

## **Danubian Economy and Legislation**

### **Elements of Compared Law concerning Tax Evasion**

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**Abstract:** The resort to international tax evasion can be explained both through the game, often perverse, of the double taxation, due to the autonomy of the national fiscal regimes, as well as to the fiscal pressures deriving from these. In view of escaping to be subject to two different taxations, the taxpayer wishes actually to avoid them both. And in order to avoid being subject to either of them, he takes cover in the fiscally protected regions. The techniques are numerous and depend on the taxpayer's imagination. They contain a series of subtle and agile combinations of using the disappearances between the fiscal systems by resorting sometimes to fraudulent mechanisms. This paper aims at analysing the European dimension of the evasion phenomenon, corresponding to some fiscal and social laws that are more favourable.

**Keywords:** tax; contribution; contributor; fiscality

The fiscal evasion manifested in **France**, the approach of the "crime economy" leads to a doubtless conclusion: conformation depends on constraint. The conclusion of such an approach is the following: the fact that a taxpayer pays his taxes and fees is exclusively as a result of the predictable consequences of his discovery and punishment. (Alm & Vasquez, 2005) In **France**<sup>2</sup>, to the illegalities committed by the taxpayers there can be applied two types of penalties: **fiscal penalties**, that have an administrative nature, and **criminal penalties** that correspond to the most serious offences and are decided upon by court. For the same offence, the two categories of penalties can be cumulated.

*The criminal penalties in France are set in cases of serious fraud; the taxpayers can be brought before the correctional courts, which are to rule special penalties. The procedures and punishments differ depending on the way of producing a general*

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*misdemeanour of fiscal fraud or special misdemeanours*<sup>1</sup>. In order to have general misdemeanours of fiscal fraud, the following conditions have to be met cumulatively: a material element/the non-payment of a part of the declared tax; and an intentional element/the volition of evading the fiscal regulations. This intention is obvious, for example, in the case of the deliberate omission of filing the statement, organizing the insolvency, imaginary records in the account-books, sales without invoices etc.

The penalties ruled by courts can be fines from 5,000 to 250,000 EUR; prison from one to five years.

These penalties can be increased in case of relapse (fine from 15,000 EUR to 70,000 EUR; or prison from 4 to 10 years), or if the fraud was done by purchase and sale without invoices (the fine can be of 500,000 EUR and 5 years). They can also rule additional penalties: the publication and display in the Official Gazette and in the journals designated by court, as well as in the local official notice boards (mandatory character); the prohibition of exercising a commercial, industrial or liberal activity; the banning of the right of management; the deprivation of civil rights, in case of relapse.

The French legislation provides also a category of *special misdemeanours* that refer to the non-payments from sums withheld at source (prison from 1 to 5 years); opposing to the exercise of the fiscal control (penalty of 6 days to 6 months in prison); organising a collective rejection of tax (fine from 3,600 to 60,000 EUR and prison from 3 months to 2 years).

A relatively recent problem for France constitutes the accounts of French people in Switzerland. The authorities in France managed to obtain the names and bank data of approximately 3,000 French citizens suspected of fiscal evasion with accounts in Switzerland, the French minister of the budget, Eric Woerth, describing the event as “a first battle won against the banking secrecy and it is the first time when obtaining such information is possible, so precise, with name, account number and deposited amount.”

In **United Kingdom**<sup>2</sup>, as for the internal incomes are concerned, the investigations carried out in the cases of fiscal evasions are of the competence of specialized units, respectively the Special Bureau of Confirmation (SBC). In certain cases, these investigations turn out effective in criminal investigations and go before the

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Court. The investigations undergone by the Special Bureau of Conformation are usually assisted by an accounting expert.

A special case of evasion appears usually following a fiscal control or as a result of an anonymous report. If such a case implies non-stated incomes of up to 50,000 £ overall (for a period of re-evaluation of up to 20 years) or of 25,000 £ (for a period of up to 3 years), the local bureau of taxes and fees transfers the case to the Special Bureau of Conformation.

When a fiscal inspector in the territory suspects a serious case of fiscal evasion that meets these criteria, informs the Special Bureau of Conformation and stops the fiscal control. Sometimes, such a suspicion arises during the encounters with the taxpayer. The fiscal inspector has to avoid the collecting of information at this stage, because this information cannot be used in the criminal investigation.

The decision whether to start a criminal investigation is taken by the board, where the fiscal prosecutor, the pleader of taxes is assigned to perform the investigations. If the decision is not to start the criminal investigation and the taxpayer made full disclosures over the deed and voluntarily cooperates in the investigations, the public accountant of the taxpayer is to draft a report containing an analysis of the private capital, incomes and expenses. Also, the latter is to note what illegalities were committed and is to include an evaluation of the amounts that evaded payment. This report is to be the basis of an agreement outside the Court or for an appeal to the Commissioners. Also, the Special Bureau of Conformation is to benefit from this report, because even though it might hold evidences for a part of the illegalities, they now have the possibility to obtain full details of the incriminated deeds.

