Annals of DAAAM for 2010 & Proceedings of the 21st International DAAAM Symposium, Volume 21, No. 1, ISSN 1726-9679
ISBN 978-3-901509-73-5, Editor B. Katalinic, Published by DAAAM International, Vienna, Austria, EU, 2010
Make Harmony Between Technology and Nature, and Your Mind will Fly Free as a Bird
Annals of DAAAM International

CORPORATE FISCAL OFFENCE

RADULESCU, D[ragos] L[ucian]

Abstract: *The article argues about legal tax avoidance and tax evasion as a corporate means to bypass tax provisions. The forms of corporate economic crime like industrial espionage, money laundering, etc. are presented, at the same time mentioning the differences between various states regarding the existence or absence of bad faith in defining tax evasion. The study presents the economic and legal theories underlying evasion control.*
Keywords: *fiscal, corporate, evasion, limiting*

1. INTRODUCTION

We are talking about bypassing legislation using the so-called legal tax evasion, with the aid of legislation gaps or tax havens, and about fraud as such when the tax payers try to escape taxation by means of not declaring the taxable income. Another method through which companies defend from tax burden (Radulescu, 2007) may be tax saving, when they reduce their activity in order to avoid obtaining substantial revenue that would also generate a significant tax liability. Actually, tax evasion is represented by the direct infringement, in mala fide, of the tax liabilities, both through omissive deeds (lack of bookkeeping etc.) and comissive deeds (account forgery, inexact revenue and expenses statements etc.). In the legislation of certain states (Austria, Greece, Luxemburg, Norway, France, Denmark, Switzerland, Italy) tax fraud is conditioned by the existence of the intent, from the part of the tax payer, to bypass the fiscal law, this element being necessary only for criminal classification, while in others (France) the aspect of hiding is a prerequisite, and in Argentina, Germany, Israel this is analyzed by courts on a case by case basis.

If, generally speaking, non-intentional tax fraud (Chang, W. Nam; Parsche, R. & Schaden, B., 2001), due to negligence, only leads to the tax payer's obligation to pay a fiscal fine (Germany, Austria), in some countries (Denmark) this treatment is only applied in case there is no gross negligence, while in others (Italy) no distinction is made between the intentional and non-intentional form, for each of these cases being established a criminal penalty.

2. CORPORATE ECONOMIC CRIME

As a novelty element, corporate economic crime (PricewaterhouseCoopers, 2003) constitutes an extremely important issue in Central and Eastern Europe, 37% of the studied institutions declaring that they have been affected by this phenomenon. At a global scale, the highest economic criminality rate is in Africa (51%) and in North America (41%). The most frequent economic crimes are fraudulent alienation and illegal appropriation of goods, as well as incorrect financial data provision (see figure 1).

In a study performed by the consulting company Pricewaterhouse-Coopers in 2003 on the economic criminality phenomenon at corporate level, Russia and Turkey did not report any similar situation for the previous two years, the only exceptions registered in the region being Poland, Bulgaria, and Hungary that declared fraud cases, but under the level registered in Great Britain, France or Austria.

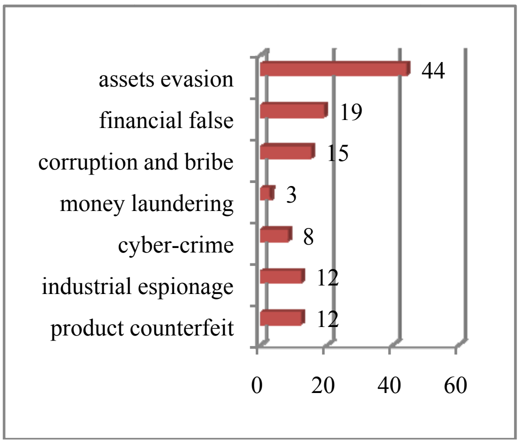

Fig.1. Tax Evasion Methods. Source: Tribuna economică no.33/2003, p. 20

At company level, the actual costs caused by economic criminality are not estimated as financial value alone, collateral damages also existing and being represented by a decrease in company staff trust, loss of reputation, damage of brand image, deterioration of business relationships, long term decrease of share value. Most companies consider that economic criminality will increase in the future, and 35% claim that illegal appropriation of goods will be the most common fraud.

On the other hand, evasion (Feleagă & Malciu, 2003) may be extended to include the creative accounting concept. This is "the process through which, due to rule breaches, accounting figures are manipulated and, taking advantage of the flexibility, those measurement and information practices are chosen that allow transformation of synthesis documents from what they should be into what the managers want, a process by which transactions are structured so that to produce the desired result" (Amat & Blake, 2000). The main beneficiaries of this process are the general managers of the respective companies that, due to their profit-based retribution, have the interest to increase profits in an as legal as possible way, even by appealing to tax avoidance. As a result of this procedure (Amat & Blake, 2000) there are effects on expenses (accounting regulation stipulating a maximum and minimum threshold for their quantification), on revenues (their recognition being slowed down), on assets (by different possibilities of stock valuation, change of accounting information display means), change of owners' funds (by changing the value of revenues or expenses and thus of reserves), change of the classification of assets and liabilities from one category to another, as well as the change of the liabilities or assets value (as a result of the possibility to accrue them over certain time intervals).

3. LIMITING EVASION

The fiscal measures regulated by states and aimed at limiting evasion, are susceptible of interpretations in the respective jurisdictions under the form of legislative, administrative, or judicial methods. Legal and economic theories are based either on the importance principle of legal regulation, each transaction being recognized by the tax authority and not taxed if it observes the private law requirements, even if tax evasion intent existed, or on the predominance of economic criteria, tax payer's use of legislative gaps not leading to non-taxation. In the case of legal theory, tax laws have an exclusive jurisdiction, and it is not possible to make analogies between strictly regulated tax evasion cases and cases with similar effect, but which belong to private law.

