

PREVENTING AND COMBATING TAX EVASION IN ROMANIA

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Abstract:

In Romania, the main components of general government revenues are tax revenues. Growth solutions of public revenues are especially found in increased taxation, and less in reducing tax evasion phenomena, therefore such decisions have generated a series of social inequities.

In this article we intend to emphasize the effort made by ANAF (National Agency for Fiscal Administration) to combat this phenomenon, during the period 2010-2015, by analyzing some performance indicators of fiscal inspection activity, respectively tax loss reduction, dimension of confiscated goods and cash, and others.

Key words: tax evasion, value of precautionary measures, fines imposed, damage value.

JEL classification: H26

INTRODUCTION

The tax evasion phenomenon is as old as the one on taxes because taxpayers perceive tax as a "necessary evil" which they seek to avoid if they have the economic and social possibility, and mostly a favorable legislative framework.

Tax evasion phenomenon is widespread throughout the world, both in developed countries, but especially in developing or even poor countries, unfortunately Romania being included in this category.

The Romanian state, through the National Agency for Fiscal Administration, is trying by various means to combat this phenomenon.

RESULTS AND DISCUSSIONS

By the tax evasion term, we understand "evading from tax obligations"¹.

There are two types of tax evasion: one that is based on exploiting regulatory gaps, and the other one which seeks concealment of taxable matter.²

It is considered that tax evasion has two forms of manifestation:

- Lawful tax evasion, which is also referred to as legal tax evasion, non-fraudulent evasion or simply tax evasion;
- Unlawful tax evasion, which is also called illegal tax evasion, fraudulent or tax fraud³.

Some authors⁴ argue that each taxpayer's may manifest the intention to evade payment, even if one does not effectively follow tax evasion. Each taxpayer wants to pay as little as possible to tax authorities. Therefore, it is concluded that regardless of the tax evasion form, there is an intention to protect wealth by various modalities.

The misdemeanor of tax fraud consists in "the act of a taxpayer or a third party who knowingly omits to present to the financial administration, all the elements that condition the establishment of taxes, or communicates incorrectly or incompletely

¹ Bistriceanu, Gheorghe D. - "Sistemul fiscal al României", Editura Universitară, București, 2008, p.165

² Goicea, Gabriel - „Analiza și perfecționarea metodelor de prevenire și combatere a evaziunii fiscale”, ed. A.S.E., București, 2009., p.124

³ Cosmin Balaban, Evaziunea fiscală. Aspecte controversate de teorie și practică judiciară. Ed. Rosetti, București, 2003, p. 7.

⁴ Hoanță, Nicolae - „Evaziunea fiscală”, Tribuna Economică, București, 2007, p.189

information in order to qualify for a tax reduction or to obtain unjustified tax advantages for a third party or for the person committing the act".⁵

The efficiency of the process to stop or at least to severely reduce the tax evasion phenomenon implies the ability to remove the causes that produce or can favour the facts in question, and not to remove the effects of this phenomenon.

From this clearly results the importance of knowing the tax evasion phenomenon, the mechanism of transposing into reality, as well as of the psychological and moral factors that determine taxpayers to resort to acts of evading from tax obligations.

Central and local fiscal authorities are intended to combat and prevent tax evasion; the tax body must have a proper training and appropriate behavior.

At the same time, cooperation is necessary between control bodies and secret services, the latter providing concrete information regarding this phenomenon. The vast majority of developed countries have specified, through their national legislative framework, provisions designed to unilaterally combat international tax evasion. In addition to these we also have the provisions stipulated in the treaties regarding the avoidance of double taxation.

These treaties may include provisions that ensure an official exchange of information between signatory States, regarding different categories of income and taxpayers (income originating in a signatory State but are received by residents of the other signatory State).

There is no doubt that tax evasion is part of an economic behavior specific to a market economy. But it has negative effects on the economy, as well as over the society as a whole. Numerous obligations that are imposed to taxpayers by the tax law will always determine them to find different methods to elude tax laws.

