

Fair Accounting “The Primordial Saving Lever” on the Dynamic Front of Tax Evasion

Ramona-Ionela HARAGUŞ¹, Attila Szora TAMAŞ²

^{1,2} University „1 December 1918” Alba Iulia

haragus.ramona.scd2021@uab.ro, attila.tamas@uab.ro

Abstract. *Taking into account the dynamics of tax evasion at the level of the main categories of taxes and fees, we argue that the measures to combat tax evasion that currently exist, cannot contribute to the eradication of this phenomenon, but only to its limitation. In this context, the purpose of the study is to prove that accounting can be considered „the primordial saving lever” on „the dynamic front” of tax evasion, the professional accountant being a “key pawn” on the “chessboard” of the proper functioning of fiscal system, by coordinating and conducting a fair accounting record, corresponding to the legal provisions in force and by not disturbing the balance between the two plates of the existing balance at the level of any economic entity, tax evasion and the application of the facilities allowed by the legislator. In order to prove the above, the research methodology was the quantitative analysis of data regarding the efficiency of taxation at the level of main taxes and fees and the qualitative analysis of the accounting mechanisms against the phenomenon of tax evasion. Our findings confirm the possibility of considering accounting as the “the primordial saving lever” against this phenomenon, but the study does not involve an exhaustive research, in the future new research directions may be developed.*

Keywords: efficiency of taxation, framework legislation, accounting documents, balance

JEL Classification: M41, H26

1. Introduction

Considering as a benchmark the existing definition in the Accounting Law no. 82/1991, republished, with subsequent amendments and completions according to which „accounting must ensure the chronological and systematic recording, processing, publication and storage of information on financial position, financial performance and other information relating to the activity carried out, both for their internal requirements and in their relations with present and potential investors, financial and commercial creditors, customers, public institutions and other users” we can say that the professional accountant, along with other people involved in the management of the economic entity, is the “artisan of the identity card” of the economic entity, in this context, his involvement in any kind of illegal activity is prohibited.

One of the most debated topics regarding the subject of tax evasion refers to the delimitation between tax avoidance -the action of the taxpayer to circumvent the law in tax matters due to errors or inadvertent regulations, is to use legal procedures to avoid tax obligations, without violating the law, hence the name „tolerated evasion”. Therefore, this type of fraud is on the verge of legality, using means such as “easily override the law” Scailteur (1961, p.65), and tax evasion, initially defined by Law 87/1994 as: „evasion, by any means, in whole or in part, from the payment of taxes, fees and other amounts due to the state budget, local budgets, state social insurance budget and special extra-budgetary funds, by Romanian and foreign individuals and legal entities , called taxpayers” definition that was completed by Law no. 241/2005 (updated) which establishes as tax evasion the phenomena exemplified in the following figure:

