

## European Law within the Tax Evasion Area

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**Abstract.** This article present the tax evasion problems in European Union framework, Union that must be equilibrium state among other tow concepts: fiscal harmonisation and fiscal competition. The measures that are justified to be taken in the name of harmonization may be considered as obstacles for the fiscal competition among member state and can conduce to the tax evasion.

**Keywords:** tax competition, tax haven, tax harmonization.

### 1 Introduction

Fiscal harmonization and competition are two directly opposed elements. Harmonization involves the lowering of the compliance costs, transparency for stakeholders, fiscal neutrality, while fiscal competition mainly refers to diminishing fiscal pressure. But, in a framework like European Union we must understand that this concepts need to be in equilibrium because EU need to be a competitive force of global economy. The most important element in a EU framework is that harmonization process must be connected with the stage of development of all countries that forms this Union. Uniformity at this level doesn't mean Harmonization. Another problem is that fiscal competition among countries or areas can create tax havens, which are a disturbance aspect of legal and honest competition.

### 2 Fiscal Competition Elements

Fiscal competition manifests itself by lowering of the tax rate, the European average (30%) being very high compared to the one used in Romania. The cancellation has been made by increasing the tax base, transferring the fiscal pressure to direct taxes, but also diminishing the budget spending (Corduneanu C, 1998). Many facilities found in the internal regulation are not created with the effective purpose of fiscal competition (attracting foreign investment), but are wished as strengthening elements for several activity areas (preferential harmonization for SMEs).

Regarding the income tax, individuals with a high training degree and which are crucial to a proper functioning economy benefit of preferential fiscal conditions, in Romania IT personnel finding themselves in this situation.

Even cross-border loss consolidation, which is very attractive for any trader, cannot be considered as facility, all the while foreign investment are treated equally as with those of national companies.

Fighting against the fiscal competition from other countries can be done by introducing facilities so even these stakeholders be pleased and not feel the need of moving towards other jurisdictions, but also by applying several countermeasures such as the CFC law and the implementation of generally accepted principles regarding transfer costs.

Many European nations have adopted efficient methods for counterbalancing the harmful activities of others nations. In the fight of attracting foreign investment, lowering the taxes is one element of the fiscal measures that must be used beyond other un-fiscal measures.

As a condition for lowering the taxes, the management must be more efficient and cheaper for the budget so the competition between member states be beneficial and the compliance costs lowered. Correct fiscal competition will consequently determine the optimization of governmental structures. Thus it is a better alternative than fiscal harmonization, which is more than certain that it will represent a harmonization at a higher level a tax rates, because otherwise even the poorest state to manage to lower its costs will have to be waited for from the tax relief point of view.

Attracting businesses that take place in other member states will just lead to a change of fiscal pressure, because the states retrieve the fiscal losses registered in the high mobility factors instance by overloading the immobile factors, such as the "work" factor.

A system has been developed in Austria (against CFC) through which case of shareholders that do not evidence fiscal pressure of at least 15%, the income is assigned towards taxing resident stakeholders.

Between the fiscal measures considered harmful the tax exemptions for SMEs, the relief for R&D is found, but also the tax exemption between group members. Regarding the last one, if foreign investors consider exemption of the Austrian group attractive enough to circulate money through the Austrian fiscal system on their way to tax haven doesn't only mean negative aspects, because it will create jobs. Germany is mostly concentrated on evading tax evasion and not through attracting foreign investment, thus holds pressure on the states with which it signs double enforcement avoiding treaties for taking the necessary measures. Thereby for those who begin activities in tax haven, the fiscal obligations will be extended for a period of 10 years.

The rules regarding reduces capitalization are thought out together with the certifying rate of the expenses with the interest. Unlike the report of 2, in Germany the debt rate is 1,5 respectively 3 for holdings. This precaution has the goal of making the stakeholders finance themselves through increasing the assets in fiscal paradises, to the detriment of indebtedness.

CFC represents the resident companies in other states than the one in question, but which are controlled by the people within the state in question. For entering this group it is necessary that the respective tax rate in the state where the company resides is at most 75% of that employed in the shareholder's home state . The home member state of the stakeholder has the right to tax a share (in Great Britain it's 25%) of the total profit, by using the variable rate of that state. Proving control over a foreign company is a difficult process, which including Romania will have to be accomplished. The difficulty is regarding to the fact that ownership can be accomplished independently or through a joint-venture with one of the residents of the home state of the company in question.