This is because, by imposing fees and taxes, tax authorities "hit the individuals in their sensitive point, which is monetary interest". The sanctions that are established in tax laws will not determine taxpayers to pay their entire tax obligations, but on the contrary, will determine them to find new methods to evade from the obligations they have to the state.

Although the state and the taxpayer should not be seen as opponents, however, it should be considered the fact that they are two "players" who don't have common goals.

Thus, the taxpayer seeks to obtain greater revenue, while the state aims to attract revenue from taxpayers.

The paradox is that though the two goals are contradictory only at a superficial analysis, because in reality, the taxpayer's prosperity entails prosperity of the state budget, and vice versa, a more relaxed budget can lead to benefits for the taxpayers.

At the moment, diminishing tax evasion is one of the main priorities of fiscal and judicial national bodies, but also at Community level.

It is indisputable that Law no. 241/ 2005 on preventing and combating tax evasion, resolves some of the issues raised in practice and jurisprudence of the former regulation.

However, as we have seen, the current regulation presents some inaccuracies, and in some cases, allows different interpretations, which is likely to generate controversy in doctrine, but it can also lead to uneven solutions of courts, seriously affecting the principle of legality, so important in criminal law.

Therefore, it can be concluded that, although the current regulation of tax evasion offenses represents a step forward in trying to establish an efficient legal and criminal system to combat the tax evasion phenomenon, the new legislative framework continues to contain some controversial issues that may affect the administration of justice.

For these reasons, an intervention of the legislature would be useful in order to give more clarity to the norm of incrimination. It is true that in most cases, the

⁵ Hoanță, Nicolae - „Evaziunea fiscală”, Tribuna Economică, București, 2007, p.143

jurisprudence has not faced yet the problems noticed in doctrine but it would be preferable for the legislature not to wait for the courts to find solutions to some problems generated by regulatory techniques, that can be solved through its intervention.

This is because it is likely that the issues raised by the legislative framework to generate, for starters, different solutions than courts, thus affecting the unity of justice, and ultimately the rights of citizens.

Further, we will analyze the main performance indicators of the fiscal inspection activity that may help to combat tax evasion.

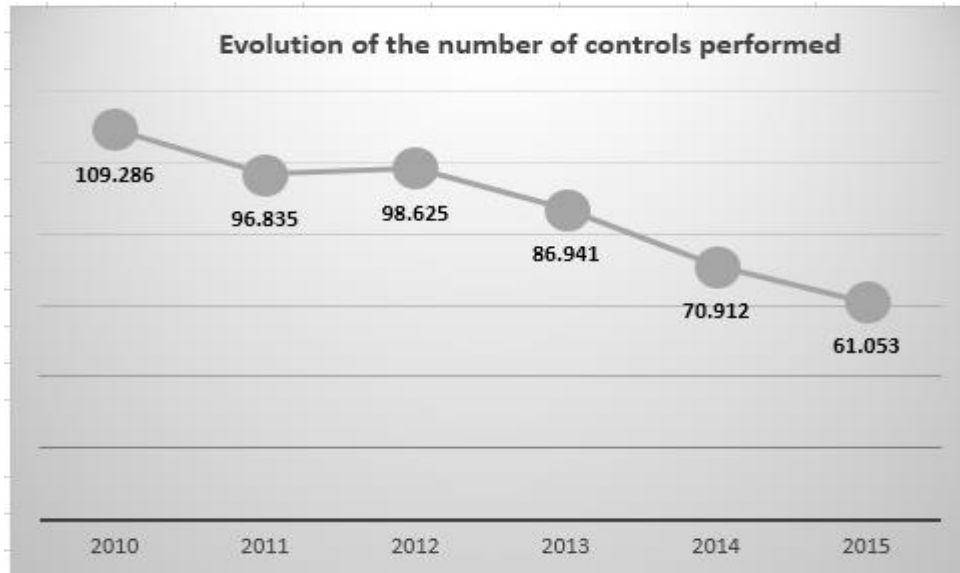


Figure 1 Number of controls performed

From figure 1 we can observe that investigating actions have been initiated, 109,286 controls being performed in 2010. There was a downward trend, in 2015 the number of controls performed was of 61,053, resulting in a decrease of over 55%.

