



THE 6<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
**EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES**

**Present Legislative and Practical Aspects  
in the Field of Fighting Tax Evasion**

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**Abstract:** Tax evasion and the unauthorized actions committed in the VAT field have a significant effect over the tax incomes of Romania and disturb the economic activity producing important damages to the state budget. The present article underlines some of the last moment legislative modifications adopted by Romania in order to decrease tax evasion and to enhance the collections for the consolidated state budget.

**Keywords:** tax evasion; contraband; taxes; excises; crimes

In the present framework, when the global crises is deeply felt by the Romanian people, the problem of taxation and collecting taxes and fees is very important for the state, because it represents the most important available modality to collect funds absolutely necessary in order to supply the basic services, meaning the essential obligations and the consideration for “the social agreement” by which the citizens “pay” the state apparatus by taxes, decide regarding the administrators by the usual vote and expect to obtain a maximum value for the amounts paid, as public services supplied in exchange for their contributions. In this framework, tax evasion represents a direct and dangerous threat for the stability and predictability of the “social agreement”. Where necessary, the state apparatus has the implicit obligation to identify and constrain bad payers to pay their contribution for the proper function of the public services.

Taxation represents the citizens’ contribution for the development and durability of the state budget, from which the administration grants funds for public investments and different services, varying from infrastructure to the sanitary system or the police. These contributions can be collected directly or indirectly, depending on the strict regulations regarding the state’s public finances. While the states usually maintain a full control over direct taxation ( as the income tax and the companies’ tax along with the provisions regarding the avoidance or elimination of double taxation), the supranational organizations seem to focus more on indirect taxation, avoiding an obvious intrusion into the taxpayers’ routine. This theory is present also in the UE case where the *acquis* from the taxation field covers especially the indirect taxes, as well as VAT and excises. The Value Added Tax (VAT) was introduced in the European Community in 1970 through a series of Directives. The purpose was to replace some of the old production and consume taxes and the allocation of a percentage from the

VAT incomes (calculated on an integrated base) in order to finance the community budget, facilitating the path towards harmonization, between the Member States, of regulations regarding VAT. The sixth Directive regarding VAT<sup>1</sup> provided a common base for financing the community, applying the tax for the same transactions in all the Member States and at the same time introducing an integrated calculation base. The Directive comprises VAT definitions and principals related to the application of a general non-cumulative consume tax, collected for all the production and distribution stages. Therefore, the VAT regulations imply an equal treatment for inland and export merchandises and services and a neutral relation tax- price. In the excises' scope, the aquis comprises harmonized regulations regarding petrol products, tobacco products and alcohol beverages. The aquis provisions establish the fee that must be collected and the minimum price for each group of products. The merchandises are chargeable when they are manufactured within the Community or if they are imported from a third country; but the fee are paid only by the Member State in which the goods are consumed, with the prices established for that state. One of the most important clauses relates to the warehouse tax, allowing merchandises to be stored without paying the warehouse fee. As a result of increasing the harmonization between the Member States regarding merchandises liable to excises, the introduction of the sole market resulted in the cancellation, on January 1, 1993, of all tax verifications at the internal borders of the Community.

Since 2007, the European Commission acknowledged the fact that the total value of tax evasion and VAT frauds, at the European Community level, is difficult to assess, because many member states do not collect or publish data in this regard<sup>2</sup>, and that a strong political impulse is necessary in order to accomplish substantial improvements in the field of fighting economical- financial evasions. In the special report no. 8 from 2007, the European Accounts Court estimated that the value of the VAT evasions could exceed the total annual budget volume of the community<sup>3</sup>, and for this reason our country introduced with enforcement on July 2010, 2010, legislative modifications in order to limit the consequences of the complex social- economical phenomenon represented by tax evasion.

Tax evasion, but most of all the unauthorized actions committed in the field of VAT frauds, have a significant effect on the tax incomes of Romania and disturb the economical activity within the internal market by creating unjustified fluxes of goods and by introducing on the internal market of unjustified low price goods.