On the other hand, the forms of economic theory (Saguna & Sova, 2006) may be different based on the state they are applied in, as follows:

- Misuse of law (Germany, Holland, Argentina, Portugal, France) refers to the fact that, although there is a recognition of any tax payer's right to conduct their business so as to generate a tax liability as reduced as possible, in case the main reason of the operation was tax evasion, this is considered void;
- Equivalent economic result (New Zeeland, Australia, Israel, Holland) represents the tax payer's impossibility to evade the tax liability by a transaction which gives a similar result to that which the legislature sought to tax; this condition is fulfilled when the tax payer's action does not generate another benefit except for the fiscal one, this being the essential purpose of the operation, and the result is opposed to the intention of the legislator;
- Substance over form (Germany, Luxembourg, Norway, Holland) is a method to exclude the way of literally construing the law, this describing the circumstances that generate the tax liability, the tax payer's activity being analyzed fiscally in relation to its economic content and not its formal one;
- Business purpose (USA, Canada), each transaction having a purpose from a fiscal point of view; thus, an ex-citizen will have a certain fiscal treatment if the purpose of his/her citizenship renouncement was not tax evasion;
- Simulation (Portugal, Belgium, Canada, and Austria) refers to establishing a simulated contract that the parties do not actually intend to observe.

Among the developed countries in OCDE, Italy has the highest tax evasion level. The difference between the statistics regarding revenues realized by the Bank of Italy and the one performed by the Ministry of Finance represents tax evasion by means of hiding revenue. Meanwhile, the positive difference between money voluntarily reported by tax payers and the tax authority's data also represents hidden revenue belonging to the underground economy, owed either to the intentional non-declaration thereof, or under the form of activities in agriculture, households, etc. that are not recorded. The economists Cannari, Bernasconi, and Morenzi stated that the majority of the responders reported figures that are closer to the truth provided they could keep their anonymity and were not faced with tax authorities. The tendency to take part in interviews declines with revenue. Individuals (Howell, H. Z., 2005) belonging to the same revenue class manifest similar behavior. The tendency to declare revenue and, thus, tax evasion rate, is higher in case of contractors as compared to employees, but has a reduction tendency as gains increase. The same situation appears in case of self-employed individuals that present a more prominent tendency to hide their revenue than the employees, the first hiding between 7% and 27% more revenue than the latter. A study performed by the National Institute for Social Security in Italy on 145.000 companies revealed that 63% of the companies used occasional workers in the production process, and paid them through indirect means in order to avoid the due social contributions. The existing system of taxes in various countries is directly responsible for the scale of the tax evasion phenomenon.

4. CONCLUSION

Tax evasion is the tax payers' response to the increasing burden of tax liabilities. The multitude of tax liabilities owed to states led tax payers to look for new ways to elude their own debts. Generally, tax evasion is the result of legislation inconsistencies, enforcement methods, lack of foresight of the main evasion causes, or tax policy considered excessive by the tax payers.

The possibilities to perform evasion increased in the European Union Member States (Chang et al., 2001) especially due to the removal of border control and to the incipient state of administrative and institutional cooperation between the countries. In addition, some countries do not want to improve the control method being afraid of loosing the economic competition advantage at company level. At the same time (Bisa et al., 2005), the tendency of the states with respect to taxation indicates a progressive decrease of rates for resident companies. The aim is to shift the tax objective towards labor, property, and consumption, protecting the capital of companies and individual revenue. Following this trend, Germany cancelled a 50% tax on gains from the selling of shares from one company to another, and Canada reduced taxation of capital gains. In general, EU States reduced the average profit tax, in some cases the decrease in taxation in a state leading to a similar process in another country with which it had solid economic relations (the case of Canada that followed USA policy to reduce taxation rates).

However, studies (Lacatus, 2004) show that the force and efficiency of European tax authorities differ from state to state. Thus, as opposed to Great Britain, a benchmark in terms of underground economy control, Turkey with a tax evasion rate of 225% has a reduced tax apparatus and mild sanctions. Similarly, Romania, with a tax apparatus comparable to that of France, is characterized from the evasion limitation policy point of view by mild sanctions and, thus, low efficiency.

5. REFERENCES

Amat, O. & Blake J. (2000). *Contabilidad creative*, Gestio, 2000

Bişa, C.; Costea, I.; Capotă, M. & Dăncău, B. (2005). *Utilizarea paradisurilor fiscale*, BMT Publishing House, Bucureşti

Chang, W. Nam; Parsche, R. & Schaden, B. (2001) Measurement of value added tax evasion in selected EU countries on the basis of national accounts data, *CESIFO Working Paper nr. 431*

Feleagă N. & Malciu, D. (2003). *Politici contabile*, Economica Publishing House, Bucuresti

Howell, H. Z. (2005). Personal Income Tax Reform: Concepts, Issues, and Comparative Country Developments, *IMF Working Paper*

Lăcătuş, P. (2004). Economia subterană rămâne unul dintre motoarele Uniunii Europene, *Revista Capital* nr. 29/15

Rădulescu, D. (2007). *Probleme globale contemporane*, Editura Universității Petrol-Gaze Ploieşti

PricewaterhouseCoopers (2003). Prevenirea şi limitarea riscului de fraudă, *Tribuna economică* nr.32

Şaguna, D. D. & Șova, D. (2006). *Drept fiscal*, Editura C.H. Beck, Bucureşti, pg.329