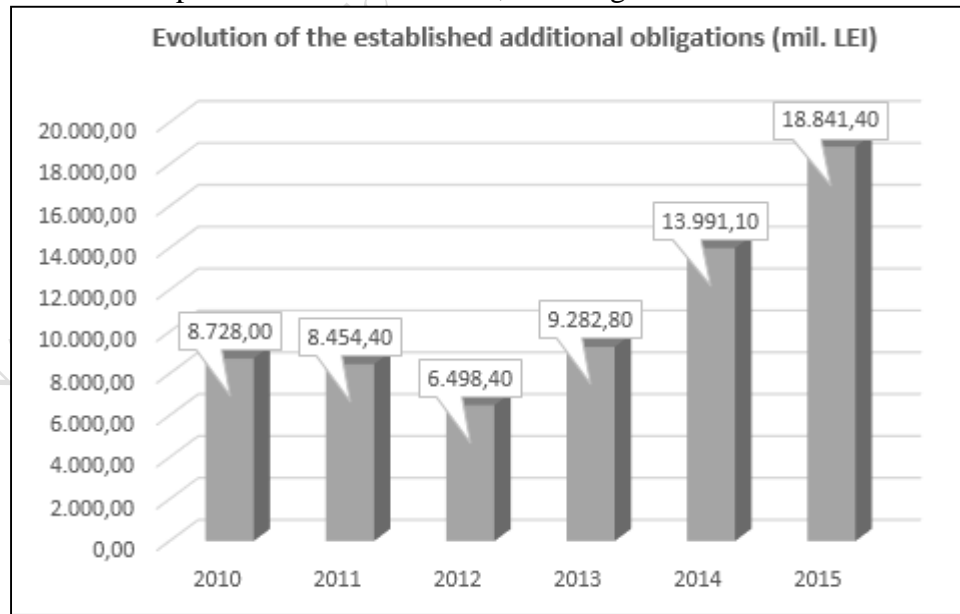


Figure 2 Established additional obligations

By analyzing figure 2 we notice that as a result of the controls performed, additional obligations were established in amount of 8,728 lei, in 2010. A downward trend was registered until 2012, with a decrease of over 25%. Starting from 2013 an upward trend was registered, and if we compare the additional obligations established in 2012 with the ones set out in 2015, the increase registered was of almost 190%.

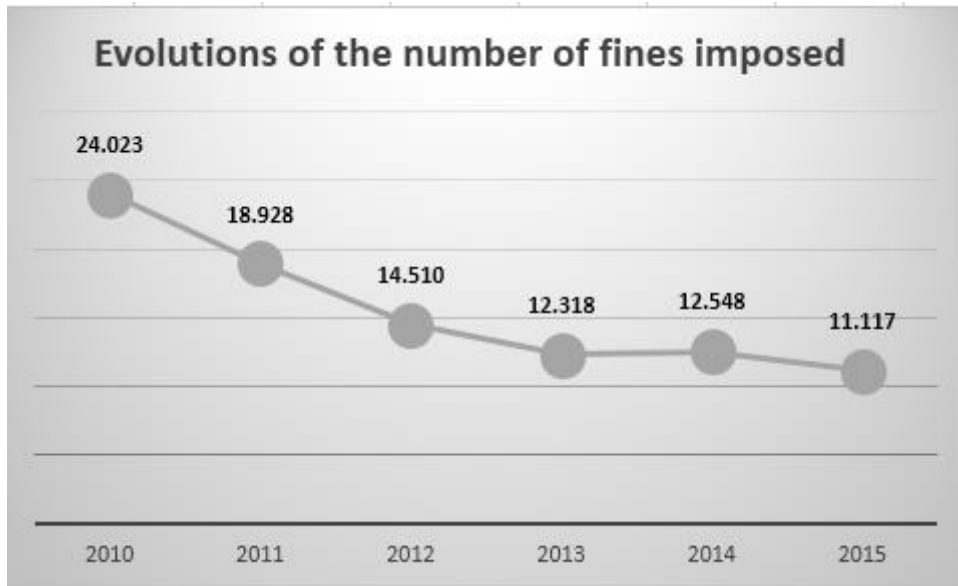


Figure 3 Number of fines imposed

From figure 3 we can observe that as a result of the controls carried out in 2015, a number of 11.117 of fines were applied, decreasing with over 46% compared to 2010 when a number of 24.023 of fines were applied.