Two major problems rise from the fiscal competition point of view. On one hand it is the it's impact on the state revenues, that can induct either rising fiscal pressure on the stakeholders, or the continuation of the ceaseless tax rate diminishing, simultaneous with the widening of the tax base. On the other hand the fiscal system structure can be taken into account, because transferring the fiscal pressure to the less mobile factors, such as the job factor will generate a negative opinion flow within the employees and implicitly the migration of the workforce to other member states. If the "gray matter"

exodus is to be taking into account, which the Romanian government is trying to prevent through granting facilities, it's obvious that this entire pressure will fall upon the individuals with lower qualification. But even here labor market distortions may appear, the most obvious example being the lack of workforce in the construction area (C. Bennett, 2002).

### **3 Tax Evasion in the Community Point of View**

In the recent literature (Tamas K.P, Elod T, 2008) appear an interesting idea about tax evasion: the problem of externalities. Tax evasion has externalities: tax evaders protect each other, because they tie down limited enforcement capacity. Thus, relatively small tax rate cuts, which decrease incentives to evade taxes, can lead to increased revenues through spillovers - creating Laffer effects.

In a union framework, the case of tax evasion it is clear that more countries abolish their fiscal precautions with the asserted goal of attracting as many investments as possible. The first nations to adopt this state of matters have been the Bahamas islands, the British Virgin Islands, as well as the English Channel, respectively Jersey, Sark and Guernsey, that have, especially, attracted British investment funds. All the while, within the territories with normal taxation and those lacking taxes a real defensive wall has been built, every party trying to protect their interests, following the international legal norms. The offshore entities have avoiding fiscal restriction as main purpose, using investments such as bank deposits, mutual funds and insurance (Gheorghită V., Aristide C, 2002).

In the European Union, another cause of entrepreneurs choosing the underground economy solution is due to the excess regulation present on the labor market, dictated by the European Commission (collective reduction in force, employee bail in case of employer's insolvency, working time organizing, etc.), that restricts this sector. In these conditions, both hirings, as well as reduction in force become expensive, much profitable being the employer's use of undeclared labor to the injury of the legal one. In the case of the European Union (Lăcătuș P. 2004) a share accounting for a fifth of the community gross domestic product is present outside of legal framework. Although, the hidden economy of the European community, mostly, includes legitimate business ventures, but unregistered and, on the side, illegal activities such as drugs, arms or lives trafficking.

Tax fraud, referred to various parameters, has been worked out at 3.8-5.5% of the GNP in Sweden, 3% of the annual income tax in Finland, 10% of the potential income taxes in the USA, 10% of the income tax collected in Canada, 23% of the income tax in France. In the United Kingdom, a loss of value between 3 and 3.3 billion pounds per year has been registered due to evasion. At the same level of 2004 tax evasion, part of the underground economy, has been worked out<sup>1</sup> via the difference between national accounts and official statistics, at a rate of 15% for Portugal, 20% in the case of Belgium and Greece, 24% for Spain. In a better status are Denmark with 3.8%, France with 9.8%, Germany with 7.5%, the Netherlands with 1.6% and the United Kingdom with 6.5%. Italy is found at the other pole with a rate of 35%.

Romania was ranked second at EU level when it comes to tax evasion (about 18% of GDP), a report (Report by Associazione Contribuenti Italiani and Klr's Network of Business Ethics, 2008) set up by the Associazione Contribuenti Italiane and Klr's Network of Business. First in the list was Italy, where the tax evasion value was estimated at 23% of GDP. Bulgaria where third in that list, because her tax evasion reached 18%. In Great Britain, tax evasion was only 6% while in Belgium is reached 5% and Sweden (3%).

In a recent study (Manos Matsaganis et al, 2010) of three high-tax-evasion counties, Greece led in income tax evasion. Economists estimated that evasion reduced the income tax yield in Hungary by 19 percent, in Italy by 21 percent, and in Greece by 26 percent.

Italy is a member state where tax evasion has an important rate. The difference between Bank of Italy revenue statistics and those accomplished by the Finance Ministry represents tax evasion by hiding of assets. Meanwhile, the positive difference between the financial reserve voluntarily declared by taxpayers and tax authority's data also constitute hidden revenue from underground economy, whether due to willingly withholding these, whether as activities accomplished in agriculture, household etc. and withheld.

