from payment to the state budget, and more so by the isolated, self-acting way of its authors. The craftsman is acting alone or at least without resorting to an organization for that purpose, that is, not acting in relation to others. Crafting fraud is the one that we meet "everyday".

Examples of craft tax fraud are multiple. They go from a normal decrease in the real selling price of a real estate or the import of goods without being declared until the income is recorded in the accounting or the deductible expenses increase.

Another form of tax fraud is black work that is symptomatic of tax

resistance. It allows the exchanger to obtain undeclared (main or complementary) incomes. And when this is done in a wage setting, it relieves the employer of social expenses (contributions or social contributions).

The greater the difference between the actual net salary received by the worker and the overall cost of the workplace (the gross salary plus the contributions payable to the employer), the more the employer will be more interested in resorting to undeclared work. As a result, income tax and social contributions losses may be considerable.

Industrial tax fraud is manifested through the use of complex procedures and ingenious legal arrangements. This type of fraud is both fiscal and criminal.

Industrial tax fraud is achieved through a division of action within an underground network that aims to support and cover fictitious operations. So, in this case, several individuals and / or legal entities are involved in making profits, which are usually very important, by fraudulently evading taxes.

Those who commit the tax fraud are basing this act on a simple principle. Fiscal verifications are limited only to the finding by the inspection bodies and their assurance that there is compliance (conformity) between the bookkeeping (balance sheet) and the supporting documents (invoices, delivery notes, bills of lading, bills, etc.). So, in order to achieve fraud safely, it is sufficient to ensure the consistency between the accounting records and the supporting documents underlying it.

d) Methods of achieving international tax fraud

Achieving international tax fraud can occur through:

- transferring profits to a low-tax country by manipulating transaction prices;
- the non-repatriation of income earned abroad through the handling of remuneration.

The first technique, transfer of profit, raises one of the most classical problems of international tax law. The manipulation of transfer pricing occurs in the relationships between parent companies and their subsidiaries. Group members have, in reality, only a very limited autonomy in relation to the parent company which manages them. The commercial transactions between the group subsidiaries give rise, at prices fixed according, not so much to economic truth (market prices), but to a tax stratagem using the

gates and the breaches offered by different tax laws. The method used is that of transfer pricing. Through transfer, in a broad meaning, we understand any value recorded in the enterprise accounts, corresponding to a similar input value from another enterprise accounts.

In order for the tax administration to establish the presumption of indirect transfer of benefits abroad, two conditions have to be met:

- the simultaneous existence of dependence links between societies
- the existence of a normal advantage.

In particular, tax fraud occurs by increasing purchase prices or decreasing sales prices.

The increase in purchase prices takes place on import, while the decrease in selling prices takes place on export. For example, a multinational firm in a country exports goods to another country using the service of its two subsidiaries, Bermuda and the importing country for this purpose. The parent company of the exporting country originally exported to the Bermuda subsidiary, artificially establishing a low transfer price, so that the profits of the transaction would not occur in the exporting country but in the Bermuda subsidiary. In turn, the Bermuda subsidiary exports the goods of the importing subsidiary at a high artificial transfer price so that this time, the profits also appear in the balance sheet of the Bermuda subsidiary.

The purpose of these operations is to transfer most of the profit to Bermuda, where income taxes are particularly low. The goods never reach Bermuda (the market of countries where intermediate subsidiaries are located). Everything is done only in writing. All transactions are carried out in the accounting records and, although the tax authorities know the mechanism very well, they cannot do anything.

The action of the financial bodies is blocked because they have the legal possibility to impose only the profits that appear in the balance sheets, and as they are properly recorded in the documents, the mechanism of legal tax evasion is perfect. This way, the parent company diminishes its tax base and its obligations to the state budget.”⁶ [4].

The administration may hinder the method of transferring benefits resulting from the reduction in the sales price or the increase in the purchase price by imposing the full price of competition without regard to the link of

⁶ N. Murgu, P. Ștefănescu, M. Isărescu – “Afaceri și căderi financiare în lumea capitalului”. Editura Dacia, Cluj Napoca, 1979.

dependence between the companies concerned.

The transfer price of a good is considered to be abnormal if its size is lower than the normal price of other customers or the prices normally practiced, the decrease taking place by omissions in the calculation of the costs that serve as the basis for the export price, or the cancellation of the margin reimbursement of benefits.