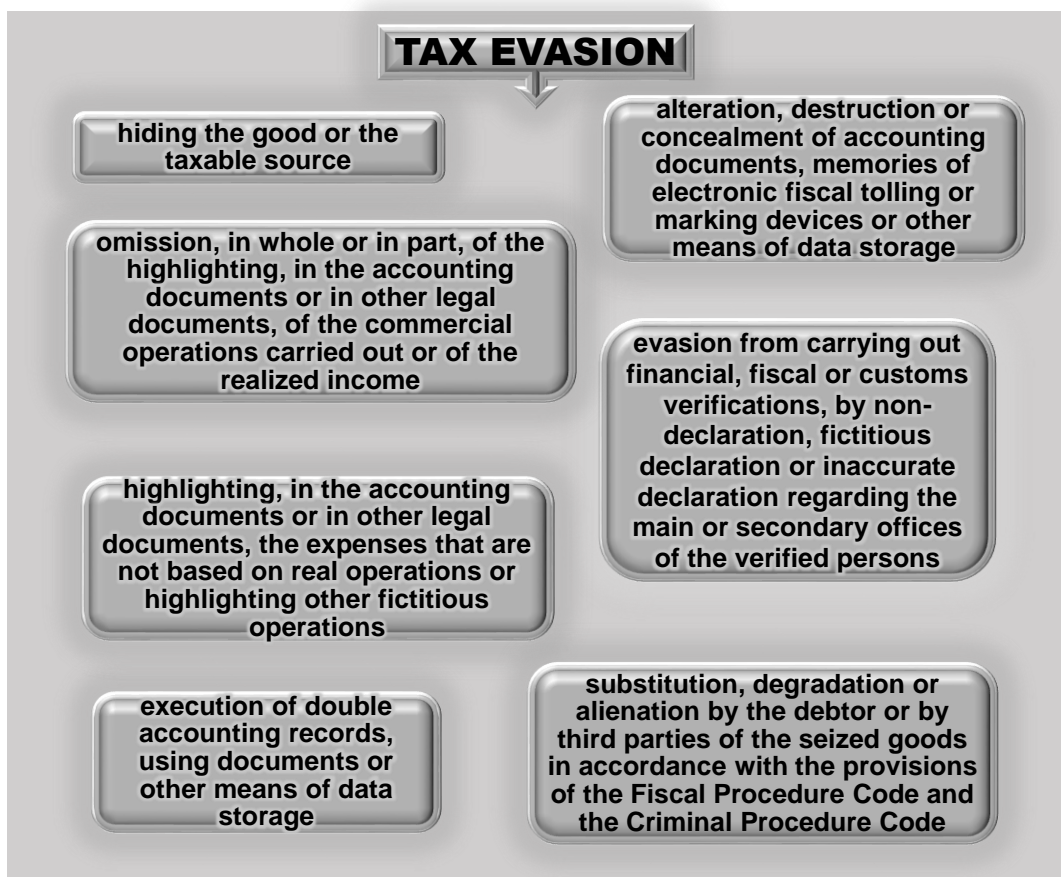


Figure 1. Forms of manifestation of tax evasion according to Law 241/2005

Source: own processing

According to the Annual Report, 2020 of the Fiscal Council "The fiscal regime must be transparent and fair; all citizens and companies must pay - to eliminate loopholes that make the tax regime unfair. Tax evasion should not be tolerated, as well as incorrect tax optimizations (tax avoidance), undue annuities".

Therefore, in order to validate the statement that fair accounting is the "primordial saving lever" on the dynamic front of tax evasion, we aim to find the answer to the following question: To what extent and through what mechanisms does accounting ensure fair financial reporting that meets the expectations of users of accounting information, thus helping to prevent and combat tax evasion?

In order to be able to give a pertinent answer to this question, the paper is built from four sections and conclusions as follows: the first section in which the literature on the issues addressed is reviewed, the second section which includes the research methodology, the third section highlighting the effectiveness of taxation at the level of the main taxes and fees, whose purpose is to highlight the extent of the phenomenon of tax evasion, resulting the information processed in the fourth section on the "primordial importance" of accounting mechanisms that must ensure fair financial reporting so as to contribute to preventing, quantifying and combating tax evasion, and the last section which identifies the „accounting documents” and „other legal documents” that are

relevant in the context of article 9, paragraph (1), letter b) of law 241/2005, conclusions and references.

2. Literature review

Nicolae Felegă and Liliana Malciu in the book „Accounting Policies and Options” consider that „in theory, an honest account is one that gives a true image, meaning an (almost) accurate description of the company, its financial position, its financial performance, cash flows and their evolution. But it is known that the true image can only be an ideal, to which the accounting world must aim”, Feleagă and Malciu (2002, p. 9).

In the book „Modernization of accounting and management control”, N. Tabără supports the following idea „if we refer to the elements that define the quality of accounting information (conformity, flexibility, clarity, reliability, verifiability, intelligibility, comparability, neutrality, etc.), unanimously recognized by the literature, we will find that their cumulative effect must be the accurate image of the accounting result, meaning the performance in the accounting activity. In other words, the performance in the accounting activity is the direct result of the selection and use of the accounting models and the concepts of capital maintenance, compliance with the neutrality requirements that take into account "the absence of the elements of appreciation introduced by the influence of a previously sought result in expressing the financial situation of economic facts or the activity of the enterprise", Tabără (2006, p. 125).

