



FISCAL FRAUD IN TEXTILE AND CLOTHING IMPORTS

STANCIU Dorică¹

¹University of Oradea, Faculty of Economics, Economic Department, Street. Călimăneștilor Nr.8, 410109 Oradea, Bihor, Romania, E-mail: dorica.oradea@yahoo.ro

Corresponding author: Stanciu, Dorcă, E-mail: dorica.oradea@yahoo.ro

Abstract: *We have appreciated that this paper can be structured in four chapters that will explain the inevitable negative effects generated by tax and fiscal fraud, which are felt in the level of fiscal revenue, determining major malfunctions in the mechanism of the markets. In the economic reality and in the rise of the tax fraud phenomenon, in the contemporary fiscal doctrine it is stated that the public desiderate of “loyal collaboration between the tax payer and the revenue agency” with the purpose of correctly setting taxes and tariffs and other required fund needed for creating public interest monetary funds. The economic, social and political globalization tendencies of the last decade have stimulated and supported actions relating to eluding the fiscal dispositions, actions which have moved more and more from the center of the national fiscal system towards the exterior, outside the field of action of the national fiscal law.*

In this regard show that reducing fiscal evasion, allows the creation of budgetary resources, necessary for funds allocation for economical growth. In Romania, one of the basic economic problems is the lack of investment resources allocated, these being the main contributor to economic growth, in which the reduction of fraud and tax evasion is the solution to increase this allocation which can be rated as one of the priority tasks of the state.

Keywords: *tax evasion, fiscal fraud, VAT, textiles, import operations*

1. INTRODUCTION

Most often, fiscal fraud designates, *stricto sensu* a violation of the law and it is distinguished from the tax evasion which is defined as being an able use of the possibilities offered by the law.

The first definition of fiscal fraud has been given between the two world wars. According to it, this fraud was an extended concept, the notion of fiscal evasion being included in the fraud notion. The most well-known sense given to fiscal fraud is “the art of avoiding the fall in the field of attraction of the fiscal law” [1], a concept that belongs to M.C. de Brie and P. Charpentier.

Fiscal fraud is fraudulent when the taxpayer that is obliged to further provide details in support of his fiscal declaration will dissimulate the taxable object, by under-evaluating the quantum of the taxable material or by using other means of not paying the tax that is due. Fiscal fraud is a generic term and represents the running away from taxes attitude. This is a broad definition of fiscal fraud, which today composes fraud as well. Fiscal fraud is made up of, incontestably, by all omitted and committed facts made by entities subjected to taxation, which represent wrongdoings made against fiscal legislation due to their grave financial consequences.

Tax evasion has a direct and immediate effect on levels of tax revenue, which leads directly to imbalances in market mechanisms and unlawful enrichment of the practitioners of this method of cheating that affects the state and ultimately, each of us, honest taxpayers.

Due to the Romanian legislation in the field, supporting the existence of a legitimate (or legal) tax avoidance and of an illicit (or illegal) tax avoidance lacks legal basis.

2. TEXTILE AND CLOTHING IMPORT

Immediately after 1989, the Italian producers were the first which came in Romania and gave a boost to the local textile industry. Other producers from Turkey soon followed on the accessories and fabrics, China (confections), Germany or Greece (clothing).

After it has reached the top of clothing and shoes manufacturers and after these two industries have got to representing almost half of the exterior commerce of Romania with the EU, their decline started in 2004-2005, due to the unfavorable conjuncture of the increased EURO-LEU exchange rate and because of the liberalization of the European market towards the Asian exports. This decline had been predictable, given the fact that on the road towards the EU, which supposes the nominal and real convergence, loss of jobs and market shares in cheap workforce industries. Through this process other countries have passed, all great textiles and footwear exporters, such as Spain and Poland, when they joined the EU.