A study (Howell H. Zee, 2005) made by the National Institute for Social Protection (NISIP) from Italy in 2003 and which aimed at 145.000 companies has testified that 63% of these have used occasional workers in the production process, paying them through indirect methods, to avoid the social contributions that had to be paid. The existing tax and toll system from various countries is directly responsible for the amplitude of the tax evasion phenomenon.

The evasion accomplishment possibility has risen in the ranks of European Union countries mostly due to the removal of border control and the early state of the management and institution cooperation between nations (Parsche, Steinherr and Waller 1996). Furthermore, some countries do not desire to improve the control method of VAT collection fearing the possibility of losing the competitive economical advantage at company levels. Countries like Italy, Spain, Greece and Belgium show high rates of evasion through VAT, meanwhile the Netherlands and Denmark have a high collection rate. In Germany an evasion phenomenon development is taking place, especially after the introducing the single market in 1993.

The Italian authorities miss out on an estimated €100 billion (\$131 billion) annually in uncollected taxes. European and IMF officials warned Greece this month that curbing tax evasion, which costs the government €15 billion each year, would be vital in unlocking more bail-out money.

The European Union law considers evasion and tax removal as a distinct sanction of the tax chapter, different from the general principles, direct taxation, indirect taxation and other taxes. Prevention is one of the main objectives of the EU fiscal policy, for which the European Anti-fraud Office (OLAF) has been founded in 2006, result of a European strategy to combat tax fraud. The biggest efforts for prevention have been aimed at VAT system integration, to fight against tax evasion and removal more efficiently. The Council made quickly clear that priority should be given to VAT fraud and efforts are now fully focused on this issue. The debate on VAT fraud has been divided into 2 main areas : conventional measures to reinforce the existing VAT system and more far reaching measures to modify the system, (an option for Member States to introduce a general reverse charge system and taxation of Intra-Community transactions).

The Commission has settled a sole legal framework that provides compulsory rules that will govern member state cooperation. The legal framework provides direct contacts between specific bilateral assistance and information exchange services in order to make the cooperation rate more efficient.

Member states must exchange information in various situations to increase the fraud detection and prevention possibilities (Boicean, D., 2004).

- Where it is considered that taxation fulfilment in the destination member state and the control system efficiency must depend on information provided by the origin member state - inter-community shipping of new vehicles or distance selling, free of tax in the origin state;
- Where a fraud suspicion is present in the other member state - inter-community services considered to have a unusual character (omitted tax invoices at the recipients for these services) or discrepancies between offers and acquisitions (cases where provided information significantly differs from the declared inter-community acquisition value);

- Where there are cases which generally show higher tax fraud or evasion risks in the other member state - the potential phoenix companies (companies which, at their beginning, provide a high number of inter-community products and services to clients from another state);
- Where a fraud case has been discovered on the territory of a member state which could have repercussions in another member state - ghost companies that have made inter-community transactions or withheld taxpayers for VAT fraud in inter-community commerce.

The competent authority from every state will send the information to the competent authority from any interested member state, in the following cases:

- where a VAT law violation has been made or one has been made in one of the other member states;
- where a tax evasion or removal risk is present the other member states;
- where a VAT law violation has occurred on the territory of a member state that could have repercussions in the other member states;
- the control system necessarily depends on the information provided by the origin member state.

The prevention measures of illegal activities against financial interests of the Community are legally based in article 280. The European Anti-fraud Combat Office has its origin in respect of these purviews, the first application of this article being accounted for by the adoption of two regulations of the Council referring to inquiries made by this organization. Meanwhile, through the implementation of this Strategy a cooperation culture has been established between all those interested in the fraud prevention policy, referring to control actions and sanction efficiency.

Four strategic objectives are referred to:

- the global anti-fraud legislative policy (the evolution of regulations parallel to the increase in coherence and efficiency);
- a new cooperation culture (commitments aimed at national and community authorities);
- inter-institution intervention for preventing and combating corruption (increasing European institution credibility);
- Strengthening of the penal jurisdiction role (the creation of judicial frameworks for the protection of community financial interests). These measures have been followed by a first action plan in May 15th 2001 made by the Commission, referring to priority situations and readying legislative initiatives towards cooperation. The primary objective was made up of the anti-fraud global policy, the protection of the Euro area, the fight against product pirating and counterfeiting, through a specific judicial framework.

