

# **CATEGORIES OF TAXPAYERS VS. TAX OPTIMIZATION AND EVASION. STUDY ON THEIR FORMS OF MATERIALIZATION FROM THE PERSPECTIVE OF THE TYPE OF TAXPAYER - NATURAL PERSONS VERSUS LEGAL PERSONS<sup>1</sup>**

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## **Abstract**

Tax evasion can be defined as the circumvention, under any form, of the payment of taxes, duties and contributions owed to the state, in the shelter of the law or eluding the legal provisions. The taxpayers, be they legal persons or natural persons, manifest their desire to defend wealth, of fortune, thus choose to carry out their economic activity in the form in which their wish is satisfied best. The choice is influenced both by the economic factors, which determine the fiscal burden (fiscal pressure), as well as the social factors (education, level of living, social services offered by the public system). In order to be able to speak about tax evasion, according to the legislation on the matter, there must exist the intentional character of the deed, the guiltiness of the person resulting from the taxable person's desire to circumvent the payment of the taxes and duties. The limit between the contraventional liability and the criminal one is determined by intention, by the whether the crime was committed intentionally or not, here having a major role the professionalism of the empowered control

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bodies in proving this intention. This study proposes to analyze which are the preferences of the taxpayers in the matter of tax evasion and optimization, depending on the form of property and which are the most encountered techniques which they approach in their intention to circumvent the payment of taxes and duties fully or partially, in relation to the type of taxpayer. The study is based on specialized practice.

**Keywords:** Tax evasion, optimization, natural persons, legal persons

**JEL Classification:** L26; M13

### **1. Introduction**

The state, with all its components, be it a developed state or an emerging one, cannot function without the financial resources collected from to the budget from its taxpayers, money that originates from the taxes and duties established by the national legislations. However, together with the first fiscal norms that “affected” the peoples’ desire to preserve their added value created through their businesses and which “would favor” the state, whose manner of operation implies the need of resources for financing of the budgetary expenses, appeared the tax evasion phenomenon.

According to the Scottish economist Adam Smith, the author of “The Wealth of Nations”, each entity is fully entitled to adopt policies and techniques that are as favorable as possible, if by using them, it does not violate the law. Nevertheless, he admits, within his studies, that there can be tax evasion that is sheltered by the law, the legal framework allowing the decrease of the taxable matter. Precisely the law-maker, although most certainly this was not his intention, removes from the sphere of the contravention or crime this type of evasion, leaving, within the context of the laws, room for interpretations. This is possible because in many countries it can remove from the incidence of taxes certain pieces of income or components of wealth which would normally fall under the scope of taxation if the principles of the generality and equity of the taxation were to be complied with in a rigorous manner. Because of the legislative imperfections, as well as due to the way the laws are understood and applied in favor of the economic agents, this form of evasion is developed mainly in the periods preceded by legislative modifications which include new forms of taxation or when new types of economic operators appear.

From the study of the specialized doctrine and, mainly, the practice of the law years, it is noted that the means used for the significant diminishing of the fiscal obligations or even the circumvention of their payment are many and they take ever more varied forms from one taxpayer to another, depending on its legal form, depending on the company's age on the market and the purpose for which it established the economic entity.

In the second section, we will approach the conceptual framework of this issue, understanding the terminology being an important step in clarifying especially the legal aspects on this matter. The third section approaches aspects regarding the main motivations that determine the taxpayers to choose the manner in which they register as a form of organization and, moreover, which is their motivation for resorting to evasion. There are multiple methods of fraud and they vary from one type of taxpayer to another, an issue approached in the fourth section of this study. The fifth section aims to underline the main legislative breaches that allow the natural and legal persons to avoid taxation or to resort to fiscal fraud. In the 6th section we propose to bring to attention the way in which the applicable framework of sanctions influences the voluntary compliance of the taxpayers and imposes certain fears in what regards resorting to evasion. At the same time, it determines the taxpayer to accept more or less easily the verification of the state's control body.

## **2. Conceptual framework - principles and notions**

In the inter-war period, the origin of tax evasion was attributed within the fiscal fraud, tax evasion being an extensive form thereof, as being part therefrom. Subsequently, the two notions started to be assimilated. Thus, the crime committed in the fiscal field is called fiscal fraud or it is more frequently encountered as the fraudulent tax evasion. Under its different forms, the fiscal fraud or the fraudulent tax evasion implies that the taxable subject finds different manners to shirk, to circumvent the payment of the taxes by hiding the taxable source or by diminishing the value of the taxable mass, to evade the legal framework by various ingenious combinations which the law did not foresee, with the sole purpose to minimize the fiscal burden or, how the European Commission defines it, as being an ensemble of "illegal mechanisms by way of which the obligation to pay the tax is hidden or ignored". From this behavior lies the flagrant breach of the law, therefore the

fiscal fraud is committed in general, with intention. The European Commission defines within its reports the fiscal fraud as being one of the forms of tax evasion, committed intentionally and which makes the object of certain criminal sanctions.