The legislative modifications introduced by the Government Emergency Ordinance regarding some measures to fight tax evasion. By OUG no.54/2010, for the efficiency of fighting tax evasion and contraband<sup>4</sup>, the following were modified and completed: Law no. 571/2003 regarding Tax code, O.G. 92/2003 regarding tax procedure code, Law no. 241/2005 for the prevention and fighting tax evasion, Law no. 508/2004, regarding the establishment, organization and function within the Public Ministry, of DIICOT, Law no. 39/2003 regarding the prevention and fighting organized crime; OUG 104/2002 regarding the customs regime of merchandises traded with duty free regime, Law 86/2006 regarding the Romanian Customs Code, HG 707/2006 for the approval of the application regulation of Customs

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<sup>1</sup> The Council's Directive 77/388/CEE, from May 17, 1977, for the harmonization of Member State's legislation regarding the turnover tax – the common system of value added tax and the common taxation base, published in, JO L 145 from 13.06.1977, last time modified by Directive 2002/38/CE

<sup>2</sup> The European Parliament's Resolution from December 4, 2008 regarding the special report no.8/2007 of the European Accounts Court regarding the administrative cooperation in the VAT field published in JO C 21 from 28.01.2010

<sup>3</sup> The quantification of VAT evasion, Special report no.8/2007 of the European Accounts Court regarding the administrative cooperation in the VAT field published in JO C 20 from 25.01.2008

<sup>4</sup> Published in the Official Monitor of Romania no. 421 from June 23, 2010

Code, Law 31/1990 regarding commercial companies, Law nr. 26/1990 regarding the Trade Registry, OUG 195/2002 regarding circulation on public roads and Law no. 290/2004 regarding criminal record.

The main modifications of the legislation framework of fighting tax evasion consist in:

Expanding the competences of the criminal pursuit bodies in order to ascertain crimes in the tax and customs field and creating the possibility for observing crimes in action and to efficiently administrate the evidence.

Therefore, art. 233<sup>1</sup> was introduced in the Tax procedure Code, with the following content:

„Art.233<sup>1</sup> Collaboration with the criminal pursuit bodies

(1) In case there are data or grounded evidences regarding the preparation or accomplishment of crimes targeting the goods provided in art.135 paragraph. (4) from Law no. 571/2003 regarding the Tax code or the goods from the excise application scope, the criminal pursuit bodies can perform ascertainment activities, research and evidences' conservation.

(2) In the situation mentioned in paragraph (1) the criminal pursuit bodies will immediately request from the verification bodies within the National Tax Administration Agency, to perform tax verifications according to the established objectives.

(3) At the criminal pursuit bodies' request, when there is a danger for the evidences to disappear or for a situation to change and there is necessary to immediately clarify some facts or circumstances of the cause, the assigned personnel of the National Tax Administration Agency will perform the tax verifications.

(4) In justified cases, after beginning the criminal pursuit, with the prosecutor's approval, the National Tax Administration Agency can be requested to perform tax verifications, according to the established objectives.

(5) The result of the verifications provided in paragraphs (2) – (4) is registered in minutes, representing evidences. The minutes do not represent debentures, according to art. 110.”

At the same time, art. 2 paragraph (1) letter. g from Law nr. 241/2005 for the prevention and fighting tax evasion was modified with the purpose of assigning the capacity of competent bodies and criminal prosecution bodies of the judicial police. Therefore, it is provided that: „g) competent bodies –bodies with financial, tax and customs verification attributions according to the law, as well as criminal investigation bodies of the judicial police”.

The incrimination, as crimes, of tax evasion actions, previously considered contraventions. Therefore, the following are considered crimes:

- the unauthorized possession of excisable products without being properly labeled or with improper labels ; Article 296<sup>1</sup> paragraph (1), letter. l from the Tax code:

„l) the possession, by any individual, outside the fiscal warehouse or trading on the Romanian territory of excisable products submitted to marking, according to title VII from the Tax code, without being labeled or improperly labeled or with false labels over the limit of 10.000 cigarettes, 400 cigars of 3 grams, 200 cigars larger than 3 grams, over 1 kg tobacco, spirituous beverages over 200 liters, intermediary alcohol beverages over 300 liters.”

