

Motto:

“If your plan is for one year plant rice.

If your plan is for ten years plant trees.

If your plan is for one hundred years educate children.”

孔子 (Kǒngzǐ) – CONFUCIUS¹

¹ Chinese philosopher, educator and thinker (551-479 BC).

INTRODUCTION

Motto:

*“The value-added tax may be thought as the Mata Hari of the tax world – many are tempted, many succumb, some tremble on the brink, while others leave only to return, eventually **the attraction appears irresistible**”.*

Alan Anderson Tait²

Organized crime groups receive significant revenues from illicit activities, such as illicit trafficking in narcotics, weapons, ammunition and explosives, trafficking in human beings, fraudulent bankruptcy crimes and, last but not least, substantial incomes from economic and financial macro-crime, banking and ending with the huge profits generated by the “*CAROUSEL*” fraud.

All this income from illicit activities is “*stored*” in the accounts of the underground economy, and some of it will then take the path to financing terrorist acts.

Nevertheless, reality demonstrates that, at present, the “*CAROUSEL*” fraud, a component of tax fraud, is far from being **properly** and **completely** perceived as a “*financier*” of terrorism, so that the mechanisms designed to prevent, discovery and combat it are somewhat inadequate.

If, at the beginning, the “*CAROUSEL*” fraud focused on “*community trade*” with tangible goods (mainly high-value products such as mobile phones, computer processors and precious metals), it has recently migrated to intangible goods (i.e. CO₂ certificates, natural gas and **electricity**), making it “*faster*” and more and more difficult to discover.

The circumvention of taxpayers with the “*help*” of the “*CAROUSEL*” fraud from paying VAT, as well as obtaining without right sums of money as reimbursements, can endanger the financial security of the rule of law, adversely affecting both the national budget and the EU budget through the “*domino effect*”.

Through such a complex mechanism, not only a part of the necessary funds for the terrorist groups to accomplish their bloody attacks is obtained, but at the same time, the power

² One of the most renowned tax theorists. Source: Alan Anderson Tait, quoted by Alan Schenk and Oliver Oldman in *Value Added Tax: A Comparative Approach*, Cambridge University Press, p. 1.

of the economy that "*supports/finances*" the actions of the institutions responsible for the prevention, discovery and fight against both organized crime and terrorism is diminished.

In the content of this research, I will try to show that the "*CAROUSEL*" fraud is not just a "*terrorist financier*" with which some of the financial resources needed for terrorist groups are "*generated*" to organize, plan and complete terrorist attacks, but also a potential invisible "*terrorist*" that could endanger the safe operation of the electricity transport network, part of the national critical infrastructure.

CHAPTER I. GENERAL ASPECTS REGARDING THE “CAROUSEL” FRAUD

Motto:

*“Tax evasion is a **creation** of the state based on obligations enforced by the state itself”³*

Constantin Ioan Gliga

Section 1. General viewpoints on tax evasion

Before starting a detailed examination of the “CAROUSEL” fraud, we can notice a certain “*inconsistency*” between the terminology employed to name the first chapter and the one employed to name this section, respectively the concept of “*fraud*” vs. the concept of “*tax evasion*”.

This is triggered by the fact that the **domestic legislation** incriminates and punishes the “CAROUSEL” fraud as follows:

- ✓ tax evasion crime;
- or*
- ✓ crime related to tax evasion crimes.

* * *

In terms of economic analysis⁴, taxation is a withdrawal of money from the economy while expenses act as an injection of money back into the economy.

An excessive tax policy does not automatically and spectacularly imply an inflow of large financial resources to state budgets, but it rather contributes to the fleeing of taxpayers, through more or less lawful means, from the official economy to the underground economy based on the “*preservation instinct*”⁵ of their own financial resources.

³ Constantin Ioan Gliga, *Evaziunea fiscală. Reglementare. Doctrină. Jurisprudență*, Ed. C.H. Beck, Bucharest, 2007, p. 6.

⁴ Association of Chartered Certified Accountants, *Paper F6, Taxation (UK) FA 2010 and F (No. 2) A 2010*, Ed. BPP Learning Media Ltd., UK, 2010, p. 4.

⁵ Dragoș Pătroi, *Evaziunea fiscală între latura permisivă, aspectul contravențional și caracterul infracțional*, 2nd edition, Ed. Economică, Bucharest, 2007, p. 35.

