

TAX EVASION IN THE DOMESTIC AND COMPARATIVE CRIMINAL LAW

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***Abstract:** The object of this paper is the crime of “tax evasion”. The first part is dedicated to the conceptual definition and the elements of “tax evasion” in some comparative legal criminal law, i.e. criminal law of Albania, Finland, Croatia and Uzbekistan. In the second part, the author pays attention to the concept, basic elements and characteristics of the offense, “tax evasion” in Article 229 of the Criminal Code of the Republic of Serbia.*

***Keywords:** criminal act, tax, tax, criminal sanctions*

1. INTRODUCTION

Historically, tax evasion exists since the tax payment. Tax evasion has existed regardless of which form of state there was, regardless to governmental structure, which leads us to the conclusion that the negative social phenomena can never be completely eradicated.

Tax evasion in the modern world, affects almost all modern countries, it is becoming the trend and a problem that needs to be addressed urgently. This negative social phenomenon is present in the territory of the Republic of Serbia, leading to the conclusion that neither our state is immune to the issue of tax evasion.

Community development causes an increase in the collection of public revenues; a notion of public revenues is mainly identified with the taxes because they have the largest share of the revenue.

Public revenues including taxes alone serve to satisfy public needs, i.e. government expenditure. Its characteristic is to be collected in cash, periodically and continuously. At the same time, along with the tax collection evasion of the tax liability appears, and that avoidance is often turned into tax evasion.

Tax evasion is legal with full use of the law for the purpose of reducing or abolishing the tax liability, and may be realized due to deficiencies or inaccuracies of the law.

Tax evasion involves illegal avoiding violation of the law in order to lower the payment or non-paying the taxes. Speaking of tax evasion, two types of fraud can be described - full and partial. Full tax evasion is not reporting earned income; while a partial evasion is reporting the revenues partially.

Tax evasion undermines the tax system and a number of factors affect the tax, such as level of tax burden, the fair distribution of the tax burden, tax technique, the ratio of tax administration to taxpayers and tax morale.

In Serbia, tax morale at very low level because most people think that tax evasion is normal and justified. For this reason, it is necessary that the tax authorities apply all available measures and instruments that will affect the reduction of tax evasion. This primarily refers to the identification of the various forms of tax evasions, which is most often encountered in the calculation of VAT. It is also the most abundant tax revenue of the state budget making 80% of total tax revenue.

Speaking of evasion of VAT, the most common cases occur with employers who pay in cash a major part of their income, to whom the account is blocked, showing false export deliveries, which carry out the delivery of goods and services on the black market, which stated incorrect information in the tax returns. In addition to the above common cases, tax evasion is done via so-called “phantom” companies that have no employees, no business premises, whose office is registered in a non-existent address, there is no commercial property etc.

2. TAX EVASION IN COMPARATIVE CRIMINAL LAW

2. 1. Albania

The Criminal Code of the Republic of Albania¹ provides only a tax criminal offense in Article 181. This offense is titled “Failure to pay the withholding tax.” It consists of non-payment of taxes or other duties prescribed by law in certain time by a person who has previously been administratively (misdemeanor) punished even though it was capable (able) to pay, without reasonable excuse.

The objects of this criminal offense are taxes, but other public fees too.

The act of commission consists of unjustified tax evasion in the manner and time as specified by the law. However, the law for the existence of criminal offenses requires that the offender was able to pay a set amount of public duties. Secondly, it must be a person who has previously been convicted for a tax offense. Therefore, the perpetrator of this criminal offense may be only the person who has special traits determined by the law, i.e. it is a recidivist, a person who has a tendency of non-paying its duties or tax evasion.²

This criminal offense shall be punishable by a term of imprisonment for up to three years or a fine.

2. 2. Finland

The Criminal Code of Finland³ in chapter 29 of the “Offenses against public finances” criminalizes three criminal offenses related to tax evasion, including tax evasion⁴, aggravated tax evasion⁵, and petty tax evasion⁶.

