

## MANAGEMENT OF ACTIVITIES TO COMBAT THE PHENOMENON OF TAX EVASION AND THE PREVENTION OF INTRA-COMMUNITY FRAUD

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**Abstract:** *The rules governing the application of the VAT exemption for intra-Community supplies of goods have undergone significant changes since the beginning of 2020, in order to standardize documentation requirements at European level, but also to combat tax evasion, given that the collection deficit the tax remains high. Proof of transport between Member States is one of the substantial conditions for granting the VAT exemption, with the EU establishing a set of specific documents that can constitute proof of intra-Community transport. Tax evasion is a special component of economic and financial crime, and combating the phenomenon has become a major goal of national and international bodies. Approached from a strictly theoretical perspective, Community and / or international tax evasion has to do primarily with the expansion of production / services, respectively of some of their components, belonging to national entities in states where they benefit from tax regulations and much more favorable social.*

**Keywords:** *economic crime, tax evasion, VAT, tax fraud, Open Source Intelligence OSINT, information management.*

**JEL Classification:** *H26.*

### 1. Introduction

It can be said that the EU is currently facing the import and export of economic crime. The flow of such activities is very difficult to track and control, especially since criminal groups have become transnational and have the ability to adapt easily and quickly to all elements of novelty in the community. The evolution of society, both from an economic-social point of view, as well as multicultural and political, has amplified economic crimes, a context in which economic crime has experienced a spectacular dynamic.

Tax evasion is a special component of economic and financial crime, and combating the phenomenon has become a major goal of national and international bodies. Approached from a strictly theoretical perspective, Community and / or international tax evasion has to do primarily with the expansion of production / services, respectively of some of their components, belonging to national entities in states where they benefit from tax regulations and much more favorable social.

Due to the special complexity of the phenomenon that manifests itself in the increasingly fierce contemporary period, generating negative effects on all states, respectively the arguments presented above, we consider the topic very topical, its approach requiring perseverance, documentation and special practical experience.

The main ways of limiting creative accounting are represented by: International Accounting Standards and International Financial Reporting Standards, corporate governance, promotion of ethical and moral values. But the inventiveness for finding the optimal methods of committing fraud, enriching the subcomponents of the methods used with the changes in tax regulation, knows no bounds, the desire to learn being superior to the risk.

### 2. Theoretical basis on tax evasion and fraud

Several forms of crime can be delimited, namely the one that harms the life and / or bodily integrity of the individual, the health or virtue of the person, patrimony and / or

property, but also business, on all their components (financial - banking, computer science, etc.). In a generic sense, economic and financial crime aims to maximize profits through punishable illegal means (crimes against companies, banking, money laundering, accounting, customs, etc.). Having a transnational character, the economic-financial crime has acquired global dimensions, with negative effects on the economic security of the states. Illegal activities are somewhat similar to those carried out by economic entities from different sectors of activity, a part of the profits obtained being reinvested on the black market, increasingly diversified and constantly evolving. Then it is certain that tax evasion is a component of this phenomenon.

All definitions of tax evasion also include the element of illegality. The reduction of the taxable mass may or may not be the result of the will of the legislator. As a result, there is the problem of delimiting the forms of tax evasion on the basis of legality, because there may be other forms of non-taxation that have the effect of reducing the taxable matter, although this is not implemented by evading the payment of tax obligations, and as such, it does not represent tax evasion.

For a long time, tax evasion was considered a component of tax fraud. However, the two notions have been delimited, in the sense that it is currently considered that tax evasion includes all manifestations aimed at avoiding the payment of taxes / fees, with two main components: tax evasion (legal) and tax fraud (illegal tax evasion) . In terms of economic theory, the legal distinction is inconsistent as long as both forms are elusive and generate a decrease in state budget fiscal revenues.

Referring strictly to tax fraud, this involves an abuse of tax laws, a crime committed knowingly and deliberately on the regulations regarding the payment of tax obligations.

Regardless of the definition of tax evasion, this phenomenon is condemned all over the world and persists despite the anti-evasion measures adopted at national, community, regional, etc. level.

Legitimate tax evasion involves the theft / concealment of a certain part of what is a taxable matter, but without this approach being a contravention or crime. In essence, any study addressing lawful tax evasion has an obligation to emphasize from the outset that the activities that led to its materialization are legal, despite the fact that it harms the quantitative dimension of budgetary payment obligations.

Lawful tax evasion has to do with the process of reducing the value of taxes / fees through eminently legal tax mechanisms. It materializes in the context in which specialists manipulate the vulnerabilities or ambiguities of the legislation in the fiscal field. Although the methods used are legal, their consequences are labeled as defective or abusive. Due to the subjectivism of those who interpret and subsequently apply tax regulations, in certain contexts establishing a clear line between lawful tax evasion and tax fraud is difficult and sometimes even impossible.