An abnormal advantage may result from loans or advances agreed by an enterprise in favor of another, with interest-free or low-interest payments. Abnormal financial operations leading to evasion or tax fraud occur in this case.

Manipulating the remuneration of services abroad consists in not reimbursing the income received. Evasion, if not fraud, is often allowed through basic societies or fictitious companies that receive remuneration for services owed to a taxpayer in a heavily taxed country. This process was discovered in the 60s and is known as rent a star company (company that rents its services to an artist).

The actor or professional athlete receives a fixed remuneration paid by the company he controls and far below the fees paid by the producing companies.

"American professors teach at Canadian universities for 2 years and thus avoid both Canada and US taxes: American residents who work abroad for more than 18 months benefit from income tax relief from US authorities, and in Canada foreign teacher's income is not taxable in the first 2 years of residence there. Movie stars prefer to have their domicile in Switzerland because their income tax is lower than in England, Sweden, etc. British lords prefer to leave London when they reach old age, moving into a tax haven (eg the Bahamas) to avoid the very high taxes imposed in England on the wealth of the deceased."⁷ [5].

From the outset of the procedures and instruments of international tax evasion, we conclude that the line separating international tax evasion from tax evasion remains uncertain.

The problem is complicated to the extent that the same fiscal actions undertaken by the taxpayer can be classified in a country as tolerated and in others as constitutive manoeuvres of tax fraud.

⁷ J. N. Murgu, P. Ștefănescu, M. Isărescu, *op. cit.*, p. 223.

3. Case studies on tax evasion and tax fraud in Vrancea County

Given that our country's trade has increased substantially, especially after Romania's accession to the European Union, the phenomenon of large-scale evasion has expanded, physical and legal persons diversifying the means of circumventing the legislation. In this context, the evasion scale has registered an increasing share in the Romanian economy.⁸

The issue of tax evasion has been politically supported, tolerated, avoided and postponed for 23 years. At present, in full financial and economic crisis, there must be taken firm action in a least two major directions of hidden economy: underground labor and tax evasion with the purpose of obtaining a public budget oriented towards competition, cooperation, investments, economic growth, transparency and honesty⁹.

In order to elucidate the mechanism of tax evasion, the informal economy as a whole, the factors favoring their emergence and development, the value proportions they have reached and, implicitly, the impact on the State budget, we have analyzed in depth the areas of activity that are best represented in the territory of Vrancea County. Research, enquiries and surveys have highlighted the impressive amounts of the "other economy" that come from the activities of individuals and legal entities, often carried out with the indulgence of institutional factors, which should take action against the facts and illegal activities.

That is why we considered that presenting case studies could better help us understand the phenomena in our own right by trying to answer some key questions: how they are born, who is competing and helping to produce them, what sizes are the amounts of money so circulated, where do they go and what are they ultimately used for, these so called "black money".

Following our investigations, of the spheres of activity prolific to the phenomenon of tax evasion in the economic geography of the county, we detained the following:

- commerce (wholesale, retail, public alimentation, etc.);
- Collaborations and affairs between state-owned companies managed by the political power of governing parties and private

⁸ Adrian Amarița, Evaziunea fiscală în România, Revista Română de Statistică – Supliment nr. 1, 2017, p. 4.

⁹ Sorin Adrian Ciupitu, Mirela Nicolae, Tax evasion in Romania, Journal of Academic Research in Accounting, Finance and Management Sciences, vol. 1, no. 1, January 2013, p. 159.

- firms, tick-companies who, without too much effort, earn onerous profits (at the expense of the first ones);
- the services sector – the activities of lawyers, doctors, teachers, meditators, all of which are liberal professions;
 - the small industry – which, using the raw material purchased, usually on the agricultural market, produces finished or semi-processed consumer products for the population (bread, pastry – confectionery, semi processed food and meat preparations, etc.).

In our opinion, there is a need for a clearer distinction between legal and illegal evasion. Or, in practice, the delimitation operation is as uncertain as the distinction between fraud and evasion. In theory, the taxpayer respects the law or violates it, whether or not he owes the tax, pays it or not. Instead, in practice, this conception does not correspond to the complexity of taxation, so there is no rupture between legally and illegally, but a continuity. Successful attempts to seize the loopholes often lead the taxpayer from legal actions to fraud. "It can be said that there are three families of taxpayers. One of the honest taxpayers (white), others of the rogue (black) and gray who escape paying taxes, either legitimate by skill or legal through acrobatics or abuse of law"¹⁰ [6].