Efforts have also been made through the community *acquis* implementation concerning Union financial interest protection by the ten new accepted states. In every member state, has, thus, been created, a central anti-fraud combat coordination structure, especially seeking, the development of cooperation between national administrations of member states and the creation of a magistrate unit aimed at coordinating these activities. The fight against corruption has been made through the new regulations regarding the management of the Commission's financial interests, penal protection being provided by the way of the enforcing of the anti-fraud combat conventional instruments in March 17th 2002 (the Convention regarding financial interest protection, the first PIF Convention protocol and the protocols regarding the Court of Justice competence). There have been debates regarding the creation of the European Package and of a new European prosecutor.

In addition, the European Commission on 28 January 2009 adopted a proposal to change the VAT Directive (2006/112/EC) in respect to the invoicing rules, based on a Communication on the

technological developments in the field of electronic invoicing. The aim of the proposal is to increase the use of electronic invoicing, reduce burdens on business, support small and medium sized enterprises (SMEs) and help Member States to tackle fraud.

The proposal adopted by the Commission in August 2009, on administrative cooperation and combating fraud in the field of value added tax covers the following items (European Commission, 2009) :

- automated access to specific data related to the identification of a taxable person and to his activities contained in the databases of other Member States;
- common minimum standards for registration and deregistration of taxable persons in VIES;
- EUROFISC: Discussions started on the creation of a European Network composed of officials from national Tax Administrations.

#### **4 Combating International Tax Evasion**

Combating the tax evasion and fraud phenomenon can be done by other states by, firstly, identifying the taxpayers and income sources through their own statement (for example USA, Canada), either due to the obligation of reporting information about the types of assets payed or received in the respective fiscal year. Thereby, the tax and fiscal responsibility equity act<sup>1</sup> from 1992 in the USA imposes that 10% of American shareholders and foreign company managers show a report about shareholders and revenue in every fiscal year. Also regarding tax evasion and fraud limitation, introducing and removing amounts over 5.000 dollars from the country must be reported to the authorities, mentioning the origin, destination and transport route.

Economic theory shapes (Şaguna D.D., 2003) , on the other hand, can be different according to the states in which are applied, such as:

- law abuse (Germany, Netherlands, Argentine, Portugal, France), refers to the fact that, although the right of every taxpayer to run business as to give birth to a tax debt as low as possible is recognized, if the dominant motive of the operation has been tax evasion, this will be considered null;
- the equivalent economical result (New Zealand, Austria, Israel, Netherlands) accounts of the taxpayer's impossibility to remove himself from the fiscal obligation through an operation that gives a similar result as the one the legislature aimed to tax; this condition is achieved when the taxpayer's actions doesn't give other benefit than the fiscal one, this being the sole purpose of the operation, and the result is opposed to the intention of the legislator;
- the substance of the form (Germany, Luxembourg, Norway, Netherlands), is an exclusion method of the literal law interpretation way, this describing the surroundings that give birth to tax obligation, taxpayer activity being fiscally analyzed regarding it's economic content, and not the formal one;
- the business purpose (USA, Canada), from the fiscal point of view every transaction having a purpose; thereby an ex-citizen will have a certain fiscal treatment, if the purpose of renouncing his citizenship wan not tax evasion;
- simulation (Portugal, Belgium, Canada, Austria) refers to concluding a simulated contract, which the halves don't intend to respect.

For the study made by the PricewaterhouseCoopers consultancy company, in 2003, of the economic criminality phenomenon a corporation level, Russia and Turkey didn't report any situation of this type in the previous two years, but also below the level of those from the United Kingdom, France or Austria.

At company level (PricewaterhouseCoopers, 2003), the real expenses caused by economic criminality are not estimated just as with financial value, collateral losses represented by the decrease of staff trust, loss of reputation, brand perception deterioration, worse relations with business partners, long term decrease of share value being present.

Meanwhile, the state tendency regarding taxing shows progressive rate reduction for residing companies from 44% in 1985 to 31% in the year 2004 in the case of OECD countries (Bişa C., et al, 2005). The aim is shifting the tax objective towards work, properties or consumption, while protecting company capital and individual income. Thus, in the capital taxing case, the USA has registered a decrease from 27% in 1965 to 15% in 1999, and rates applied to individual income by OECD member states decreased from 55% in 1986 to 47% in the year 2000. Following the same tendency, Germany canceled a 50% tax of income from selling the shares of other companies, and Canada has reduced capital revenue taxation from 75% to 50% in the year 2000. Generally, EU states have lowered revenue tax average from 44.8% to 31.8%, and that of individual income from 62.3% to 48.3%. Sometimes, the decrease of taxation in a state starts a process, of the same kind, in other countries with which it has strong economical relations (in the case of Canada that followed the USE policy of reducing taxation rates).