The authors B.Needles, H.Anderson and I.Coldwell consider that „the information provided by accounting forms the basis of the decision-making process both inside and outside the company”, the purpose of accounting information to “provide the basic data that different users need to make fundamental decisions - it is an ideal. The difference between ideal and current is the most interesting and controversial part of accounting”, Nedlees, Anderson and Caldwell (2000, p.4).

„Accounting is a mirror of society. It must be understood that the mirror, even if it provides an image of reality in an objective way, is also a tool for transforming reality, because we are in the presence of a mirror that distorts through its imperfections or because it has been manipulated consciously”, Burlaud (2020).

„The issue of financial and fiscal reporting and the relationship between these two areas of reporting has always existed and has continuously developed over time. This is because accounting rules are not always the same as fiscal ones. This is why this relationship has always been and continues to be a research target of different scholars”, Vokshi (2018).

The accounting profession has the duty to ensure that it acts in the interests of clients. However, the "best interest" should be measured not only financially, but also in terms of social impact and risk management. It can be endlessly debated whether "fairness" is a concept that should play a role in taxation. However, the current reality shows that the perception of "fairness" plays a role in the future of taxation Roedler (2014).

What role should accountants play? On one hand, it is clear that tax evasion - which is illegal - should be condemned by all parties and no professional accountant should ever be associated with it. On the other hand, capitalizing on "tax incentives" is certainly appropriate. Between the two extremes is the complex issue of "tax evasion" IFAC (2014).

„As we will see, accounting is a social phenomenon, but it is no less true that it is assailed by doubt and always wonders if it tells the truth", Capron (1993).

3. Research methodology

The main objective of the paper is to highlight the tools that accounting uses to confirm its position as the "primordial saving lever" in identifying, quantifying and combating the phenomenon of tax evasion. For this purpose, the study combines elements of quantitative research, by processing quantitative data on the efficiency of taxation at the level of the main taxes and fees, provided by the Fiscal Council and Eurostat, with the elements of qualitative research.

In order to complete this study, a review of the specialized literature was carried out, materialized in courses, treatises, monographs, books and specialized articles existing in electronic form in online libraries, in databases (*Web of Science*) where words regarding the relationship between accounting and tax evasion were used as search criteria, or in a printed form in classical libraries.

4. The efficiency of taxation at the level of the main taxes and fees

According to the Annual Report, 2020 of the Fiscal Council, Romania registered a very low level of budget revenues and fiscal revenues relative to GDP, ranking on the penultimate place in the EU in 2020, similar to the years 2016-2019, at the same time, it should be noted that, in the context of the significant volume of deferred payment obligations, estimates are provisional and the results should be treated with caution, but frequent changes in fiscal policy, non-systematic application of regulatory impact assessment tools, budgetary pressures arising from the new pension law on the background of a very limited fiscal space and expansionary fiscal-budgetary policy, the existence of an insufficiently modernized fiscal administration apparatus, Consiliul fiscal, (2020), all these represent the favorable conjuncture for the manifestation of the phenomenon of tax evasion.

In order to highlight the extent of the tax evasion phenomenon and how important is the involvement of the fair accounting in combating this phenomenon, we processed data regarding the efficiency of taxation at the level of the main taxes and fees, provided by the Fiscal Council and Eurostat:

Table 1. Efficiency of VAT taxation

Country	VAT average			Default charging			Default charging			Position		
	share weighted (%)			rate * (%)			efficiency index **					
	2018	2019	2020	2018	2019	2020	2018	2019	2020	2018	2019	2020
BG	16,9	16,7	16,7	15,2	15,6	15,9	0,90	0,93	0,94	4	4	4
CZ	18,8	18,7	18,7	15,9	16,0	15,9	0,85	0,85	0,85	5	5	5
EE	18,6	18,6	18,6	17,9	18,0	18,3	0,96	0,97	0,98	3	2	1
LV	19,3	19,2	19,3	14,2	14,5	15,5	0,74	0,76	0,80	7	7	7
LT	19,2	19,1	19,0	12,6	13,0	13,3	0,66	0,68	0,70	10	10	10
HU	19,9	20,4	20,2	19,3	19,3	19,9	0,97	0,95	0,99	2	3	1
PL	17,1	17,1	17,1	13,9	13,8	14,1	0,81	0,81	0,82	6	6	6
RO	14,5	14,2	14,1	9,9	9,9	10,0	0,68	0,69	0,71	9	9	9
SI	15,9	15,9	15,9	15,8	15,3	15,5	0,99	0,96	0,98	1	2	3
SK	17,3	17,1	16,9	12,5	12,8	12,7	0,73	0,75	0,75	8	8	8

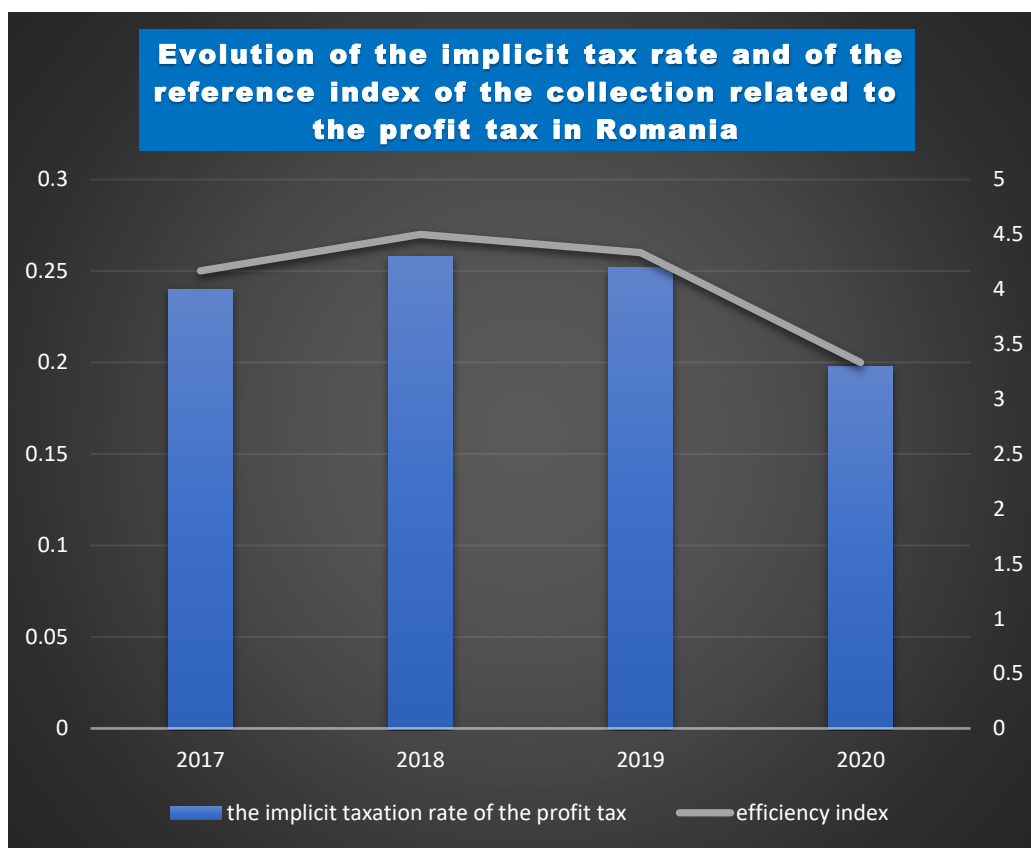
Source: EC, Eurostat, Fiscal Council calculations, available at:

https://media.hotnews.ro/media_server1/document-2021-06-29-24888450-0-raport-anual-consiliul-fiscal-2020.pdf, [accessed in November 2021].