- The installation of means to subtract alcohol and fuels from the production installations; Article 296<sup>1</sup> paragraph (1), letter m from the Tax code:

„m) Using mobile pipes, elastic hoses or other tubes of this sort, using non-calibrated reservoirs as well as placing in front of counters, channels or faucets by which one can extract quantities of alcohol or non-counteracted oils”.

- The unauthorized possession of stamps, banderoles and standard forms with special regime; Article 7 from Law no. 241/2005:

„art.7.- (1) It is considered crime and punished with prison from 2 to 7 years and the prevention of certain rights, the possession or unauthorized circulation of stamps, banderoles and standard forms used in the tax field with special regime.

(2) It is considered crime and punished with prison from 3 to 12 years and the prevention of certain rights, printing, holding or the intentioned circulation of false stamps, banderoles and standard forms used in the tax field with special regime.

It is considered a crime the unjustified refusal of an individual to present to the competent bodies, the legal documents and patrimony goods, with the purpose of preventing financial verifications, tax or customs verifications, within maximum 15 days from the notification.

Article 4 from Law no. 241/2005:

„Art. 4 – It is considered a crime and is punished with prison from 6 months to 3 years or with fine, the unjustified refusal of an individual to present to the competent bodies, the legal documents and patrimony goods, with the purpose of preventing financial verifications, tax or customs verifications, within maximum 15 days from the notification”.

By this regulation, it is provided the integrity of evidences, prevention of destructive actions, hiding or perfecting false documents as well as the improvement of the state bodies' authority. In the previous regulation, there was necessary to fulfill three times the notification procedure for this refusal to be considered a crime.

Establishing standards for the registration and removal from the evidences, of the taxable entities performing intra-community commercial operations, especially intra-community acquisition of goods, in order to fight tax evasion in the VAT field for the acquisitions of: cereals, technical plants and oleaginous products, vegetables and fruits, flowers, meat and products from meat, fish, fish products, sea fruits, milk, dairy products, eggs, sugar, raw sugar and sugar beet, flour, bread and bakery products and construction materials. Therefore, by the modification of Law no. 571/2003 regarding the Tax code, was established that during July 01, 2010 – December 31, 2010, the generating fact and the fee's exigibility are applied when these goods enter the Romanian territory, resulting from intra-community acquisitions, including for the acquisitions performed within a triangular operation, the VAT taxation base being determined by using certain minimum values established for these products.

The fee for these acquisitions will be paid at the tax authorities located on the tax verification points, based on the special VAT statement for intra-community goods acquisitions until the fee exigibility is applied, except for the taxable entities framed in the low evasion risk category who are obliged to provide guarantees with the value of the owed fee. The access paths, tax verification points where these goods will be presented and the competent tax authorities are established by the order of the Public Finances minister upon the proposal from the chairman of the National Tax Administration Agency.

At the same time, by this normative act, it is established and organized within the National Tax Administration Agency, starting with July 01, 2010, „The Intra-Community Operators Registry”

comprising all the taxable entities and legal entities non-taxable, performing intra-community operations. These individuals have the obligation, under the sanction provided by art. 219<sup>2</sup>, paragraph (1) letter. a) providing a fine from 1.000 lei to 5.000 lei, to be registered in the Intra-Community Operators Registry, when the registration is requested, for VAT purposes if they intent to perform one or more intra-community operations or before performing the respective operations, in the case of individuals registered for VAT purposes. The taxable entities and the non-taxable legal entities have the obligation to submit to the competent tax authority, in order to be registered within the Intra-community operators registry, a registration request accompanied by the criminal record of the associates and administrators, as well as other evidencing documents, and afterwards the tax authority will analyze and decide upon the motivated approval or rejection of the request for registration within the Registry. The normative act establishes the fact that taxable entities having as associate or administrator an individual against who the criminal action was initiated and who has crimes registered in the criminal record, regarding any operation, cannot be registered in the Registry, and the tax authority will cancel ex officio the taxable entities in this situation, the taxable entities and the non-taxable legal entities registered in the inactive taxpayers' list and also the taxable entities who are temporary inactive, registered in the Trade Registry.