The great retailers that came to Romania have looked for cheap qualified labor, low pay and vicinity to the great markets of the EU. After Romania joined the EU, it has lost the fight with the Asian markets, in regards to costs, the factories of China, Bangladesh, Mexico or Pakistan becoming more interesting from this point of view. Besides these aspects, the economic-financial crisis led to the Romanian factories losing their most important clients and finally, thousands of employees losing their jobs. Some factories were obliged to shut down production.

On January 1st 2007, Romania joined the EU. Since then, customs taxes on textiles and clothing have decreased by 10%, to a value of about 7%. In this context, the imports and re-exports from Hong Kong and China were expected to grow.

Chinese corporations declare that the volume of their own investments in the Romanian economy total around 254 mil. USD, but the concrete load of these investments on the textile industry is unknown.

With the integration of our country into the European Union, some operators in Romania quickly assimilated criminal fraud practices of tax obligations used successfully for many years in the Community. The mechanism itself is structured in the current transitional arrangements for the taxation of intra-Community trade, which requires, as a general rule, the taxation of intra-Community goods carried between taxable persons, in the Member State of destination.

During 2010-2011, many textile imports have been identified, originating from China. The importers are limited liability companies from Romania, many of them having their social headquarters in the west of the country. Many of these companies have declared the simultaneous introduction into use of the goods they imported into another member state and putting them into free circulation.

Some importing companies have rapidly assimilated the criminal fraudulent fiscal obligation practices, successfully used for a number of years in the European Union. Thus, the mechanism is based on the moving of good from the customs office through which they entered in the EU towards a certain customs office of a member state, where the goods are declared in a certain custom regime on import, without putting the goods into free circulation in that state, the customs taxes are paid for those declared products, VAT-exempted, which is to be paid in the member state in which the goods will be put on sale.

3. FISCAL FRAUD ON TEXTILE AND CLOTHING IMPORTS

Since Romania joined the EU, customs regulations are applied according to the Community Customs Code, which supposes the usage of a community customs tariff, as well as other community commercial policy regulations.

From case to case, the textiles and clothing that are bought, in part from China, have been imported in Romania by commercial companies that had as unique associate and administrator people with a low level of knowledge and who did not understand what the implications of the societies they have registered are.

Thus, besides fraud in textiles and clothing, consisting of undeclared production, undeclared imports, under-evaluated imports, fictive exports, not including goods in the taxing base, in 2010-2011, profiting from the customs possibilities offered by the new regulations, the textiles and clothing imports from China have been released into free circulation on Romania's territory without paying required fiscal taxes, especially VAT, by simulating the delivery to a different member state.



As we have shown above, the fraud methods in this field are multiple, but the ones that are the object of a concrete analysis in this paper are those identified as entered in Romania in a non-taxable transit for which custom clearances have been made at an office in the West of Romania, a special customs regime being solicited – the codified customs regime 42.

This codified regime 42 represents the releasing into free circulation of goods and introducing into consumption of goods that are part of a VAT-free delivery to a different member state, and, depending on the case, tax-free.

The exempt of taxes and VAT is given because the import is followed by a delivery or an intra-community transfer of goods towards a different member state. In this case, VAT and the customs tax will be paid at the destination, in that member state. In order to use this regime, operators need to fulfill some conditions. These operations are regulated by art. 143, paragraph 2 from the 2006/112/CE Directive, and, by case, art. 17, paragraph 1, letter d from the 2008/118/CE Directive.[2]

Based on article 143, paragraph 1, letter d from the VAT Directive, goods can be imported VAT-free only through a commercial agent which is registered as a VAT payer in the country where the goods will be sold or a fiscal representative (which is a representative according to article 5 of the CVC) in that country.

The goods are put into free circulation in a member state, but are destined to an economic operator from a different member state. The VAT formalities are made by a commissioner in the customs, which is a fiscal representative in the intra-community VAT system – his VAT number and the VAT number of the economic operator are declared in box 44 from the customs declaration, together with the relevant TARIC codes.