In our opinion, at the base of these fiscal policies is the possibility that the transnational companies will delocalize their investments when tax rates are considered excessive, as well as the possibility of qualified workforce loss. Thus, attracting direct foreign investment is attempted through the protection of company interests in case of a, stronger and stronger, competition between states at a global level.

In a recent work the situation of the shadow economy seems to be like this:

Table 1. Size of Shadow Economy in 21 Nations

<b>Country</b>	<b>Percent of GDP</b>
Greece	25.1%
Italy	22.3%
Spain	19.3%
Portugal	19.2%
Belgium	18.3%
Sweden	15.6%
Norway	15.4%
Denmark	14.8%
Germany	14.6%
Finland	14.5%
Average	13.9%
Ireland	12.7%
Canada	12.6%
France	11.8%
Australia	10.7%
United Kingdom	10.6%
Netherlands	10.1%
New Zealand	9.8%
Austria	9.4%
Japan	9.0%
Switzerland	8.2%
United States	7.2%

Source: Lars P. Feld and Friedrich Schneider, "Survey on the Shadow Economy and Undeclared Earnings in OECD Countries," Jan. 2010, available at <http://www.econ.jku.at/531/>

In Eastern Europe the following main factors (Bajada, C., Schneider, F. 2005) for the growth of the shadow economy are important:

- The lack of competence and trust in official institutions combined with an inefficient and corrupt administration;
- Property rights cannot be guaranteed by the official institutions combined with inadequate enforcement of laws and regulations;
- High costs and administrative burden for entrepreneurs hinder official economic development ;
- A low probability of being caught as an illicit worker or tax evader can result in a cost-benefit calculation where illicit work is more attractive than regular and official work;
- Sometimes, hiding in the shadow is essential for surviving or to establish a business due to slow bureaucracy;
- Broad acceptance of illicit work makes it difficult to fight this phenomenon.

At an international level, economic criminality and money laundering are the aim of the Criminality and Penal Justice Prevention Council (CCPCJ ), specialized structure of the United Nations and the Action Force against Money Laundering (FATF), followed by the INTERPOL and the EUROPOL.

In addition, The Global Forum on Transparency and Exchange of Information for Tax Purposes ([www.oecd.org](http://www.oecd.org)) are the multilateral framework within which work in the area transparency and exchange of information and it has been carried out by both OECD and non-OECD economies since 2000. The Global Forum's main achievements have been the development of the standards of transparency and exchange of information through the publication of the Model Agreement on Exchange of Information on Tax Purposes in 2002 and the issuance of a paper setting out the standards for the maintenance of accounting records Enabling Effective Exchange of Information: Availability Standard and Reliability Standard developed by the Joint Ad Hoc Group on Accounts in 2005. The Global Forum now includes 95 members on an equal footing. Membership includes all G20 members, all OECD countries and all offshore jurisdictions.

## **7 Fiscal Harmonization Aspects of the E.U. Member States**

The community acquis is, firstly, necessary in order to not hinder the exert of "the four freedoms" that give substance to the "single market" concept.

There are two types of obstacle that divide the single market and which can be generated by the fiscal instruments used by the Member States. It is, firstly, about discrimination, a situation that can intervene in the cases, respectively: the application of different rules for comparable situations; the application of the same rules for different situations; or the application of some very different treatments for situation that are not too different. Discrimination can be direct (explicit), if the treatment difference is generated by the taxpayer's nationality or residence, or indirect (default).

Discrimination is presumed incompatible with the CE Treaty, but this incompatibility is not absolute, being able to be accepted in special circumstances. In the fiscal area, the situations in which the indiscriminate obligation can be considered excessive and inopportune are more frequent than in other areas. In practice, like also in special literature, several more susceptible circumstances to permit a certain dose of discrimination between taxpayers have been identified (Negrescu, D., 2007):

- a) in order to counter budget income loss or decrease;
- b) in order to preserve the national fiscal system "internal logic" (cohesion);
- c) in order to counter tax evasion or "tax avoidance";

This type of reasoning has not, until now, been rejected the plan. the European Court of Justice (CEJ) admitting that it is a legitimate objective, acceptable from the community legislation point of view, Though the CEJ practice regarding the application of this justification is wavering and founded on negative reasoning: the simple tax evasion/avoidance is not enough in order to derogate from the general indiscrimination principle. From the jurisprudence examination it can be inferred that this reasoning lived to be easier accepted that in the past, although without getting automatic acceptance. The cases of this nature are examined from the proportionality principle point of view.