By the completion brought to the Government Ordinance no. 92/2003 regarding the Tax procedure code with article no. 219<sup>2</sup>, sanctions and contraventions are established and also sanctions to the "Intra-community operators registry" regime, which are asserted and sanctioned by the tax authorities. Therefore, it is sanctioned with fine from 50.000 lei to 10.000 lei, and confiscation of the merchandise and incomes obtained from selling the merchandise, as well as the transportation means used for the transportation of goods, in the following situations:

- performing intra-community acquisitions of goods which are framed in the category of goods provided in art. 135 paragraph (4) from Law no. 571/2003, with further modifications and completions, by submitting a special VAT statement for intra-community goods acquisitions comprising false or incomplete data which can determine the nonpayment of the value added tax or the decrease of the amounts due according to the law, if the action was not committed as to represent a crime;
- performing intra-community acquisitions of goods provided in art. 135 paragraph (4) from Law no.571/2003, with further modifications and completions, with the breach of the provisions of art.156<sup>3</sup> paragraph (8) and art. 157 paragraph (2<sup>1</sup>) from Law no.571/2003, with further modifications and completions, if the action was not committed as to represent a crime. The individuals who committed one of the abovementioned actions will be canceled from the Intra-community operators registry ex officio by the competent tax authority.

The few abovementioned aspects were based on strategic reasons and were suggested for implementation following the intent to collect as much as possible from the fees and taxes owed to the Romanian state budget. Fighting this phenomenon, which is currently generating significant budgetary losses, with deep implications at the social and economical level, represents a constant concern for Romania, member state of EU; who must systematically and efficiently introduce immediate measures in order to avoid and limit tax evasion. Therefore, it has been taken into consideration the fact that in certain areas, the objectives of the adopted measures at the community level, in order to fight tax evasion related to VAT cannot be reached, with the purpose of immediate decrease of the phenomenon, imposing the medium term adoption of a package of measures in the VAT field, targeting the transactions with certain categories of goods with high risk of tax evasion, respectively: cereals, technical plats, vegetables, fruits, meat, sugar, flour, bread and bakery products.

Practically, the measures had to be introduced because it was observed that during January 2007-March 2010, the tax inspection bodies established tax obligations with the total value of 1.293.029.095 lei (supplementary debits and accessories), after the tax inspections performed at legal entities taxpayers who exercised commercial activities in the field of cereals, technical plants, vegetables, fruits, meat and sugar. It is very important to mention that a significant share within the total tax obligations is held by the value added tax, amounting 776.933.592 lei. The main modalities to commit crimes leading to enormous prejudices to the state consolidate budget, in the field, are the following:

- using new established companies, apparently with normal function until the maturity date of the tax obligations (one- three months), companies that cannot be afterwards identified at the registered office or at the working points, becoming “ phantom” companies, making difficult to identify the real beneficiaries of the respective transactions, companies with the highest volume of tax obligations registered;
- writing on the transportation documents false beneficiaries ( not registered within the Trade Registry) based on the fact that it will be impossible to verify, during the transit through the border points, the real recipient or some beneficiaries who do not recognize the transaction (stolen tax identification code);
- The transportation documents are intentionally improperly filled so as to prevent the identification of the real beneficiaries.

Although the variety of traded merchandises is high, these evasion procedures were mainly focused on the sector in which the rotation speed of the resulted amounts is significant, and the collection of the merchandises' counter-value is performed close to or at delivery: cereals, technical plants, vegetables, fruits, meat and sugar.