In **Belgium**<sup>1</sup>, if during a fiscal control, the inspector suspects that the fiscal statement was intentionally forged, he can report this to the prosecutor's department, after receiving the consent of the regional director. Also, an inspector from the Special Inspectorate of Taxes must receive the authority from one of the three inspectors specially assigned. Thus, the fiscal inspector can transfer the case to the Special Inspectorate of Taxes for additional enquiries. Another possibility for an inspector to report his suspicion is the so-called private report. This refers to a report made by a third (anonymous) party. In such a case, the office of the public prosecutor is requested to ask the opinion of the Regional Director, explaining the material and ethical nature of the case. If the office of the public prosecutor does not do that, the future investigation is null. Anyway, the office of the public prosecutor is not forced to follow the advices of the Regional Director.

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<sup>1</sup> Documentary fund of MPF-NAFA (the Ministry of Public Finances-the National Agency of Fiscal Administrations), Synthesis note concerning the penalties applied in various countries in matters of fiscal fraud, 2005.

The fiscal administration is authorized to refuse the consultants, as representatives of the taxpayers, for a period of five years. This penalty cannot be attacked.

If a consultant was found guilty in court of a fiscal or administrative deed, as an alternative penalty, he can be imposed with the impossibility of representing the taxpayer for a period of up to 5 years.

Certain violations of the provisions of the Fiscal Code regarding VAT are punished with fines that start from 24 EUR up to 2,466 EUR. The Royal Decree no. 44 provides different levels of fines. The most frequent irregularities concerning the making of accounting documents are punished with fines from 100 EUR up to 200 EUR. The criminal penalties are provided in section 73 of the Fiscal Code concerning VAT. They are given for specific fiscal deeds. The guilty persons can be convicted to prison of up to two years and with fines of up to 12,000 EUR.

Same as in the income tax, a fiscal consultant or accountant found guilty for a deed concerning VAT can have his right to work ruled out for a period of up to 5 years.

The fiscal evasion in **Switzerland** (Brudariu, 1995, pp. 161-166) is manifested by the inventory according to the law of three categories of deeds that bring damage to the fiscal system:

- *the simple evasion from paying taxes* (considered minor offence, respectively a crime for which the law provides as penalty only fine; this penalty pertains to the criminal law, whereas the deed represents crime) this includes the evasion from the direct federal tax, either by disregarding the liabilities, or by hiding some essential elements, or by the intended or negligent stating of some inaccurate data. The proving of guilt resides with the fiscal authority;
- *the qualified evasion from the paying of tax*, which represents a false mention according to which it was performed an insufficient taxation; this implies a false, forged or inaccurate document, used for the purpose of evading from the direct federal tax;
- *fraud, on making the inventory of succession assets*, to avoid paying taxes.

In the first case, a **fine** is applied, that can increase up to four times the sum of the avoided tax difference, to which they add the pay avoided from tax (the fine can be increased or diminished, depending on the circumstances). In the second case, it is applied the penalty with prison or fine up to 30,000 francs.

Any person that does not conform to the fiscal liabilities is to be sanctioned with fine. Such violations of the law can be: the filing of a statement after the legal due period, incomplete or incorrect, or the non-filing of a fiscal statement; the non-conforming or insufficient conforming concerning the liability to provide information, to confirm certain deeds or report aspects about third parties.

The obligation to provide information in relation to the taxpayer's liabilities or to the establishing of taxes and fees for third parties, of confirmation, of reporting about third parties, of making up documents and accountings, of keeping these documents are considered similar from the point of view of the penalties. The penalty for a non-conformation concerning these aspects is fine of 700 EUR, and for the serious cases of repeated violation of the law, the fine can reach up to 7,000 EUR. These penalties do not affect in any way the punishments given under the commercial law for the non-conformation regarding the liabilities of making and keeping the accounting documents, or the records and other papers.

Also, any person which intentionally or out of negligence, evades from paying taxes and fees is punished with a fine of 100% of the evaded amount. For the cases less serious, the fine can drop to 40 EUR, while for the more serious cases, the fine can increase up to 300% of the hidden sum.

The fiscal fraud is committed when a taxpayer has presented or used accounting documents, exercises, profit and loss accounts, false or forged to outline an incorrect statement. The punishment is both prison, as well as fine of up to 21,000 EUR.

Since the financial and fiscal system of Switzerland is so well-ordered, the fiscal evasion in the Confederacy is pretty rare, the true problem being the banking secrecy, which the Swiss state uses so as not to disclose information about the banking accounts of the citizens in the countries that deal with the phenomenon of evasion.