d) measures that do not counter the dispositions from the bilateral treaties

The functioning of different national fiscal systems is at the hard of several problems (Bratton, 2001):

- influencing (distortion) of resource allocation, with negative consequences for the capitalization of the advantages of a real single market, but also from the tax income international allotment point of view, that can put certain Member States at a disadvantage compared to others;
- making budget revenue fragile, through income loss related to the fiscal competition;
- fiscal sovereignty limitation, including through limiting the tax avoidance/evasion combat possibilities;
- the tendency toward fiscal system inequity, through the privileged treatment of mobile taxation bases;
- the double taxation risk;
- the "dereponsibility" of the political governors: of "over-taxation" is considered a "regulation failure", then the first best solution is correcting the way in which this regulation is made not the one "through rebound", by way of fiscal competition (Negrescu, D., 2007).

*Harmonization measures of direct taxation of corporate income in the EU*

1.Regarding the tax management method

The first directive that is related to direct taxes in the CE has been the one regarding the mutual assistance between the national fiscal authorities (Directive 77/799/EC), that aimed to create the framework for the information exchange destined to fight cross-border tax evasion and avoidance practice, by distorting the capital flow, as in the competition conditions.

This Directive has been updated and modified in 2003 in order to reflect the new conditions induced by the access to modern technologies and cross-border activities within the EU. The focus has been on coordination, between the fiscal authorities of the Member States, of cross-border tax fraud investigation actions and the possibility for fiscal administrations from Member States to deploy several procedures in the name of the administrations of other Member States (Negrescu, D., 2007).

Likewise, at a community level certain decisions have been registered that though do not strictly regard fiscal harmonization, have made premises towards cooperation in the fiscal area. Thus, through Decision 2235/2002 of the European Parliament and the Council from December 3rd 2002, member states are encouraged to proceed with a better cooperation and are invited to adopt a community program toward this, the Fiscalis Program 2003 - 2007, that encourages information exchange in the fiscal domain. On the occasion of the European Council meeting in November 2008, the Fiscalis 2013 program has been adopted, that continues down the line opened by its predecessor, Fiscalis 2007. The new program, that refers to the 2008-2013 period, offers improved methods to member states for fighting fiscal fraud as well as reducing fiscal compliance expenses, especially with regards to VAT and excise duties.

## 2. Regarding the tax rate

The differences between the nominal tax rate for corporation income in the different EU countries are important and have increased even more after the expansion from the 2000's. As a general rule, it can be observed that "large" countries (ex. Germany and France) have a tendency to apply higher taxation rates than small countries (ex. Finland and Ireland).

European Corporate Income Tax (EUCIT): the additional application of an European tax must be done over some basis of assessment as close as possible to those of each Member State in which the respective corporation is paying income tax. By itself, this cannot be - for the problems generated by the presence of a large number of different national fiscal systems (large compliance expenses, fiscal competition, large possibilities for tax evasion/avoidance) - more than a partial solution and just in certain conditions: for example, if the largest part of the corporate income tax would be taken at this level, and national tax rates would not have too great of a dispersal (Negrescu, D., 2007). Therefore, it results that this option rather has budget significance, in the sense that it could admit a significant improvement of community budget resources, susceptible to support more and more detailed common policies.

The distinction between the two types of fiscal competition, an acceptable one, and another that must be fought, can appear specious, but is present because it has reasoning that cannot be ignored

The first category is based on the presence of negative externals. The citizens of several democratic societies must have the right to choose the size of the public sector that they want themselves (thus, the GDP amount recycled through the public budget), "but that does not mean that the countries have the right to offer advantages to foreign investors to the harm of the capacity of other countries to offer those public services that its citizens want". A more convincing case of negative external is that of tax evasion that is facilitated by some harmful competition exerting instruments, as offshore fiscal paradises, "equipped" with powerful guarantees for keeping financial secret (Negrescu, D., 2007).

*Tax « planning », « avoidance » and « evasion »*

The differences between the national tax conditions facilitate or make uses through which taxpayers can decrease payed taxes possible. This type of response from the taxpayers to a taxation environment regarded too cumbersome can have considerable effects for the budget income. According to a study based on data collected at OCDE level, over 65% of the additional income discounted because of a unilateral increase of tax is susceptible to loss due to the actions of artificial transfer and profit declaring in other fiscal jurisdictions (Devreux M., 2006).