¹ Kodi penal i Republikës së Shqipërisë (*Botim i Qendrës së Publikimeve Zyrtare, Shtator 2011*), npeysero ca: http://www.justice.gov.al/UserFiles/File/Legjislacioni_Brendshem_Web/KODI_PENAL.pdf

² Jovašević, D. *The Tax Evasion In The Comparative Criminal Law*. Beograd: Strani pravni život, 2009., str. 163

³ Criminal Code of Finland (39/1889, amendments up to 940/2008 included), <http://legislationline.org/documents/section/criminal-codes>

⁴ Section 1. (1228/1997)

⁵ Section 2. (769/1990)

⁶ Section 3. (769/1990)

- a) The crime of “tax evasion” is perpetrating a person who gives a taxation authority false information on a fact that influences the assessment of tax, files a tax return concealing a fact that influences the assessment of tax, for the purpose of avoiding tax, fails to observe a statutory duty pertaining to taxation that is of significance in the assessment of tax, or otherwise acts fraudulently and thereby causes or attempts to prevent assessment and tax determination, causing the assessment of taxes at a lower value or the tax is being refunded groundless.

The commission is alternatively determined, so it can take be in the form of providing false information to the tax authorities, unfounded or unsubstantiated seeking of tax refunds, causing or attempt to prevent the evaluation and determination of the tax, causing assessment of a lower tax value, or in any other way makes evasion in order to avoid paying taxes.

The objects of this crime are taxes, but other fees too.

Perpetrator of this criminal offense shall be imposed a fine or imprisonment of up to two years.

- b) Aggravated tax evasion is the criminal offense made by a person who obtains a substantial illegal financial gain, or the fraud is perpetrated in a special, i.e. specific manner.

The perpetration includes obtaining substantial financial benefits, contrary to the regulations in this field, fraud, or any other specific way.

The objects of criminal offense are taxes, but other fees too.

This crime is punishable by imprisonment from four months to four years.

- c) The third criminal offense in relation to the Code is petty tax evasion. This form of the crime is specific in that the offender shall be sentenced to a fine, if it is assessed that the amount of evaded taxes is low, and the circumstances of the perpetration are related to tax offense.

If it is estimated that the tax increase is sufficient penalty for the perpetrator of this crime, the perpetrator may be released from punishment.

2. 3. Croatia

Croatian Criminal Code⁷ was adopted on October 21, 2011; and entered into force January 1, 2013. In Chapter XXIV, in the group of crimes against the economy, Article 256 criminalizes the offense entitled “Tax evasion and evasion of customs duty.” The protection objects in this criminal offense are taxes, contributions for social insurance, customs, and any other necessary liabilities or benefits.

This criminal offense⁸ is committed by a person who is giving false or incomplete information on incomes with the goal that he or another person wholly or partially avoid the payment of taxes or duties, objects or other facts that are important for determining the amount of tax or customs duty, or anyone with the same goal who in case of mandatory application does not report income, subject, or other facts that may affect the assessment of the tax or customs duties, and therefore there is a reduction or failure to determine the tax or customs duties in excess of HRK 20,000.

⁷ Kazneni zakon Republike Hrvatske (*Urednčki pročišćeni tekst*, „Narodne novine“, broj 125/11 i 144/12): <http://www.propisi.hr/print.php?id=11365>,

⁸ Članak 256. stavka 1

This criminal offense is determined in two ways, so it consists of giving inaccurate or incomplete data on incomes, objects or other facts on the one hand and on the other hand consists of underreporting of income and other items, or the facts that are obligated under the letter of the law.

The perpetrator of this criminal offense should be aware of the fact it is avoiding entirely or in part the payment of taxes, duties or other prescribed duties by its act.

The perpetrator of this crime will be sanctioned by imprisonment of six months up to five years.