The fiscal legislation in **Germany** provides three concepts that define fiscal evasion, mentioned previously here. Depending on these, in the event that the fiscal inspector has a suspicion concerning the fiscal fraud, he first informs the competent fiscal authority whose duty is to qualify the fraud according to the type of legislation specific to the respective field. Therefore, it is excluded the fraud corresponding to the imported and excisable products.

If the fiscal inspector noted that the taxpayer destroyed his accounting documents, he is first to make a criminal complaint. By this procedure, the taxpayer becomes a suspect for committing a crime of fiscal nature. The verification of the fiscal documents by the inspectors can continue even after the taxpayer became a suspect for committing that deed. The German fiscal authority that deals with the finding of fraud is made up of two departments. A department of investigations, that deals exclusively with the detection of frauds, and a department that is in charge of the fines applied to this type of frauds.

The German fiscal legislation provides the following deeds that are subject to the penalties:

- the non-making or incomplete making of the tax statements or the request for incorrect reimbursements. These deeds are punished with a limitless fine or with prison from 1 to 5 years;
- the relapse or forgery. If it is about a considerable damage or if it proves to be a repeated fake or a forgery in making documents, then the penalty is from 6 months to 10 years; the same penalty is set if it is proved that the fiscal inspector abused his position;
- the negligence caused by a diminishing of taxes is punished with fine that can reach up to 100,000 EUR;
- the lack of accounting documents;
- the non-payment of the due taxes. In this situation, the amount of the fine varies function of the gravity and frequency;
- the non-collaboration in offering fiscal information.

If a company mistakenly fills in a tax statement or demands an illegal reimbursement, then the company's accountant can be punished. If the taxpayer refuses to cooperate during the control of his accounting documents, the fiscal administration is authorized to estimate the sum which the taxpayer has to pay to the state.

Another interesting aspect refers to the covering of costs of the operation of fiscal investigation, such as those relating to the travelling of inspectors, by the defendant, if he was convicted in the last instance.

The Code of Fiscal Procedure of the **United States**<sup>1</sup> provides more than 150 administrative fines for different violations of the legal provisions. These administrative fines apply for the completion of an overdue tax statement, for the non-paying of taxes, for unstated commercial activities or for the non-disclosure of correct information to the fiscal inspectors.

Thus, if an economic agent does not conform to the liability of filing the tax statement, he risks getting both civil penalties, as well as criminal ones. If he intentionally pays a smaller tax or does not file his tax statement in time, it can be considered that he committed a criminal deed. The penalty for such a deed is fine of 25,000 USD or a year in prison, to which trial expenses are included.

The economic agent that does not observe the liability of keeping account books and of filling in accounting documents, for starters, if the fiscal inspector sets that these accounting documents do not meet the requirements imposed by the Code of procedure, he will try to improve his collaboration with the economic agent, by assisting him in making them. In the event that the fiscal inspector notes the economical agent did not improve the mode of making the account books, then the

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economic agent is to receive a warning, and eventually, if the economic agent does not meet the necessary conditions, then he is to be fined for non-keeping the accounting.

If during the fiscal control, the inspector notes that by various accounting irregularities, the due tax was diminished intentionally or if the value of the set tax was substantially larger than what was paid, then the economic agent is to respond under the penalty of the criminal law.

For the non-making of the statement of fiscal information, the economic agent can be punished with the payment of several types of fines. These fines can be granted either for non-completion or partial completion of these statements, or for non-filing the statement within the prescribed time or for non-stating the accurate sums.

The amount of fines is:

- between 15 USD and 75,000 USD, if the statement is filed with an overdue period of less than 30 days;
- between 30 USD and 150,000 USD, if the statement is filed with an overdue period of more than 30 days, but until the date of 2<sup>nd</sup> August of the respective year;
- between 50 USD and 250,000 USD, if the statement is filed with an overdue period of more than 30 days and after the date of 2<sup>nd</sup> August of the respective year;

As mentioned earlier, if there is intention, a criminal penalty is imposed.

Not allowing the access of the fiscal inspector within the registered office of the economic agent is punished every time by fine of 500 USD. Supplementary, to this type of fine, the access can be done by a court order. The economic agent that does not observe this order is to be made guilty of criminal offence, which can be punished with fine or with prison.

The companies that do not meet these liabilities can be punished with fines of 10,000 USD. This fine can be increased to 30,000 USD in the event that the previous fine was not paid within 9 days.

Another article of the Code of Procedure provides that every citizen or USA resident has to present information relating to the transactions made with other foreign companies. If this information is offered too late or not at all, the company is to receive 1,000 USD fine for every financial year involved.

## Conclusions

The fiscal policy of the European Union has as object only the indirect taxes, whereas the policies regarding the direct taxes are left at the disposal of the national authorities. In this context, all the more frequent, the fiscal administrations have to deal with the international and community regulations that allow for the orientation of their politics.

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