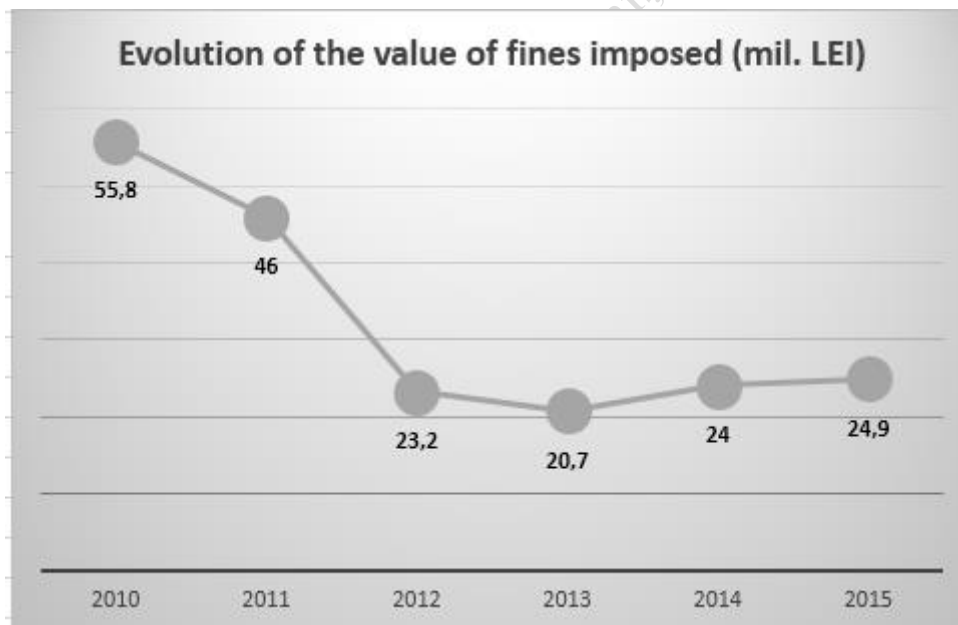


Figure 4 Value of the imposed fines (mil. LEI)

If we analyze figure 4 we can observe that as a result of the controls performed in 2015 fines were applied amounting 24.9 million Lei, registering a decrease of over 44% compared to 2014 when the amount of imposed fines was 55,8 million Lei.