Those who use tax or tariff benefits in excess of HR20,000 contrary to the conditions under which it received them⁹, shall be fined according to a paragraph 1 of this article.

If the criminal offense from the paragraphs 1 and 2 of this article has led to a reduction in tax liability or non-determination of a large scale, the offender shall be punished by imprisonment of one up to ten years.¹⁰

The provisions of paragraph 1 to 3 of this Article shall apply also to the offender that in described actions reduce the funds of the European Union.¹¹

2.4. Uzbekistan

The Criminal Code of the Republic of Uzbekistan¹² in Chapter XII, entitled “Economic Crime”, prescribed the criminal offense titled “Taxes or other payments evasion” under the Article 184.¹³

This criminal offense has basic and qualified form.

The basic form of the offense consists in the deliberate concealment or failure to report a profit (revenue) or other taxable items, or otherwise evaded taxes, duties or other payments.

The act of commission consists of deliberate concealment or failure to report a profit, or in any other manner that avoids payment of taxes, duties and other prescribed duties.

For this criminal offense, a fine up to one hundred and fifty minimum monthly wages, correctional labor up to two years, or imprisonment up to six months is predetermined.

The qualified form of this act performs a person who evaded taxes or other payments in the return or in high amounts.

A person who commits a criminal offense in the return shall be fined with the amount of 150 to 300 minimum monthly salaries, correctional labor from two to three years, or imprisonment up to three years.

Those who evade taxes or other payments in high amounts shall be fined in the amount of 300 to 600 minimum monthly wages, or imprisonment from three to five years.

The objects of this criminal offense are taxes, customs, and other prescribed duties.

If the offender meets its obligations to the state by paying taxes, duties, and other prescribed liabilities, it may be released from punishment.

⁹ Članak 256. stavka 2

¹⁰ Članak 256. stavka 3

¹¹ Članak 256. stavka 4

¹² Criminal Code of the Republic of Uzbekistan (*Tashkent, September 22, 1994, No. 2012-XII*) <http://legislationline.org/download/action/download/id/1712/file/a45cbf3cc66c17f04420786aa164.htm/preview>

¹³ As amended by Law 29.08.2001

3. TAX EVASION IN THE DOMESTIC CRIMINAL LAW

The Criminal Code of the Republic of Serbia¹⁴ was adopted on September 29, 2005, and entered into force on January 1, 2006. In the “Crimes against the economy,” group our legislators Article 229 provides for a criminal offense called “Tax Evasion “.

This criminal act committed by a person who with intent to fully or partially avoid paying taxes, contributions or other prescribed duties, giving false information on legally earned income, on the subjects or other facts which may affect the determination of such obligations or with the same intention, the case of mandatory application, not the application lawfully earned income, or objects or other facts that may affect the determination of such obligations or with the same intention otherwise concealing information related to the establishment of the aforementioned obligation, and the obligation whose payment avoids exceeding 150,000 RSD.

Whoever with intent to fully or partially avoid payment of taxes, contributions or other statutory dues, gives false information on legal income, objects and other facts relevant to determination of such obligations, or who with same intent, in case of mandatory reporting (filing of returns) fails to report lawful income, objects and other facts relevant to determination of such obligations or who with same intent conceals information relevant for determination of aforementioned obligations, and the amount of obligation whose payment is avoided exceeds RSD 150,000.¹⁵

The object of protection is a tax¹⁶, the fiscal system, while the objects of the attack are taxes, contributions, and other prescribed duties.

The committed criminal offense may consist of: a) providing false data on legally earned income, on the subjects or other facts that are important for determining the obligation to pay taxes, b) failure to report legally acquired income or other objects or facts that are important for determining the payment of taxes, in those cases where the taxpayer is obliged by law to mandatory reporting, and c) otherwise concealing data referring to the establishment of the aforementioned obligations in terms of paying taxes, contributions and other prescribed duties.