#### **Appreciation:**

The European Union defines tax evasion models that have an effect on its own revenue through the *acquis communautaire* in the field of tax evasion and deals separately with the issue of preventing tax evasion, which is one of the main objectives of its tax policy. The *acquis communautaire* in the field of tax evasion primarily concerns schemes to evade VAT, production-related taxes and imports.

→ The information that accounting provides is the main source of clues about a possible evasion mechanism or scheme. However, the accounting information is not in itself a sign of a potential evasion because only a complete, logical and systematic documentation of the observance of the accounting legislation and policies can generate the necessary indications for the instrumentation of the evasion phenomenon.

### 3. Intra-community VAT fraud

The rules governing the application of the VAT exemption for intra-Community supplies of goods<sup>1</sup> have undergone significant changes since the beginning of 2020, in order to standardize documentation requirements at European level, but also to combat tax evasion, given that the collection deficit the tax remains high.

→ Proof of transport between Member States is one of the substantial conditions for granting the VAT exemption, with the EU establishing a set of specific documents that can constitute proof of intra-Community transport.

#### **Independent or affiliated parties for the purposes of applying the VAT exemption;**

The national legislation, in this case the instructions for applying the VAT exemption implemented by Order 103/2016 and recently amended by Order 2148/2020, mentions that the notion of “independent parties”, within the meaning of art. 45 a of the EU Regulation 282/2011 for the application of the VAT exemption, shall be interpreted as those parties that are not considered affiliated according to the provisions of art. 7, point 26 of the Fiscal Code.

In the case of companies, affiliation occurs where the relationship between them is characterized by at least one of two conditions: a direct or indirect holding of at least 25% of the value or number of shares or voting and / or control rights, common or exercised by one company over the other. As long as one of these conditions is met, companies are considered affiliated, while if these conditions are invalidated, the companies are independent.

#### **Documents required to prove intra-Community transport**

If the parties involved in the transaction are independent, proof of intra-Community transport must be provided on the basis of European rules by means of two non-contradictory documents from the list established at European level, as follows: two documents directly related to transport (bill of lading, air transport invoice, carrier invoice); or a document directly related to the transport and an additional document, such as insurance policy for goods during transport, bank statements proving payment of the carrier, receipt issued by a warehousekeeper, document issued by a public authority (eg notary) certifying arrival goods in the Member State of destination.

In addition, if the shipment is arranged by the buyer, a declaration on his own responsibility attesting to the arrival of the goods in the Member State of destination will be required. This declaration must be sent by the buyer by the tenth day of the month following delivery, in accordance with the EU Regulation. However, the provisions of the national legislation (Order 103/2016) support the companies, mentioning that the supplier will continue to benefit from the VAT exemption provided that the declaration is received within 150 days from the date of delivery.

If the parties involved in the transactions are affiliated, for example when the carrier of the goods is affiliated with the seller or the buyer, proof of intra-Community transport is made on the basis of national rules (excluding from this analysis the supply of excisable products and means of transport), with documents directly related to transport (signed CMR or a signed consignment note, a bill of lading, specific air freight document) and one of the following additional documents: insurance policy for goods during transport, bank statements proving payment of the carrier, receipt by a warehousekeeper, a document issued by a public authority (eg notary), a written declaration from the buyer stating that the goods have been dispatched to the Member State of destination.

### 4. Administrative cooperation between states in the field of VAT

Tax fraud and tax evasion that extend beyond Member States' borders lead to budget losses and breaches of the principle of fair taxation<sup>1</sup>.

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<sup>1</sup> They can also lead to distortions of capital movements and conditions of competition.

At the level of the European Union, it has been considered that in order to combat VAT evasion, close cooperation is needed between the competent authorities of each Member State, responsible for the application of the provisions in this field<sup>1</sup>.

Every year, the European Union loses billions of its VAT revenues due to the activities of organized criminal groups. As exports of goods and services from one EU Member State to another EU Member State are exempt from VAT, criminals can fraudulently evade the payment of VAT in the Member State of destination. This leads to revenue losses for both the countries concerned and the EU.

### 5. Exchange on information in the field of VAT

Information obtained from the exchange of information between Member States may be used for the purpose of determining the tax base or for the collection or administrative control of taxes for the purpose of determining the tax base.

→ The same information may be used in connection with legal proceedings which may involve sanctions, initiated as a result of a breach of tax law, without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in such proceedings.

→ By way of derogation from the general purpose, the competent authority of the Member State providing the information may allow its use for other purposes in the Member State of the requesting authority where, under the law of the Member State of the requested authority, the information may be used for similar purposes. .