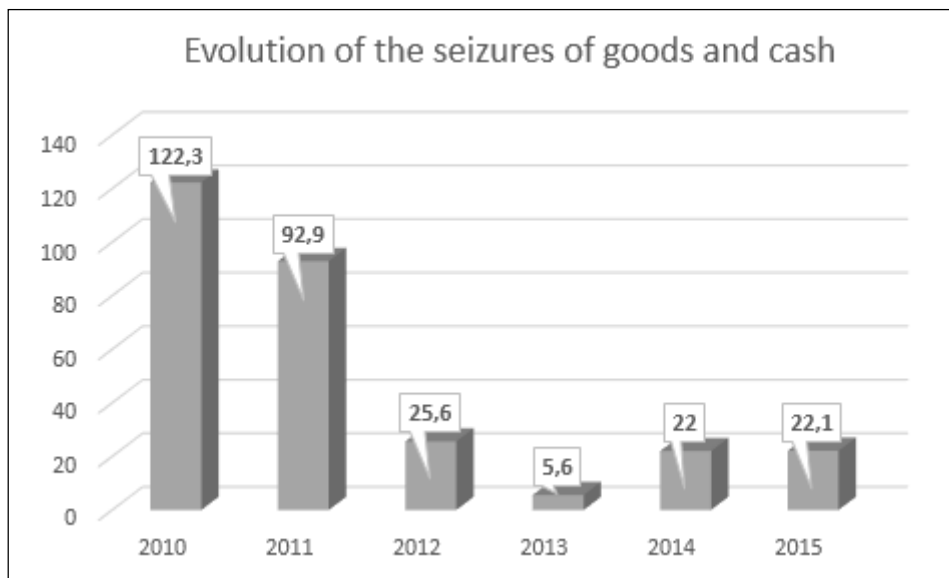


Figure 5 Seizures of goods and cash (mil. LEI)

Figure 5 shows us that as a result of the controls performed in 2015 goods and cash amounting 22.1 million Lei were seized, increasing by 0,7% compared to 2014, but the increase registered was nearly 300%, compared to 2013, when the goods and cash seized amounted 5,6 million Lei.

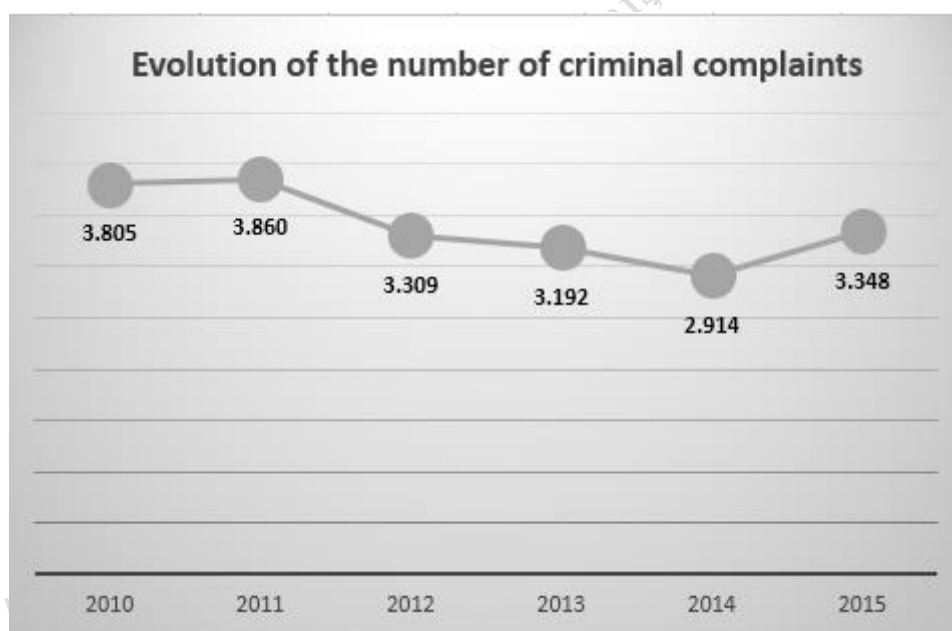


Figure 6 Number of criminal complaints

In figures 6 and 7 we can notice that as a result of the controls performed in 2015, 3348 criminal complaints were filed totaling 11.253 million Lei, increasing with almost 188% compared to 2010 when the value of the damage was 3.911,30 million Lei.

From figure 8 we can observe that as a result of the controls performed in 2015, precautionary measures were ordered, totaling 4.966 million Lei, this represents an increase of 34,8% compared to 2014 and of 88% compared to 2010.