In addition to the above mentioned, for the existence of this part, two more elements are necessary, namely 1) the existence of the intent of the offender to fully or partially avoid paying taxes, contributions or other prescribed duties at the time of execution of the action, 2) that the amount of the obligation exceeding RSD 150,000.

This is the premeditated offense.¹⁷

The perpetrator of this crime can be any person. The prescribed penalty for the offense is imprisonment of six months to five years and a fine.

In addition to the basic form, there are two severe forms of this offense.

If the amount of the liability specified in paragraph 1 of this Article whose payment is avoided exceeds RSD 1,500,000, the offender shall be punished by imprisonment of one to five years and fined¹⁸.

¹⁴ Krivični zakonik Republike Srbije („Službeni glasnik Republike Srbije“; broj 85 /2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009 i 121/2012).

¹⁵ Član 229. stav 1.

¹⁶ Đurđić Vojislav, Jovašević Dragan. *Krivično pravo*, Posebni deo. Beograd: Nomos, 2010), 123

¹⁷ Stojanović Zoran, Perić Obrad, *Krivično pravo*, Posebni deo (Beograd: Pravna knjiga, 2006), 198

¹⁸ Član 229. stav 2.

If the amount of the liability specified in paragraph 1 of this Article whose payment is avoided exceeds RSD 7,500.000, the offender shall be punished by imprisonment of one to eight years and fined.¹⁹

4. CONCLUSION

Tax evasion is a pressing problem that affects all countries and all modern legal systems. The fact is that no one likes to pay taxes, and therefore people are looking for various ways to avoid taxes or to reduce them. It is needless to emphasize the harmful effects of this negative social phenomenon.

States criminalize tax evasion or tax fraud in various ways, so we have the cases that in certain criminal laws one criminal offense is provided, and in some two or more offenses, pointing out to less severe or more severe criminal sanctions for the tax evasion offenders. Criminal Code of Albania stipulates in Article 181 entitled "Failure to pay the withholding tax" the criminal offense in relation to tax evasion. In the fight against tax evasion, this state stipulates the following types of criminal sanctions - a fine or imprisonment up to three years.

The Criminal Code of the Republic of Croatia, Article 256 criminalizes the offense entitled "Tax evasion and evasion of customs duty x evasion and customs". The legislation provides imprisonment from six months to ten years for this criminal offense, which leads us to the conclusion that this country is more severe in terms of threaten criminal sanctions to perpetrators of these crimes, compared to the previously mentioned state.

Uzbek lawmaker also provides one criminal offense in connection with tax evasion called "Evasion of tax and other types of payments". The sanctions for the perpetrators of this crime are fines of from 150 up to 600 minimum monthly wages; imprisonment up to six months; correctional labor up to three years, and imprisonment of up to five years. In contrast to the above-mentioned Code, the criminal law of Uzbekistan provides for the possibility of releasing from punishment if the offender meets its obligations toward the state, payment of taxes, duties and other prescribed duties.

In contrast to the above-mentioned Code, Finnish criminal code is distinctive in that it provides three offenses related to tax evasion, as follows: 1) Tax Evasion, 2) Aggravated tax evasion, and 3) Petty tax evasion.

In this country, to the perpetrators of the foregoing offenses may be impose a fine or imprisonment up to four years, with the possibility for exemption from punishment.

The Criminal Code of the Republic of Serbia defines a criminal offense, under the title "Tax Evasion" with more specific alternative actions. The imprisonment for the perpetrators of this crime ranges from six months to ten years, along with a fine, the same as in the Criminal Code of the Republic of Croatia.

In order to establish the tax discipline, it is necessary to introduce several measures, one of which is the imposition of stricter penalties and their rapid execution. It would also be desirable to allow access to information, through which taxpayers can find out who is included in the VAT system. This kind of access to information exists in many countries, and it is known that the better information has impacts on reducing tax evasion.

¹⁹ Član 229. stav 3.

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