* Calculated as the ratio between „VAT revenue” (ESA code D211REC) and „final consumption of households and IFSLSG” (ESA code P31_S14_S15). In the case of Romania, the VAT revenues include the temporary additional receipts resulting from the implementation of the “chain” compensation scheme of arrears (205.5 million Ron in 2018, 96.4 million Ron in 2019, respectively 123.8 million Ron in 2020).

** Calculated as the ratio between the default charging rate and VAT average share weighted.

Table 2. Efficiency of the profit tax



Source: EC, Eurostat, Fiscal Council calculations, available at:

https://media.hotnews.ro/media_server1/document-2021-06-29-24888450-0-raport-anual-consiliul-fiscal-2020.pdf, [accessed in November 2021].

Although we cannot talk about eradicating the tax evasion phenomenon, about which not without reason, the former federal Minister of Finance, Wolfgang Schäuble, spoke as "fighting the hydra, the monster with many heads in Greek mythology, cut one head and in its place grow three more heads", as stated by Steffen Seibert" (Sabine Kinkartz, 2017), we can use various mechanisms to streamline the process of limiting this pressing scourge, as in the following figure:

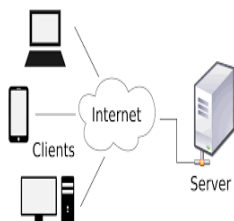
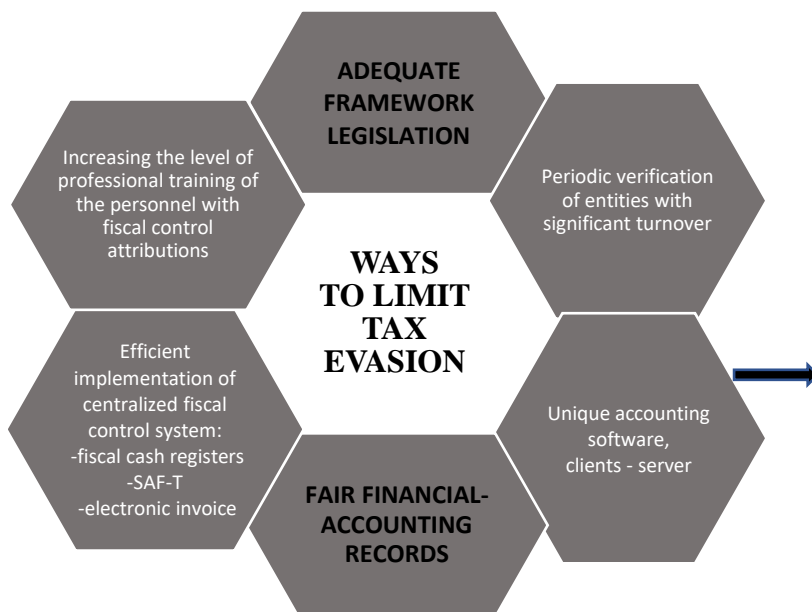


Figure 2. Ways to limit tax evasion

Source: own processing

5. Accounting mechanisms to prevent, quantify and combat tax evasion

The involvement in any kind of illegal activity, contrary to ethical standards, must be avoided by professional accountants, because the effects of illegal activity reverberate towards clients, towards the accounting profession in general and last but not least towards society as a whole.

On the other hand, tax legislators and administrators must provide the guarantee of an adequate legal framework so that taxpayers can fully and easily comply with their tax obligations. Therefore, the accounting information, the main source of economic activity reflection and its results, the professional accountant by organizing and coordinating a fair accounting, through unparalleled technical experience, which refers not only to aspects in the field of accounting, but also to tax legislation and practice, accounting as a whole in terms of its functions, form a unitary whole with a major responsibility in maintaining the balance between the two plates of the existing balance at the level of any economic entity, tax evasion and application of facilities allowed by the legislator.