The fiscal fraud acts across borders, and the magnitude of this phenomenon is differentiated depending on the legislation in force and the economic market of each state in part. Regardless development level of the country in which it manifests, the effects of the fiscal fraud are destructive, affecting both the state budget, as well as the financial resources of the offenders' commercial partners. The fiscal fraud has negative effects over the economic market, and one of the consequences is the social inequality from the perspective of the abuse and the predisposition of certain taxable subjects to fraud. Certainly, the phenomenon remains unraveled, the financial schemes being extremely complex, and the fraud mechanisms are one of the most laborious ones and in a permanent improvement, the evaders finding new means by way of which they can illegally attract financial resources.

According to the specialized literature, the illegal tax evasion presents itself in various shapes depending on the evaders' modus operandi, this being divided into four categories: traditional, legal, accounting evasion and evasion by evaluation (Şanta 2017).

In order to fully understand the modalities in which the taxpayer chooses not to pay his debts to the state, using legislative gaps which favor one of the organizational forms in comparison with another, using fiscal facilities granted to one of the categories, identifying ingenious optimization solutions and even the reason for which one of the two categories resorts to fiscal fraud, it is important to clarify the terminological aspects, reason for which we consider it to be necessary to deepen the understanding of the following notions.

✓ **Tax evasion:** is effected by the deeds provided under article 8 and 9, paragraph (1) from Law no. 241/2005, committed by the taxpayers with the purpose to circumvent the fiscal laws and, implicitly, to circumvent the fulfillment of the fiscal obligations.

✓ **Fiscal obligation** - the obligation to pay any amount due to the general consolidated budget, consisting of the main and accessory fiscal obligation.

✓ **Supporting documents** - the documents that stand at the basis of the operations recorded within the accounting. The document that stands at the basis of the recordings into the accounting can acquire

the capacity of supporting document only in the condition in which it supplies the information provided by the legislation in force. According to article 6 of Law no. 82/1991 The law of Accounting, any economic-financial operation is noted at the time at which it was performed in a document that stands at the basis of the recordings into the accounting, thus acquiring the capacity of supporting document. The supporting documents that stand at the basis of the recordings into the accounting carried the liability of the persons who prepared, stamped, and approved them, as well as that of the persons who registered them into the accounting, as the case may be.

✓ **The accounting records** as provided by the Law of Accounting no. 82/1991 rep. the accounting records must be kept according to the primary documents representing any kind of supporting document for the operations performed and the mandatory accounting registers, respectively the accounting log, the inventory log, and the ledger.

✓ **Fiscal records.** The Code of Fiscal Procedure, under article 108, paragraph 1 provides the obligation for the taxpayers to conduct fiscal records, according to the legislative framework in force. Fiscal records are considered the registers, the situations, as well as any documents the preparation of which falls under the obligation of the natural or legal person who carry out activities that bring income. Their preparation contributes to establishing the fiscal de facto state of the taxpayer subjected to verifications and implicitly, to establishing the tax-based claims. The tax records are considered to be: the sales and purchases log, the register journal, the tax record book, the transfer pricing documentation.

✓ **Taxpayer** - any legal or natural person who owes taxes, duties and contributions and other amounts to the general consolidated budget, under the conditions of the law. (Cârlescu, 2015) and, according to the provisions of Article 1, Paragraph 4, Law no. 207/2015 rep. concerning the Code of Fiscal Procedure, the taxpayer is any natural or legal person or any other entity without a legal personality which owes, according to the law, taxes, and social contributions.

✓ **Self-employed person** is defined in the legal dictionary as being the natural person who is authorized to carry out any form of economic activity allowed by the law, using mainly his/her workforce (article 2, letter i) from the Government Emergency ordinance no. 44/2008. According to the Article 5 of Law no. 259/2004, the applicant of the authorization assumes responsibility for carrying out the activity in compliance with the legal dispositions in force.

✓ **The legal person** According to the Legal dictionary, from a legal standpoint, this is a collective civil right subject who participates in its own right in the legal relations, having a civil liability; a human collective formed directly by the natural persons or by way of association with other legal persons as a rightful subject, having a standalone organization and a distinct set of assets, affected to the realization of a purpose determined in accordance with the public good. And from a fiscal perspective, the Fiscal Code realizes a delimitation depending in the law that governs the respective entity. The legal person of a Romanian nationality is any legal person that was established in accordance with the legislation of Romania, according to article 7, pt. 29 of Law no. 227/2015 rep. The income of the Romanian legal person is taxable in Romania, regardless of the place where it is realized. The legal person established in accordance with the European legislation is any legal person constituted under the conditions and through the mechanisms provided by the European regulations.

✓ **The form of organization.** The first step in the initiation and in carrying out an economic activity is the establishment of a company or the constitution of a legal form of organization. The legal form of organization is chosen depending on the field of activity, the capital involved, on certain criteria of optimization, such as the type of taxation or the fiscal facilities granted by the state.