This way, transnational companies can use public goods provided by certain countries, though freeing themselves of the obligation of paying for these through the fiscal obligation's integral realization. This unambiguous negative effect of the uses of the nature is although somewhat compensated by the "valve" role played by it through "turning the intensity down" to fiscal competition: resorting to this type of practice can reduce the need to make investments in jurisdictions with low subjection rate.

The purpose of a VAT system that is integrated as much as possible at community level is the one that offers an indirect taxation system to the traders that involves reduced roadblocks at the exchange level between member states. Excluding several exceptions, the business environment considers that there aren't important disadvantages following a EU level common basis VAT (PriceWaterhouseCoopers, 2007). All withstanding, there are certain aspects that are susceptible to reform towards increasing the harmonization rate. One of these elements is related to the provisions regarding VAT aggregation. This remains behind the legislative framework compared to the economic reality that gave birth to some uncertainty and implicitly a whole casuistry in the VAT area that has become a focus for dispute within the arbitration courts and at the level of the European Court of Justice.

Many of these disputes have risen following the present tension between the need to eliminate fraud and tax evasion on one hand, and the need to ensure a tax burden without economic inadvertence on the other. For example, one of the most frequent frauds at a community level is the so-called carousel fraud, that creates rising concern and has generated many debates regarding the ways to avoid it. One of the possible solutions that have been taken into account is the application of the inverted taxation system, in such a way as to transfer the collection responsibility to the taxpayer. Evidently, the risk of placing a unjustified fiscal management burden on the shoulders of traders is present, traders that are already burdened enough by the many debts related to the collection and flow process.

The community level debates are also done over the need of wide scale introduction of a lower VAT rate. Commission suggested the rationalizing and simplification of the decreased rates, through reviewing derogations and ensuring their application in a homogeneous way in all member states. The aimed objective was the avoidance of the distortions made from the unequal application of the reduced VAT rates in some states, objective that can ultimately be reduced to following a certain degree of fiscal harmonization in the sense of the one mentioned in Article 93 TCE.

These drawbacks can be discarded by transferring to the origin principle, that has been suggested repeatedly by the European Commission (1987, 1989, 1996), in different ways, but has been rejected every time by the member states. This principle implies treating cross-border inter-community transactions in a manner identical to the transactions that take place inside each and every national fiscal jurisdiction.

In the inter-community border surveillance absence conditions, the functioning of this system needs multiple complex rules for determining the location where the transaction is subjected to tax. Though large drawbacks stem from this:

The vulnerability to fraud is bigger, due to the fact that getting from the explicit sampling to the implicit one takes place in a very sensible point, that of the transfer from one fiscal jurisdiction to another. The presence of a continuous and wide flow of goods that circulate within the EU without paying VAT widens the fraud risk, of which size is estimated (conservatively) at about 8 bn EUR/year. The collection problems related to this system can explain why, in the last few years, VAT collections don't increase in the anticipated economy growth rate.

With the absence of tangible progress on the extensive solving of the tax location problem, the Commission resorted (in a similar way to the one made in the direct taxation area) to "by point" initiatives, destined for correcting some specific problems.

Thus, the Council Directive 2003/92/EC adopted on October 7th 2003 has amended Directive 77/388/EEC at the place of origin of gas and electricity offer rules chapter. As consequence, this Directive has facilitated the running of the single market and aimed for attacking the double-taxation problems, tax evasion and the distortions induced by fiscal competition, through transferring the tax from the place of offer to the one of the consumer.

A more recent initiative of the Commission suggests the modification of the rules regarding the service performance location. Resorting to already tested tactical solutions in the direct taxation area, this suggestion has been included in a "VAT Package", along with two VAT collection simplification measures. In this case the sole counter and simplified rules for VAT return to taxpayer of another member state.

The European commissar for tax and border union, Laszlo Kovacs, has presented the priorities, in a series of speeches at the beginning of 2007, to the Commission and the Council President regarding this indirect taxation reform at European level during this year. Though the European Commissar has remained busy with Germany's position that has conditioned its agreement with the VAT Package until now through the request of the inclusion of a inverse taxation mechanism - reverse charge mechanism , on a national basis, towards fighting tax fraud. The taxation mechanism is applied in the



case of sales to corporate individuals. This allows the goods or service provider to not collect VAT from his client. So the provider is not withheld to transfer VAT, this obligation falling back on the buyer. In turn, the latter can deduct the VAT value in the moment in which the goods or services are consumed in productive purposes.