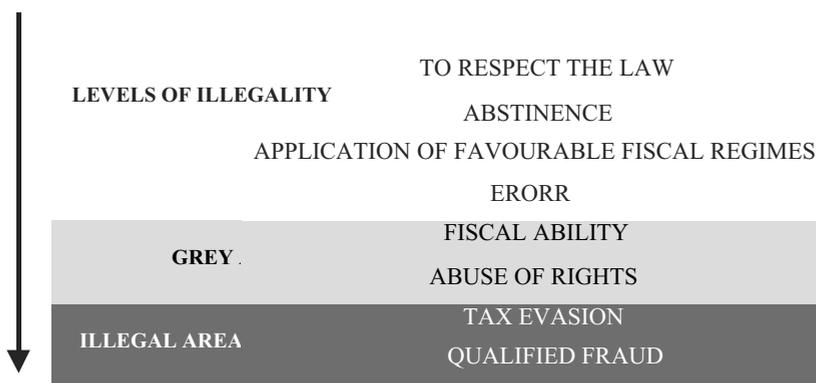


Diagram no. 1 – Fiscal fraud and tax evasion

¹⁰ M. Cazian, “L’impôt sur la revenu au question”, Litte 1989, citat de J.C.Martinez, opere citite pagina 10.

According to this diagram, the taxpayer misleads the use of fiscal options, from simple abstinence to lawful manipulation of laws and ultimately abuse of tax laws to qualified fraud. In practice, it is sometimes difficult to distinguish an involuntary accounting error from the conscious decision to reduce the tax. In addition, the multifaceted notion of tax evasion has a content whose variable geometry prevents an accurate delimitation between acts compliant with the law and acts contrary to the law. It follows that the limitation between "legitimate" and "illegitimate" tax evasion can only be drawn on a case-by-case basis.

Case study 1

The production of goods of strict necessity, with a constant demand on the market and fast selling – bread, meat products and preparations, production of confectionery, confectionery, etc.

- is carried out under specific conditions that facilitate the non-recording in the bookkeeping of a significant part of the activities carried out, so that the base for calculating the state taxes is considerably diminished;
- the raw material needed is mainly purchased from individuals;
- flour or cereals, animals, dairy products, fruit for confectionery (apples, walnuts, sour cherries, etc.);
- the suppliers of such raw materials do not issue documents (they do not have this quality) and the entrepreneurs who purchase them take advantage of this and make records for these products in accounting but only in very small proportions;
- the appropriate accounting document established for the registration of purchases of agricultural origin from individuals is the acquisition slip, which does not fall within the category of the special regime – the series, the order number is given by the person using it etc.;
- not registering the raw material purchased in its entirety, the resulting finished products also become unregistered, which will make them be used on the "black market";
- in such activities, according to the provisions of Law no. 82 / 1991 of accounting and G.D. no. 704/1993, the entrepreneur writes

- production reports – which have the same "special regime" as the purchase fronts and can be purchased from any bookstore center;
- the delivery of the obtained products is based on delivery notes. Tax evasion at this point extends along the chain, because the one delivering the specific products has established "collaborations" with the one who redeems them – through shops, confections, places, etc. – so that on the same shipping bill issued for the first "batch" is delivered 2 – 3 times or even more times the same products, without anyone being able to see these transactions.

The marketing of the products listed above becomes even easier when the one who produces them has their own store or network, so that the "success" of the whole business depends only on 100% of its ability.

An enlightening example of the above, refers to the production and exploitation of bread.

As noted in the preamble of this case, to maximize profits, any entrepreneur seeks breaches, gaps in legislation, and strengthens a strategy to leave no trace, which can be considered evidence, thus nothing cannot be identified or sanctioned if the fiscal institutions try to take action against it.

By calling on suppliers who do not issue documents – the supply itself depends entirely on it – any cross-check can hardly establish any responsibility except in cases where it is demonstrated by other evidence that it is guilty of non-registration of such of operations.

Bakeries are usually supplied with basic raw material – flour – in various ways:

- from milling specialists who wholesale this product;
- acquires wheat – speculates this detail and looks for it in large production areas (Teleorman, Ialomița, Călărași, etc.) where the prices at source are usually lower – then it turns into flour through the supplying units (grinding mills).