The mechanisms through which the professional accountant and the accounting in general ensure their undisputed position in the "first line" in the fight against the

stringent phenomenon of tax evasion, ensuring the prevention, quantification and combating of this phenomenon can be considered the following:

- compliance with the fundamental principles of the Code of Ethics for professional accountants: integrity, objectivity, professional competence and prudence, professional conduct, respect for technical and professional norms;
- compliance with the accounting principles established by OMFP no. 1802 / 2014: going concern principle; the permanence of methods principle; the prudence principle; the principle of accrual accounting; the intangibility principle; the principle of valuation at acquisition cost or production cost; the non-netting principle; the principle of economic prevalence over legal; the materiality principle.
- compliance with the regulations issued by the Ministry of Finance, respectively by the institutions with regulatory attributions in the field of accounting, regarding the accounting policies and procedures provided by the legislation;
- use and preparation of mandatory accounting records according to Law 82/1991: Journal Ledger, Inventory Ledger and General Ledger;
- the use and preparation of justifying and accounting documents for all performed operations, their registration in the accounts during the period to which they refer, their keeping and archiving, as well as the reconstitution of lost, stolen or destroyed documents;
- correct preparation, signing and submission within the legal term to the territorial units of the Ministry of Finance, of tax returns, annual and, where appropriate, consolidated financial statements, as well as accounting reports;
- compliance with the provisions of the Fiscal Code and the Fiscal Procedure Code;
- the permanent concordance of the accounting with the publications from the Official Gazette;
- correct declaration of incomes and expenses registered by individuals and legal entities.
- guidance of taxpayers, natural and legal persons, for the purpose of applying economic and tax legislation.
- discouraging creative accounting „that is on the border between legality and moral fraud, and the step to real fraud is small and invisible most of the time” Groșanu (2013, p.82).

Accounting information is the key element in identifying tax evasion and is an essential source for tax inspectors in order to prepare, organize and conduct tax control. According to OMFP 1802/2014 for financial information to be useful, it must be relevant and represent exactly what it intends to represent. In this respect, it must meet a number of fundamental qualitative characteristics (relevance and accurate representation) and amplifying (intelligibility, comparability, verifiability and timeliness).

The role that accounting information has in identifying, quantifying and combating tax evasion ensures its undisputed position in the "first line" in the fight against this stringent phenomenon, Teia and Ștaovischi (2019):

- accounting information, through its role as a tool for knowing the reality, constitutes the access ramp to the identification of tax evasion, sketching the favorable context for the tax authorities, so that they can notice the occurrence of tax evasion by identifying the differences between the budgetary obligations due and the budget obligations calculated / registered / transferred;
- the accounting generates simultaneously the accounting information and its documentary support, the accounting information ensuring the direct link with the primary documents, which "primarily attest" the production of tax evasion, providing those interested in the investigation of tax evasion the manner in which the law regarding a given accounting information has been violated.

- the accounting information confirms the compliance with the accounting principles, the accounting policies, as well as the interest of the public administration in collecting the legal budgetary obligation created at the level of the entity, by the way it is generated, structured, registered and processed.
- the accounting information ensures the quantification of the produced tax evasion, by simple recalculation, by the fiscal authorities, of the difference between the due budgetary obligation and the calculated / registered / transferred budgetary obligation by the organization;
- the accounting information signals behaviors that may generate in the future the phenomenon of tax evasion: recording of accounting losses in the last 5 years; requests for VAT reimbursement from the state budget; declaration 394 - discrepancies between the VAT reporting obligations of taxpayers and those related to their partners; failure to submit or delay the submission of tax returns /late payment of taxes and fees, discrepancies between the amounts reported in the financial statements and the tax returns.

So, from the perspective we have studied, to communicate fairly and opportunely means, in fact, to prevent tax evasion.