In 1776, the Scottish economist Adam Smith mentioned in his work "*The Nation's Wealth, Research on Nature and its Causes*" that "every man, as long as he does not break the law, has the full right to deal with his own profits in his own personal manner"⁶.

This remark was later acquired by American judges in the final disposition from 1935 during the trial *Helvering vs. Gregory* from the Supreme Court of the United States of America, where they noted that "every citizen has the right to arrange their business as to **minimize their tax obligations**. Nobody has to plan their income and expenses according to the maximum requirements of the Department of Finance; no citizen has the patriotic duty to pay a maximum of taxes"⁷.

Thus, economic analysts have been concerned with identifying the maximum level of taxation efficiency, respectively that common level that would allow conciliation between the maximum of public financial resources and the maximum of supportability from the part of the taxpayer.

It is useful to note in this respect the theoretical basis of the American economic Arthur Betz Laffer, known as the "*Laffer Curve*".

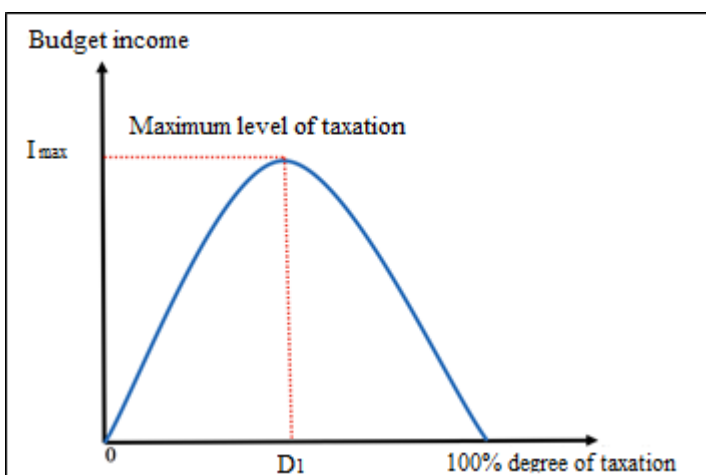


Figure 1: Laffer Curve

According to him, as the degree of taxation increases from 0 to D_1 , budget income will also increase from 0 to I_{max} . A steady increase in the degree of taxation over D_1 (the maximum tax burden for the taxpayers) produces an adverse effect on budget income that begins to decrease due to the level of taxation that has become burdensome, pushing taxpayers to survival behavior, which often stimulates their ingenuity to invent various methods of circumventing tax laws.

⁶ Adam Smith, quoted by Nicolae Grigorie Lăcrița, *Cazuri particulare de paradisuri fiscale*, Revista Impozite și taxe, nr. 6, 2005, pp. 42-43.

⁷ Bogdan Virjan, *Infrațiunile de evaziune fiscală*, Ed. C.H. Beck, Bucharest, 2011, p. 17.

Thus, through this "*process*" there is a transition from a competition that initially provided equal opportunities for all competitors to an unequal economic competition between fraudsters in the underground economy and economic agents in the official economy who do not resort to such practices.

The theoretical basis presented by the Laffer Curve is based on the "*too much tax, no tax*" principle, which can be translated into: when there is no taxation level, i.e. it is null, budget income is null, and when the taxation level has reached the maximum threshold of 100%, budget income is still null.

Therefore, there should be identified the optimum level of taxation that ensures both a maximum degree of satisfaction for the state budget and for taxpayers; "tax specialists have unanimously concluded that *tax evasion is all the more feared as tax is higher.*"⁸

At the same time, political decisions to tighten taxation must take into account the impact that they can produce in the short, medium and long term on both the economy and the business environment, **as an uncontrolled increase in taxation will encourage "investment" in the underground economy with harmful effects at socio-economic level.**

⁸ Victor Munteanu (coord.), *Control și audit financiar-contabil*, Ed. Lumina Lex, Bucharest, 2003, pp. 336-337.

§1. Definition of tax evasion

Over time, specialized literature has formulated several definitions of tax evasion, some more succinct and some more elaborate.

Thus, the first definition of tax evasion was given between the two world wars by P. Laroque and A. Piatier⁹, but C. de Brie and P. Charpentier worded its most famous concept, respectively “*the art of not falling in the field of tax law attraction*”¹⁰.

Romanian literature defines tax evasion such as:

✓ „to avoid taxation of part of the taxable sources”¹¹;

or

✓ „logical result of flaws and inconsistencies of **imperfect** and poorly assimilated **legislation**, of methods and flawed enforcement ways, as well as misapplication and ignorance of the lawmaker whose **excessive taxation** are as guilty as those who challenge them in tax evasion”¹².