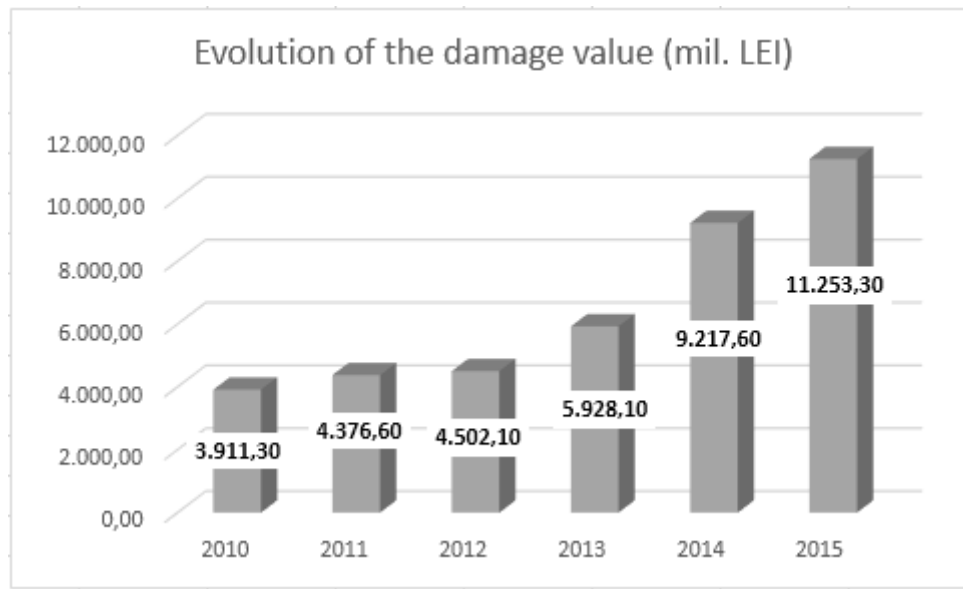


Figure 7 Damage value (mil. LEI)

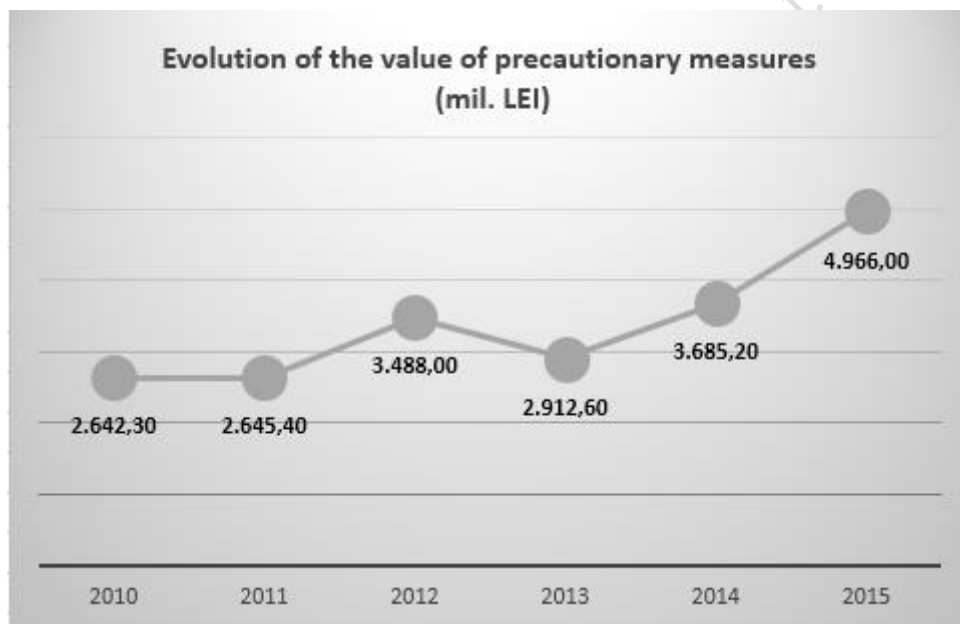


Figure 8 Value of precautionary measures

CONCLUSIONS

Effectiveness of the process to stop, or at least to severely limit the tax evasion phenomenon involves the ability to remove the causes that produce or can favor those facts, and not to remove the effects of this phenomenon.

Hence, the importance of awareness in the tax evasion phenomenon and the mechanism of transposing it into reality is very clear, as well as the moral and psychological factors that cause taxpayers to resort to acts of absconding of legal tax obligations.

From the analysis of the indicators above presented we can say that the fight against tax evasion, at national level, is closely linked to the number of verifications, which influences the number of fines imposed and their value.

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