Germany, having attained EU presidency until June 31st 2007, has stated its intention to promote VAT harmonization at community level, through the simplification and harmonization of the VAT Directive as well as through strengthening the cooperation between member states in this regard.

On the other hand, German presidency has confirmed the concerns of the commissar Laszlo Kovacs regarding delaying the decision taking over the VAT Package, until the methods through which avoiding the risk that could be induced by the latter simplifications in the tax fraud area will be clear.

#### Measures for improving the indirect tax collection

In May 31st 2006, the European Commission has presented the Report regarding the need for developing a coordinated strategy towards making the fight against fiscal fraud more efficient. The preliminary objective was that of launching a debate within the ranks of interested entities - European Council, Parliament and the business environment - on the different fraud elements that could be taken into account in the case of developing a community level anti-fraud strategy.

Of the countries that were noticed for systematic measures for strengthening control, are Poland, the Czech Republic, Bulgaria, Hungary and Romania.

Though these efforts also reflect the fact that the biggest tax fraud and evasion risk is encountered in the indirect taxation area. In these conditions, fiscal authorities have intensified their efforts towards the implementation of several more and more powerful computer systems regarding the fiscal behaviour surveillance and control of traders.

For example, in January 2006, the Fiscal Authority from Poland acquired 200 licenses for a computer program (ACL) destined for rapid analysis of large quantities of data used in the fiscal audit, financial analysis and fraud detection processes. The European Commission has recognized the use of this software and laid the foundations of an advance training program in the computerized fiscal audit area, based on the ACL software. Over 150 auditors have been trained within the Finance Ministry in 2006, the program being continued in 2007 with another 200 specialists, the financing being awarded through a twinning program financed by the European Commission. In Romania similar efforts have been made with European finance and technical assistance for implementing the computerized surveillance systems of collections from VAT (VIES - VAT Information Exchange System) and excises (SEED - System of Exchange of Excise Data) operating with the beginning of January 1st 2007, but of which operation state is still in the beginning stage.

With regards to the transfer to "origin principle" application for collecting VAT it is the only reasonable option if slowing the expansion of a phenomenon that generates a huge resource loss is desired: tax fraud. As consequence, the need to setup a redistribution system for VAT collection rises. Such a system could behave, either a "micro" compensation, based on inter-community transaction documents, either a "macro" compensation, based on statistical data regarding unified consumption and inter-community commerce. As long as Romania will continue to register commercial deficit in the exchanges with the partners for the EU, and its fiscal administration will continue to be relatively inefficient, choosing a "macro" compensation system, mostly based on production and consumption data, will be more favourable.

#### *Harmonization measures of direct taxation of individual income in the EU*

Until now there hasn't been a harmonization attempt for individual income tax at EC/EU level. This reflects the particular political sensibility of the problem at greater extent than the convincing theoretical arguments. Indeed, the tax on personal income can influence saving and investment

decisions at an international level, people movement and, indirectly, the choosing of locations from which companies are run. Even if, with time, the European Commission has disclosed that a particular level of coordination in this area can be necessary in order to prevent the presence of roadblocks in the way of free movement (ex. the double taxation of workers) or for fighting tax evasion/avoidance, Member States proved themselves unreceptive, for the moment, other than the last argument. That's why, the only regulation initiative at community level registered in this area refers to the taxation of interest for the deposits of individuals.

The relative lack of concern regarding personal income tax harmonization also reflects the fact that the mobility of people within the European Union territory is, although, limited, language and cultural roadblocks contributing to maintaining a significant segmentation of national markets. Though, in long term, the tendency is of increasing this mobility, which will need a greater attention to the associated fiscal problems (Negrescu D, 2007).

## 6 Conclusions

In the era of globalization, the “extra-liberty” of all, that can increase global wealth, is accompanied of extra-competition. The increases in cross-border flows that come with a global financial system require more effective tax cooperation. Better transparency and information exchange for tax purposes are key to ensuring that taxpayers have no safe haven to hide their income and assets and that they pay the right amount of tax in the right place. International tax evasion need to be reduced by the implementation of rules of transparency and exchange of information. Developing nations are less prepared, administratively point of view, to manage with this problem. Because of that, the cooperation among countries is important and can reduce the level of the underground economy.

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