We have looked for data on this to analyze and determine how the flour quantities resulting from the processing of purchased wheat, is used. We formally requested the largest economic agent with milling and bakery activity in the county – SC COMCEREAL SA VRANCEA – the situation of milling services to third parties during 2014. Thematic verifications were ordered on the basis of the submitted information, the result revealing the following aspects:

Total amount of processed wheat (KG)	Quantities obtained (KG)	
	flour	bran
5.144.762	3.362.589	1.782.173

The beneficiaries of these quantities of flour and bran resulting from transformation account for 87% of individuals without any authorization to carry out an economic activity, 13% of these are firms that produce bread.

Only from this source of information we could determine tax evasion due to the transformation of the flour into bread, thus:

- specific consumption of flour per ton of bread – 760 kg / t of bread;
- the amount of bread produced – $3.362.589\text{kg} : 760\text{kg/to} = 4.424.000$ kg bread.

In 2014, 1 kg of bread was sold at the price of 3.3 lei, thus resulting in a value of bread consumed without legal forms of 14.599.200 lei;

- the chosen form of taxation is the one established for the taxation of the incomes of individuals, the taxation being done according to the following rule:
 - the basis for calculating the income tax is the difference between income and expenses; but not knowing in detail all the elements of expenditure, we will appreciate that the average profitability of such activities is usually 20%, so it results in a calculation basis of 2.911.840 lei (20% of 14.599.200 lei);
 - the tax related to it: 465.894 lei;
 - The VAT calculation rule (VAT deducted – VAT deductible) automatically determines a VAT non-payment in this case because you cannot deduct VAT in the procurement system for lack of invoices or legal documents accepted for that purpose. VAT deductible can actually occur only from other transactions – for example, invoices issued by electricity suppliers, negligible in proportion as in the case of bread. In conclusion, VAT collected is almost entirely VAT. It is included in the selling price of bread, resulting in tax evasion of 1.313.928 lei (9% of 14.599.200 lei).

Thus, in 2014, the state budget was affected by the unfolding of such activities with at least the amount of 1.779.822 lei.

Case study 2

Paradoxically, at first glance, legal tax evasion is also present in agriculture, where some of the workforce released by industrial enterprises has found refuge.

Since the first years of the transition, large-scale firms operating in this field have been dismantled, regardless of their type or organizational form. Subsequently, a number of agricultural units, set up in accordance with Law no. 36/1991, such as farmers' associations or companies, especially in areas where CAPs and IASs were operating prior to 1990. They appeal in overwhelming proportions – which sometimes exceed 90% – especially for jobbers.

In general, the management of the respective units cannot determine with certainty the workforce for the next working day, no matter what kind of jobs are scheduled to be executed – gardening, picking vegetables or fruits etc. In the morning, before starting work, it is found that most people that arrive at work are different than those of the previous day. Also, seasonal agricultural workforce is sometimes formed by holiday students, elders, Roma. Some of them either do not have ID cards – children up to 14 years old, or they lost them (Roma) – or do not carry them to farm work.

Therefore, in the work performed by jobbers, there can be no written contractual relations between the parties. On the other hand, it would be practically unrealistic if it were considered that a unit would not be allowed to carry out the work with any person, regardless of the social category, since it is important to carry out the work. In most cases, the agricultural units pay the value of the work done by these individuals in kind, so the taxation has been circumvented and the work appears in the accounting records without having recorded any natural expenses related to their execution.

Considering all the normative acts in the field, we observe that the regulation of the taxation of income realized by the jobbers has many gaps:

- neither from G.O. no.73 / 1999 on the income tax do not expressly mention the taxation of the income obtained by jobbers;
- the only revenue category that could accommodate the income of the day-laborers/ jobbers would be those assimilated to salaries. the Implementing Rules do not detail or expressly refer to this category of income;
- according to point 3 of the explanations given in application of Articles 22 and 23 by the Methodological Norms of G.O. no. 73 / 1999, "salary or wage income includes all the sums received as a result of a contractual employment relationship, as well as any amounts of salary received under special laws "; but the work done

- by the day-laborers/ jobbers does NOT take place on the basis of a typical (written) contractual relationship, since this would require, in accordance with Law no. 130/1999 on the conclusion of an employment contract or a civil service convention; according to the provisions of Law no. 130/1999 and G.D. no. 935 / 11.11.1999, in this case no civil service contract can be concluded because the work done by the day-laborers/jobbers is part of the basic activity of the employers and exceeds the maximum of 3 hours stipulated by the law;
- neither O.M.M.P.S. no. 747/13 Dec. 1999 for the approval of the norms for the enforcement of Law no. 130/1999 does not clarify the situation regarding the taxation of the income obtained by the day-laborers/jobbers;
 - work performed by day laborers/jobbers is a casual work, running short and intermittent on periods of time, usually seasons, workers often changing work places from one employer to another.