6. “Accounting documents” and “other legal documents” relevant from the tax evasion perspective

Analyzing the article 41 paragraph (1) of Law no. 82/1991, which establishes as “contravention the following facts: holding, for any reason, elements of the nature of assets and liabilities, as well as carrying out economic-financial operations, without being recorded in the accounts; non-compliance with the regulations issued by the Ministry of Public Finance, respectively by the institutions with regulatory attributions in the field of accounting provided in article 4 paragraph (3), relating to: use and keeping of accounting records; drawing up and using the supporting and accounting documents for all the operations carried out, recording them in the accounts for the period to which they relate, keeping and archiving them, and restoring lost, stolen or destroyed documents; conducting inventory; preparation, signing and submission within the legal term to the territorial units of the Ministry of Finance of the annual financial statements and, as the case may be, of the consolidated annual financial statements, the interim financial statements as well as the accounting reports ”, we note that these facts can be overlaid on the provisions of article 9 paragraph (1) letter b) of Law no. 241/2005 „omission, in whole or in part, of the recording, in the accounting documents or in other legal documents, of the commercial operations carried out or of the realized income”, and in these contexts the delimitation of these contraventions from the crime of tax evasion becomes a subject of debate.

Decision no. 323 / RC / 2014 captures the opinion of the Supreme Court regarding the situation in question: “the omission of the evidence means the non-registration in the legal documents with fiscal relevance of certain operations or revenues and may consist in the non-elaboration of the supporting documents for the respective operations performed or realized incomes, in the non-registration in the obligatory accounting registers of the operations or incomes, in the non-preparation of the recapitulative financial-accounting statements, according to the legal provisions, or in the non-completion of the fiscal declarations within the legal terms”, Bugnar-Codlea (2021, p. 172).

Following the same idea "We will be in the presence of this crime even when there is no accounting" Minea, Costaş and Ionescu (2006, p.127), "non-highlighting is a notion with a more comprehensive scope that implies the total non-existence of the accounting act", Jurma (2000).

Taking into account the article 9 paragraph (1) letter b) of Law no. 241/2005 we consider it's necessary to find the answer to the following question: Which are „the accounting documents” and „other legal documents” that are relevant from a tax evasion perspective?

Article 6 paragraph (1) of Law no. 82/1991, establishes that "any performed financial-economic operation shall be recorded at the time of its performance in a document underlying the accounting records, thus acquiring the quality of supporting document", article 20 of the Accounting Law 82/1991 records as obligatory accounting registers: Journal Ledger , Inventory Ledger and General Ledger, in the case of double-entry accounting and Receipts and Payments Register and Inventory Register as mandatory records in the case of single-entry accounting, according to article 22, "in order to verify the correct recording in the accounts of the operations carried out, the verification balance shall be drawn up, at least at the end of the financial year, at the deadlines for the preparation of the financial statements, accounting reports, and at the end of the period for which the entity must prepare the statement for profit/income tax, according to the law", also, according to article 28 paragraph (1) of the Accounting Law, "the persons provided in article 1 paragraph (1) - (4) have the obligation to prepare annual financial statements".

Thus, by reference to the „accounting documents”, in the context of article 9 paragraph (1) letter b) of Law No 241/2005, Bugnar-Coldea (2021, pp. 178-179) considers in the book „Tax evasion offenses” the following:

a) for the performed operations, supporting documents were drawn up, they were recorded in the registers, but they were not registered in the summary accounting documents (general ledger, balance sheet, financial statements) - the deed is not typical;

b) for the performed operations, supporting documents were prepared, but they were not registered in the registers - the deed is typical;

c) no supporting documents were prepared for the performed operations, but they were recorded in the registers - the deed is not typical, regardless of the content of the other accounting documents of synthesis and reporting.

d) no supporting documents were prepared for the performed operations, nor were they registered in the registers - the deed is typical. In this case, however, highlighting the income earned or the operations performed in the other summary and reporting accounting documents may be an indication that there is no qualified intent required by the criminal law, but criminal liability is not excluded.

In this respect, for example, we refer to the criminal sentence of the Arad Court No. 350/2014 in which it is stated that: „the company managed by the defendant, although it carried out commercial operations and issued invoices, did not draw up any document related to accounting and did not submit the required tax returns ", as a result, the statements of the defendants according to which they highlighted the commercial operations and income invoices and contracts raised by the tax authorities on the occasion of the first control carried out, can not lead to their exemption from criminal liability as long as the material element of the objective side is clearly outlined by the mentioned criminal norm and refers to the non-registration in the company's accounting records and non-declaration to the fiscal authorities of the performed commercial operations, Bugnar- Codlea (2021, p. 176).