→ If the requesting authority considers that the information which it has received from the requested authority could be useful to the competent authority of a third Member State, it may forward it to the latter. It must inform the requested authority in advance. The requested authority may provide for the transmission of information to a third party to be subject to its prior agreement.

#### Conditions governing the exchange of information, namely:

- the communicated information is provided, as far as possible, by electronic means;
- in cases where the request has not been transmitted in full by electronic means, the requested authority must confirm receipt of the request by electronic means, without delay and in any case no later than five working days after receipt;
- in cases where the authority has received a request or information without the intended recipient, it must send a message to the sender by electronic means, without delay and in any case no later than five working days after receipt ;
- requests for assistance, including requests for notification, and attached documents may be written in any language chosen by mutual agreement between the requested authority and the requesting authority. Such requests must be accompanied by a translation into the official language or one of the official languages of the Member State in which the requested authority is situated only in special cases where the requested authority provides a reason for requesting such a translation;
- the requested authority in one Member State provides information to another requesting authority in another Member State, subject to **two conditions**:

1. the number and nature of the requests for information submitted by the requesting authority within a given period do not involve a disproportionate administrative burden on

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<sup>1</sup> Măsurile de armonizare fiscală luate în vederea realizării pieței interne trebuie să includă instituirea unui sistem comun de cooperare între statele membre, în special în ceea ce privește schimbul de informații, prin care autoritățile competente ale statelor membre urmează să se sprijine reciproc și să coopereze cu Comisia Europeană pentru a asigura aplicarea corectă a TVA la livrările de bunuri și prestările de servicii, achiziția intracomunitară de bunuri și importul de bunuri.

the requested authority;

2. the requesting authority has exhausted the usual sources of information which it could have used under those conditions in order to obtain the requested information, without risking jeopardizing the attainment of the objective pursued.

## 6. Concrete ways to remove fiscal obligations

An economic operator who carries out a commercial activity and intends to evade the payment of tax obligations has several options at his disposal to achieve his goal. If it opts for the non-registration of all or part of the revenues, there is the probability that by a simple check in the database, the tax authority will find inconsistencies between the informative declarations regarding deliveries / services and purchases made on national territory (394, 390) submitted by supplier and, respectively, by the beneficiaries, to initiate a fiscal control and, on this occasion, to discover the tax evasion practiced.

- Similarly, the economic operator could try to reduce its taxable income by increasing expenses, achieved through the accounting of fictitious operations. Nor can this option give him a chance to evade criminal liability, as a routine tax audit could find that the invoices and other supporting documents provided are false, come from an inactive taxpayer or have another object of activity, no payments have actually been made. on behalf of these benefits, etc.
- These are common forms of tax evasion, quite common, but which can not generate substantial damage, because they were not designed and organized in such a way as to have all the characteristics of a large-scale operation. In order to avoid tax controls for as long as possible and, implicitly, to avoid criminal liability, an economic agent will use apparent circuits of commercial transactions and financial flows in which phantom companies and commercial companies are involved. non-resident (offshore). The stakes of such fictitious circuits can be both the reduction of the profit tax paid, and especially the illegal deduction of VAT, with the creation of an appearance of creditworthiness and credibility, but also the insurance of the proceeds of crime by money laundering.

The main fraudulent financial reporting schemes relate to underestimation of income and misrepresentation of inventories, to which are added other schemes relating to the valuation of assets, liabilities and receivables or other schemes. Smoothing results, another creative practice, aims to reduce variations in accounting results, wanting to provide a relatively constant level of financial results over several financial years.

Revenue management as a method of applying creative accounting takes place when managers have a certain goal that they must achieve for objective or subjective reasons. The simplest technique for applying this method is to choose when to sell an asset based on when you want to record a profit. Another technique refers to the recording of exceptional expenses that belong to several financial years only in one, because the occurrence of that exceptional event can serve as a basis to justify the low performance of the entity in that year.

Typical Community fraud involves the use of an economic circuit consisting of VAT-paying entities with different functions. Committing this type of fraud requires the existence of a phantom entity which does not carry out economic activities but which is used only for making intra-Community acquisitions and recording deductible value added tax. Other methods of VAT fraud are fictitious intra-Community supplies and cash & carry schemes.

We consider that the identification and assessment of fraud risk components is the central pillar of control or audit actions, which cannot define their objectives in the absence of knowledge of potential risks. That is why, in the applied research, we developed a case study aimed at improving control strategies in the field of combating community fraud. It aims to

design a general audit framework focused on identifying specific methods and techniques for detecting Community fraud at the level of European funds.

**Appreciation:**

As a general rule, a ghost company<sup>1</sup> it does not actually carry out commercial activities, but generates supporting accounting documents, which are used by the other commercial companies involved in the evasionist circuit.