Case study 3

According to the legal regulations on tax, every income is taxed. Exceptions from this rule are certain categories of income and taxpayers in express situations provided by law.

An explanation of the lesser concerns of law enforcement bodies in the case of non-payment of taxes by individuals would be that the level of tax evasion in this case is much lower and that the tax body always has the objective to return from a verification with a consistent "price" (higher amounts attracted in addition to premiums and incentives – also higher that are earned monthly in addition to the legal salary), and, on the other hand, the absence of clear and coherent legislation on this issue:

a) the transfer of goods that bring income from the personal patrimony into the company's patrimony. Individuals who own apartments or dwellings that they rent, pay a tax to the State.

b) lending firms by individuals with significant amounts of money. According to current legislation, lending operations by business people are allowed. The lending operation is preferred because the borrowed amounts are returned by the company to the employer; unlike this situation, in case of a capital increase, which represents a definitive immobilization, it is necessary to change the company's status, a change that requires time and

money. From the analysis of this type of transaction, it is noted that the company's lending operation is, in some situations, a way of washing large amounts of money obtained by illicit means.

For the amounts credited to the firm – either by cash contribution or by contribution in kind or through appropriate and unjustified dividends – the commercial company owes to the lender the amounts deposited under a contract between the parties and the interest thereon. Interests are deductible in the calculation of corporation tax, within the limits of bank interest. If such interest earnings were obtained from bank deposits, according to G.O. no.73 / 1999 on income tax, they would be taxed with the 1% quota, tax paid by withholding tax.

c) the cash withdrawn from the treasury (cashier) of the company by employers or their representatives for various uses is not always related to the firm's activity and remains unjustified.

This method of acquiring money from the patrimony of a company has not been thoroughly analyzed by economists or lawyers; therefore, this process has not been classified – we have not identified any study material about it – as a means of circumventing any law to avoid taxing.

Indeed, the amounts withdrawn from the company's own treasury desk by the employers do not have the income regime but are assimilated to "treasury advances" intended to pay for protocol, advertising, goods and personnel, payment of services performed by third parties etc.

Respecting home discipline requires, in this sense, the justification of the amounts withdrawn by staff from the treasury, which does not always happen.

Such operations are regulated by a series of normative acts:

1) G.D. no. 704/1993 approving the Norms for the application of the Accounting Law no. 82/1991, which establishes the execution of such operations through the account 542 – "Treasury advances". This account specifies how to withdraw and use the amounts in the cashier of the unit, but does not provide for any measure or sanction if its debit balance remains unreasonable or unreserved by the person who withdrew the amounts. Personally, through my work, I have for years discovered, at different companies, large balances of this account, which increased from one fiscal exercise to another without anyone (the fiscal body) being able to take any measure against this state of affairs.

2) According to Decree no. 209/1976 (normative act with a surprisingly high standard, in the conditions in which, in the last years, the accounting and tax regulations have been proliferated), "the unspent amounts of the advance payments are deposited at the cashier no later than the working day following the return of the delegation or within the deadlines set by the legal provisions".

The arbitration and crackles of this regulation appear to be obvious. As for deadlines, cases are listed in Art. 29 lit. a, c and d of the Regulation, providing that "the record of the advances granted and the pursuit of their justification within the time limits established shall be carried out within the accounting department of the unit". But not even 30% of companies at national level have organized such compartments.

"The advance holder is bound" – by whom? – within the time limits set for the justification of the advance, to draw up and submit to the department of accounting of the unit that granted the advance, the statement of expenditure and all supporting documents... Advance holders who do not submit the accounts for the justification of the advances, together with the supporting documents, or do not return the unpaid amounts in due time, will pay a penalty of 0.5% on the advance received or on the unredeemed amounts for each day delay".

Not even the majority state-owned units no longer respect this normative act since 1976, considering it "socialist", and the management currently in force no longer takes such regulations into account.

Thus, there are important sums that are actually used for the personal endowments of employers, directors, etc., villas are built, luxury cars are purchased, commissions are paid, bribes, many things are solved and they have no tangency with the company's activity, which carries this money but remains with the unpaid budget obligations and the sources of financing for the development of the activity are no longer insured.