Thus, in 2010-2011, a number of 733 customs transit operations have been identified, with goods coming from outside the community – China – being introduced on the customs territory of the European Community and put in a tax-free system, destined for two commercial companies with limited liability from the west of Romania.

The customs transit operations have been closed at the customs office from the area where the two companies operated, where the import declarations have been registered and deposited, in the customs regime, described above, 42. The 733 transit operations were made up of clothing for children, women, men – comprised of trousers, skirts, blouses, jackets, t-shirts, dresses, mackinaws, pullovers, vests, pajamas, twinsets, lingerie, scarfs, robes, etc., made from cotton, wool, synthetic fibers in various mixture proportions.

The total quantity of the goods that made up the 733 transports was of 12.471.334 pieces (4.146 tons), the value of these goods in the customs being of 13.624.820 lei (3.214.993 euro equivalent). For the textiles and clothing that have been analyzed according to the specific tariff code, custom taxes totaling 5.278.573 lei (1.245.563 euro equivalent).[3]

The importing company has declared, through the solicited customs regime, that the goods will be put into free circulation and introduced into consumption in Hungary, the situation respecting the procedure while the VAT for these goods was to be paid in Hungary.

In this situation, the competent customs authority was to keep in its registry the operations until presenting documents that prove that the goods have left the Romanian territory, which usually are transport confirmation documents from the recipient (in this case CMR, because the transports were made exclusively on roads) or other relevant documents.

From the inspection made by specific control services, it has been shown that the vehicles have not left the Romanian territory, a situation in which it is supposed that they were sold on the Romanian territory with smaller prices, without paying the fiscal obligations, which led to a prejudice for the State budget, consisting of VAT and profit tax.

The taxing base for VAT has been determined based on the information available, by this formula:

$$\text{Tax base VAT} = \text{value in the customs} + \text{customs tax} \quad (1)$$

In order to determine the VAT, the 24% quote has been applied to the tax base calculated by the formula above. After calculating the VAT obligation, it has resulted that through this engineering, the payment of the 4.536.814 lei (1.070.534 euro equivalent) have been avoided, representing VAT for the consolidated state budget of Romania. [4]

Based on the data provided by the National Institute of Statistics, it is clear that tax evasion is at a very high level in Romania, accounting for 13.8% of GDP in 2012. The NIS data show that about 60% of tax evasion is generated from VAT, in 2010 representing 9.6% of GDP, the same level as in 1996. It is worth noting that in 2010, tax evasion increased from 8% to 9.6% of GDP, while in 2010 the rate of VAT increased from 19% to 24%, in which case, normally, the levels should have lowered. The evolution of tax evasion is shown in Table 1.

Table 1. Evolution of tax evasion on the main taxes (% of GDP)

Year	2007/% of GDP	2008/% of GDP	2009/% of GDP	2010/% of GDP	2011/% of GDP	2012/% of GDP
Income tax	0.57	0.58	0.87	0.97	0.98	1.01
Profit tax	0.87	0.96	0.71	0.83	0.84	0.85
HIC	1.93	1.82	2.8	3.13	3.15	3.24
VAT	7.1	7.4	8.0	9.6	8.4	8.3
Excises	0.74	0.42	0.55	0.67	0.45	0.39

Source: NIS

4. CONCLUSIONS AND PROPOSALS

By selling these goods in Romania, a prejudice has been caused to the state budget, consisting of VAT and profit tax. Through accepting at the customs very small declared values for the goods, the resources of the general budget of the European Communities (European Union) have been illegally diminished, by not paying custom taxes related to the real value of these goods. In order to increase the collection of taxes, a profound reform of how taxes are administered in Romania is absolutely necessary. Due to the Romanian legislation in the field, supporting the existence of a legitimate (or legal) tax avoidance and of an illicit (or illegal) tax avoidance lacks legal basis.

ACKNOWLEDGMENT

This paper has been financially supported within the project entitled „*SOCERT. Knowledge society, dynamism through research*”, contract number POSDRU/159/1.5/S/132406. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. **Investing in people!**”

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