The Romanian Explanatory Dictionary (DEX)¹³ defines tax evasion as “*the avoidance of a natural or legal person to comply with its tax obligations*”.

* * *

The first law enacted by Romanian lawmakers following the events of 1989, which expressly incriminated and punished tax evasion, namely Law no. 87/1994 *on tax evasion*¹⁴, tax evasion was defined as “*the evasion, by any means, from the imposition or payment of taxes, duties, contributions and other amounts of money owed to the state budget, local budgets, social security budgets or special budgets by Romanian or foreign natural or legal persons, hereinafter referred to as taxpayers*”¹⁵.

The present legal framework, respectively Law no. 241/2005 *for the prevention and combating of tax evasion*¹⁶, compared to Law no. 87/1994, which was the main tool to fight tax evasion for over 10 years (from 1994 to 2005), does not define tax evasion any longer.

⁹ In this respect see André Piatier, *L'évasion fiscale et l'assistance administrative entre États*, Librairie du Recueil Sirey, Paris, 1938.

¹⁰ Christian de Brie and Pierre Charpentier, *L'inégalité par l'impôt*, Ed. du Seuil, Paris, 1973.

¹¹ Iulian Văcărel, *Finanțele publice-teorie și practică*, Ed. Științifică și Enciclopedică, Bucharest, 1981, p. 155. Also see in this respect Iulian Văcărel, *Finanțele României*, Ed. Economică, Bucharest, 1995.

¹² Dan Drosu Șaguna, Dan Șova, *Drept fiscal*, ed. a 4-a, Ed. C.H. Beck, Bucharest, 2011, p. 281.

¹³ Illustrated and Explanatory Dictionary of Romanian Language, Ed. Arc & Gunivas, 2007, p. 684. Also see in this respect <http://dexonline.ro/definitie/evaziune>.

¹⁴ Published in the Official Gazette no. 299 of October 24, 1994, 1 republishing in the Official Gazette no. 545 of July 29, 2003.

¹⁵ As per the provisions of art. (1) of Law no. 87/1994, republished.

¹⁶ Published in the Official Gazette no. 672 of July 27, 2005.

§2. Factors triggering tax evasion

For a better understanding of tax evasion and to be able to prepare and enforce efficient measures to prevent and fight this phenomenon (as per the Romanian saying “*evil must be cut off at its root*”), it is necessary to point out the factors generating it.

Thus, specialized literature has grouped these factors as follows:¹⁷

a) Factors of legislative origin

A weak and unstable fiscal system, which, in addition to being incomplete, suffers over time numerous changes and additions, both in substance and in form, with great loopholes, inaccuracies and ambiguities, is an important factor contributing to the amplification of the tax evasion phenomenon by exploiting the taxpayers' maximum ability of these deficiencies, having a negative impact on the state's ability to self-finance.

In Romania, at the turn of the 10th anniversary from its appearance, the main legislative framework regulating taxes and duties generating revenues to the general consolidated state budget, namely the Tax Code, suffered:

- „**Over 100 de changes,**
- **The number of words tripled to around 190,000,**
- **100 new articles appeared and**
- **Only 25 articles of the initial 298 remained unchanged**”¹⁸.

Even after the occurrence and enactment on January 1, 2016 of the New Tax Code, it has suffered, in its turn, various changes and supplementations.

Therefore, the lack of a tax legal system with clear, precise and unitary regulations to prevent, detect and fight tax evasion will trigger a damaging impact both for the state and the lawful taxpayer, who will bear a constantly excessive taxation because of the need of the state to collect the revenue needed to meet its essential duties.

b) Administrative factors

Among the many factors affecting the bodies responsible for preventing, detecting and combating any acts and deeds that have the effect of tax evasion are:

- ✓ *Lack of personnel, both in terms of numbers and quality:* controls are insufficient due to insufficient staff and the people carrying out controls either do not have the necessary specialized training or are poorly trained professionally to be able to detect the deeds and facts that have the effect of tax evasion;

¹⁷ Bogdan Virjan, op. cit., pp. 25-29.

¹⁸ Source: <http://www.zf.ro/zf-24/10-ani-de-cod-fiscal-100-de-modificari-legislative-si-un-text-de-trei-ori-mai-lung-11718563>.