The villas are built with "direct labor", with more or less legally authorized personnel, mostly with people who work in the underground economy. The cars come, especially those of luxury, from the mafia-style chains stolen through specialized networks. We analyzed cases in which we found firms with losses, with zero dividends, with very large outstanding obligations to the budget, but whose employers had an extremely high standard of living with state-of-the-art personal facilities. In other words, the money "stolen" in this way from firms, maintains, develops and

permanently supplies the underground economy through an upward spiral, which self-sustains and continuously amplifies.

Conclusions

Once unanimous – the extreme heterogeneity of the phenomena that are the subject of the underground economy, it becomes clear that neither the causes of the manifestation and proliferation of the informal economy do not act uniformly and equally on the many forms that economic activities can take, that can be categorized as informal. The components of this area of the economy are therefore the effect of the action of different, multiple causes.

There is, of course, a multitude of features common to all activities that take place in the informal economy – of a general, structural or operational nature – the most important being¹¹:

- an efficient allocation superior to the official economy resulting from: sub-taxation, or under taxation of wealth, income, activities and, accordingly, overcapacity, or gaining higher earnings in the form of salaries, profits or other net results;
- a subunit report between the cost of breaching the rule and its compliance, plus additional transfer costs from the informal to the official one, which outweigh the risk of illegality.

The economic behavior of individuals and firms, based on known effects of income and substitution, may be methodological anchors of the highest relevance to decipher the choices that lead to the initiation and expansion of informal activities. Besides the quantitative elements, the models of the informal economy evaluation are deficient in terms of qualitative variables, with a major impact on the decision to access the informal economy, such as: the perception of individuals and firms about the ability and willingness of the government to monitor and counteract the dual economy; the spirit of imitation (if others succeed in circumventing the law, why should I respect it by voluntarily lowering my earnings?); the individual perception of the degree and speed of expansion of the dual economy; the preference / risk aversion of economic subjects etc.

Concerning legal / illegal dichotomy, specific to a large part of informal activities, it is necessary to consider: the existence of an osmotic

¹¹ Emil Dinga, *Asupra economiei duale*, *Oeconomica*, IRLI, Nr. 3, 2002.

layer – extremely diffuse and unstable – between the informal and the formal economy, which plays the role of a crucible that transforms economic activities from formal to informal, legal to illegal and vice versa; the phenomenological confinement (both statistically and physically) of activities that can present both different underground and official features in different proportions; the illicit nature of the resources used, or the manner in which they are used, whether the purpose of the activities is legal or illegal; the institutional deregulation, accompanied by strict non-institutional regulations (going to mafia-type structures), leading to the inexistence of bureaucracy, allowing for better circulation of information; the presence of corruption as a factor of protection against the government and the official economy.

If Romania collected half of the taxes existing in the underground economy, then it would hold budgetary revenues, as a percentage of GDP, at the level of EU average. Annual reduction in the size of the undeclared labor with 10% -15% could provide the necessary revenue (an extra of £ 3.5-5.5 billion lei) for the implementation of fiscal relaxation measures, such as reducing the employers' security contribution with 5 percentage points¹².

The informal economy is often regarded as inevitable, a permanent companion of the official economy, which it replaces or is complementary. From this perspective, the most rational objective appears to be understanding, monitoring, using and restricting it within acceptable limits, rather than complete and definitive abolition or dissolution.

Tax evasion produce an erosion on the public financial income, even if the economy is characterized by either a boom or a financial crisis, leading to the inability of governments to mobilize funding sources for stringent public expenditure (health, education, public investment, assistance and social protection, etc.)¹³.

The informal economy is a response of the economic system to the governmental, institutional and legal management act. It could be said that, the more the underground economy is, the deeper the governance deficiencies are. An effective management will know how to signal to their true size the signs that highlight the presence of the informal economy and,

¹² Cristian Nicolae Stănică, Underground economy and the tax evasion in Romania, Internal Auditing and Risk Management, year IX, no. 2(34), June 2014, p. 233-234.

¹³ Alice Georgiana Holt, General aspects regarding tax evasion in Romania, Annals of the "Constantin Brâncuși" University of Tg. Jiu, Letter and Social Science Series, 3/2016.

based on them, will react with intelligence, ultimately causing it to be more restrained.

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