Regarding excisable products, the problems identified were exclusively related to their storage in an excise duty suspension regime, this fact leading a delay in payment the excises to the state budget. Also the authorization conditions for economic operators functioning as warehouses for the production of excisable products, as well as issuing authorizations without specifying the availability deadline resulted in the registration of an increased number of bonded warehouses including storage, this situation not allowing an efficient observation, this fact leading to increased tax evasion with these products. Eloquent in this purpose are the statistic data of the Customs Authority who in 2009, following surveillance and control operations, identified 6087 breaches of the customs and tax legislation in the excises field, almost double from 2008, applied fines in the total amount of 34.142.682 lei and confiscated goods in the value of 915.811.884 lei. Also frauds involving authorized warehouse owners were observed in the field of energy products amounting hundreds of millions lei, and in the alcohol field, tens of millions lei. It was observed that the warranty system for the products held in bonded warehouses is not enough because it does not cover the excise owed in case the economic operator do not pay. In addition, the warranty is submitted only for the excise payment and the business operators established a practice due to which they register other debts to the general consolidated state budget for which the warranty cannot be executed. Frauds were discovered with beverages obtained by mixing ethylic alcohol by distillation with fermented beverages or wines, obtaining in this case products listed in the intermediary group of products for which it is difficult to observe if the fabrication formula was respected in the proportion established at authorization, for this reason the excise level for this category of products was necessary to be increased.

Regarding contraband and other illegalities in the competence of the customs bodies, in the year 2009, 2923 frauds and irregularities were discovered, by further verification of the customs evidences,

commercial and financial- accounting evidences at the registered office of the business operators, or by the verification of customs statements registered in the evidences of the customs offices and the county departments for excises and customs operations, after their performance, additional differences were observed in the customs rights and other taxes and fees, including the related duties owed to the state budget, and contraventions were applied and merchandises were confiscated in the total amount of 263.012.793 lei. Also last year, in the database of the customs authority regarding cigarettes captures, 874 transportation vehicles were involved, 194 legal entities are being sanctioned and 1.196 physical entities being involved.

Another important aspect which determined the legislative modification presented in this article was related to the fact that the Romanian authorities observed that a significant quantity of the products, involved in the illicit traffic during 2009, came from stores authorized to trade merchandises in the duty-free regime. Therefore, after the verifications performed last year on private business operators exercising the activity of trading duty-free products, resulted that : 93% from the cigarettes acquisition receipts were false and over 40% from the cigarettes confiscations were in duty-free stores, this leading to prejudices to the consolidated state budget. Analyzing from a strategic point of view, it was observed that the contribution of duty-free business operators to the state budget is insignificant, because they register losses or insignificant profits and the function of duty-free stores has no economic justification, because some companies declare accounting losses (between 7 and 82 millions lei) having as consequence the nonpayment of the annual profit tax. Also, following the verifications performed by the tax authorities, was observed a decrease of the volume of cigarettes sold by stores trading duty-free merchandises within the period of time in which the activity was monitored by the commissaries of the Financial Guard and the employees of the National Customs Authority, and the fact that the duty-free stores activity is almost entirely dedicated to the presumptive trade of cigarettes to individuals traveling to Ukraine, Moldova and Serbia, countries in which the cigarettes' price is lower than the price legally practiced in Romania, respectively 0,4 – 0,8 euro/pack in comparison to 1,2 – 1,7 euro/pack. In conclusion, the duty-free stores' activity is an important source for the black market of cigarettes, generating contraband on the terrestrial frontier, at the border with Ukraine and Moldova as well as in the Constanta harbor.

In conclusion, we can assert that in order to exercise its suzerainty, the state needs resources, for this reason being the holder of the public property right and the one that manages the general consolidated budget resources and if they are missing, the suzerainty would be severely compromised, meaning that this notion would be an institution without substance. The measures suggested by the presented normative act have the purpose to improve the discipline of private business operators, who are functioning in the regulated areas but also for a better collection of incomes to the state consolidated budget. In this moment the entire Romanian society is interested to outrun the global crises and to progress in order to reach the level required by the European Union regarding the economic, social and political level and this can be accomplished only by its own efforts.

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