**7. Impact of negligence in checking the risk potential of business partners on VAT**

Regular verification of the risk potential of business partners is becoming increasingly stringent. The National Agency for Fiscal Administration (ANAF) has been applying, for several years now, the principle taken from the case law of the Court of Justice of the European Union which states that when VAT evasion occurs, the parties involved in the transaction "knew or should have he knows" that he is participating in tax evasion.

Starting with January 1, 2018, the Fiscal Code also specifically grants ANAF the right to refuse the VAT deduction if it proves, beyond any doubt, that a company knew or should have known that the acquisition was involved in a VAT fraud, regardless of the stage in the supply chain in which it intervened. However, the same principle applies to intra-Community deliveries, especially in the case of goods that are transported outside Romania by the customer. In this case, suspicions that could hover over a legal entity in the absence of customer verification may lead to the cancellation of the VAT exemption, insofar as customers do not transport the goods in another EU Member State.

Thus, it becomes absolutely necessary to regularly check the risk potential of business partners. Companies are required to demonstrate that they have conducted reasonable investigations of business partners, for example regarding tax status, reputation, procedural history, debts, headquarters, number of employees. All these checks should highlight whether there may be suspicions of VAT fraud at the level of business partners.

The authorities consider that those companies that have not performed due diligence in their business relations are negligent, negligence that may make them suspicious. Beyond the interpretation of the law, which is the subject of many administrative appeals and disputes with the authorities, there is the difficulty of fulfilling the requirement to be diligent in contractual relations in order to prevent potential disputes and risks.

The tools provided by ANAF allow the verification of VAT codes, information about business partners. Thus, checks can be made in the two existing registers at ANAF level (Register of inactive or reactivated taxpayers, respectively Register of taxable persons registered for VAT purposes) or with the help of other sources of information - outstanding tax obligations, lack of employees, registered office, etc.

However, even these criteria are debatable, because they do not always reveal the real situation of the verified company, in practice there are cases where the information is not updated in real time. Moreover, it involves a detective activity that involves the allocation of costs and human resources.

The technique of performing the verifications undertaken by the tax inspectors necessarily involves the application of the method appropriate to the type of activity carried out by the controlled entity, the multitude of fiscal control procedures being able to be combined depending on the proposed purpose. Common control methods can be combined with specific verification techniques and have as a preliminary procedure the general study of

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<sup>1</sup> Phantom companies are used by the beneficiary by involving them in the evasion circuit, in order to avoid the payment of tax obligations to the state budget, but with the appearance of an appearance of legality under the justification of good faith.

the activity (which can be performed based on data held on the computer platform of the tax authority), followed by effective control of the documents underlying the to declare the activities carried out. Subsequently, inventory operations may take place when the entity declares depreciation or stock of goods, and in case of suspicion, the tax authority may also order the performance of specialized expertise (for example for the forgery of documents) or laboratory examinations, being also controlled the account statements through which the economic agent carried out collection and payment operations.

When carrying out the fiscal control, the most significant documents and accounting records must be checked, which most eloquently reflect the taxpayer's fiscal status, any reported inconsistencies leading to the need for a more thorough control to identify the sources of these inaccuracies and to notify, where appropriate, the existence of indications of the commission of illicit acts of an evasionist nature.

## 8. Conclusions

Creation of a definitive VAT collection system by extending the reverse charge procedure to all commercial transactions across Europe.

Being a broad-based consumption tax, value added tax (VAT) is one of the main sources of tax revenue in the European Union, with a growing share, but in recent years, the VAT system has not been able to keep up with globalization. and with the digitalization of the economy.

Modernizing the VAT system and adapting it to the challenges posed by the fight against fraud are key elements for the future of the single market. The reform of the current VAT system should contribute to the development of the digital single market and complement the agenda set by the Commission for creating a fairer and more efficient corporate tax system in the EU.

In this context, it is both necessary and urgent to move further towards an EU-wide VAT system that can stimulate job creation, growth, investment and competitiveness and is suitable for an increasingly prosperous economy. digitized.

Suppliers must obtain the supporting documents provided in art. 45 a of Regulation 282/2011 for the presumption of intra-Community transport.

Thus, in order to be able to justify the right to deduct VAT for a purchase of services, the taxpayer must be able to provide the tax authorities with supporting documents proving that:

→ the respective acquisitions were made in order to carry out operations that give the right to deduct VAT;

→ the respective services were actually provided.

If in the case of using falsified supporting documents, or issued by inactive entities, with suspended or even deregistered activity, the situation is clear, proving tax evasion is not a difficult operation, the same cannot be held when evasion accounting techniques become more sophisticated, being increased specialized knowledge of the control body is required to detect these special techniques.

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