Regarding the notion of “legal documents” we exemplify by the Criminal Decision no. 185 / A / 2017 of the High Court of Cassation and Justice by which it was decided to acquit the defendant regarding the accusation of tax evasion, decision pronounced by the Craiova Court of Appeal by the criminal Sentence no. 36/2016, by which the defendant was accused in fact of not calculating, declaring, and paying the taxes and duties due by the company she manages, in the opinion of the High Court of Cassation and Justice: „The fact that the amounts declared by the company through VAT returns and profit tax returns do not correspond to those recorded in the accounting records, the

fact that the company did not declare to the tax authority all revenues obtained, although it was recorded in the accounting documents, or did not prepare the financial statements, which had to be submitted to the tax authorities in order to verify the accounting records, constitute elements of fact that are not limited to the material element of the objective side that characterizes the constitutive content of the aforementioned crime, which provides as means of realization, the omission of income recognition, or in all mentioned situations they were recorded in the accounting documents, Bugnar-Codlea (2021, p.182). Referring to this sentence, it is necessary to find out the answer to the following question: It is useful to refer to "other legal documents", from the content of the incrimination norm from article 9 paragraph (1) letter b) of Law 241/2005?

Another interpretation in the vision of the same author, Bugnar-Codlea (2021, p.185) refers to the fact that the crime provided in article 9 paragraph (1) lit. b of Law 241/2005 can be considered an "offense with alternative content" related to "accounting documents" and "legal documents" taking into account the existence of the conjunction "or" in the norm, the text can be considered as incriminating: a) omission of highlighting in the accounting documents; b) omission of highlighting in other legal documents.

Bugnar-Codlea (2021, pp.193-204) referring to the applicability of the provisions of article 9 paragraph (1) letter b) of Law 241/2005, at the level of jurisprudence considers that certain situations considered "atypical" can be identified:

- non-registration of purchases;
- the special VAT taxation regime for intra-community acquisitions;
- the situation of the reversal invoices;
- omission to highlight income from criminal activity;
- failure to record income from prescribed debts;
- non-registration of undue payments and refund operations.

In order to exemplify one of these situations, we will address the subject of "non-registration of certain acquisitions" with reference to the Criminal Sentence No. 68/2013 of the Mehedinti Court which ordered the conviction of the defendant, for committing the crime of tax evasion provided by article 9 paragraph (1) letter b) of Law 241/2005 due to the fact that as a director of a company, he purchased goods: "which he did not register in the accounting records, thus evading the payment of taxes and duties due to the state budget", Bugnar-Codlea (2021, p.193)

In view of this situation, we consider that a serious error has been committed, as the Court unreservedly considers that there is tax evasion even when the purchases are not recorded in the accounts, or the taxpayer has indeed omitted to record an expense, the defendant being sanctioned for not diminishing his taxable base, but he finally paid higher taxes and duties than he would normally have owed, and in the context of article 9 paragraph (1) letter b) and c) of Law 241/2005 are considered tax evasion: letter b) - omission to highlight income or operations that would lead to an increase in assets, letter c) - fictitious increase in liabilities, or in our case the increase in liabilities is not fictitious, the operation being a real one.

7. Conclusions

Generalizing the approaches of this study, we conclude that the "primordial lever" in streamlining the difficult process of preventing and combating the phenomenon of tax evasion can be considered "fair accounting" that involves bookkeeping records used in strict accordance with their intended purpose and presenting in an orderly and completed manner all accounting information, the professional accountant who is entrusted with the management and harmonization of the figures on the movement of the means and resources of the enterprise, who must demonstrate that his actions are in accordance with the legal provisions in force, accounting information that must be real, accurate,

complete and operational, so that together they can, at any time, identify, quantify and combat potentially fraudulent operations.

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