**Table 1**

**Legal persons vs natural persons, conditions**

<b>Natural persons</b>	<b>Legal persons</b>
Form of organization: <ul style="list-style-type: none"> <li>• Self-employed person</li> <li>• Familial entrepreneurship</li> <li>• Individual entrepreneurship</li> </ul>	Form of organization: <ul style="list-style-type: none"> <li>• Limited liability companies</li> <li>• Collective companies</li> <li>• Shareholding companies</li> <li>• Limited partnership</li> <li>• Limited joint-stock partnership</li> <li>• Limited joint-stock partnership</li> </ul>
Incidental provisions: Government Emergency Ordinance 44/2008 concerning the carrying out of the economic activities by the self-employed persons, the family/individual enterprises, with subsequent amendments	Incidental provisions: Law no. 31/1990, concerning the commercial companies

<b>Natural persons</b>	<b>Legal persons</b>
Conditions for carrying out the activity: <ul style="list-style-type: none"><li>• The age of the holder must be above 18;</li><li>• Qualification in the field of activity, professional training, or professional experience, necessary for carrying out the proposed economic activity;</li><li>• He/she does not have any mentions within the fiscal record certificate</li></ul>	

*Source: authors' work*

From the perspective of the activity carried out, the framework of a self-employed person for carrying out the activity is limited to the activities for which he/she is qualified. At the same time, the establishment of a limited liability company allows the taxpayer to carry out a wide spectrum of activities which are legally possible, within the limits of the matters written within the Articles of Association, regulated by the NACE nomenclature, without having the obligation for the shareholders or directors to be qualified and to have certified studies in the fields in which the activity is carried out.

### **3. Taxpayers and the motivation for choosing the form of organization**

The taxpayers frequently choose the form of organization having in view the aspects concerning the easiest way an economic activity can be carried out, both from the perspective of the owed fiscal obligations is the taxpayer is a natural person or if it is a legal person, which one is more favourable from the perspective of the liability.

Regarded from the perspective of the costs which are involved by the establishment, the Self-employed person is not charged by the Trade Register, the costs being limited only to the notarial taxes that do not exceed 100 lei. Also, a self-employed person must not constitute a share capital. In the situation of the limited liability company, the costs with its establishment are higher, consisting of taxes at the Trade Register, notarial taxes, permits and authorizations, but also the constitution of the share capital of a minimum of 200 lei.

At the same time, over the course of carrying out the activity, the entity owes only the income tax determined as a difference between the income and the deductible expenses, base to which the share of 10% is applied according to the regulations in force. The self-employed person may opt to pay tax according to the actual income

system or according to the income standard (flat-rate tax whose share depends on the field of activity in which the economic entity activates). Also, another cost of the self-employed person occurs at the time when the net monthly income exceeds the national minimum wage 2230 lei, social contributions are due according to the level of the minimum national wage (e.g. for 2019, 25% national insurance contributions and 10% health insurance fund).

A form of optimization, reason for which the taxpayers choose to register as self-employed persons and not as a legal person is the fact that the monies representing collections from the economic activity (the income of the entity) can be used at any time for personal interest, without the obligation to declare or to pay any additional tax and without the need to prepare supporting documents in this regard, the single-entry bookkeeping that the self-employed person carry out obliges them only to keep the register of collections and payments.

From the perspective of reducing the costs, this form of accounting record is much simpler, and it does not require qualified personnel to maintain the accounting, the single-entry accounting being the simplest form of accounting record and it involves only the register of collection and payments and the inventory register, so that the costs with the bookkeeping are almost zero, obviously, in most cases depending on the field of activity.

In the case of legal persons there is the obligation to calculate, declare and pay the income tax of 1% for micro-enterprises, if the company has at least one employee and 3% if the company does not have any employees. In the case if the plateau of a turnover of 1.000.000 EUR/year is exceeded- the company will become a profit taxpayer and will pay a tax of 16% applied for the differences between the taxable income and the deductible expenses. The accounting records must follow rigors, norms, and regulations; thus, a qualified person is necessary, who will be compensated, the expenses being higher in comparison with those of the self-employed person. From the perspective of the legal person, the monies cannot be used at the discretion of the shareholders, for their own interest, this being possible only on a quarterly or annual basis, within the limits of the profit obtained, as dividends which are taxed with a share of 5%. The liability in the event of a prejudice is made with the company's assets and the legally constituted share capital.

From the perspective of the legal framework and the sanctioning regime, the laws are much more permissive with the self-



employed persons, making frequent distinctions between the self-employed person and the limited liability company. The only “minus” which this option represents for this form of organization could be the engagement of liability in the event of a prejudice, the personal wealth of the holder being the one with which the self-employed person is held liable.

Another distinction of which the natural persons that carry out illegal activities takes an advantage is made in what regards the access of the fiscal bodies into the seats or premises belonging to the taxpayers. According to article 65, paragraph 3 of the law of accounting concerning the Tax Code, the taxpayer has the obligation to allow the control body or the persons empowered by the control bodies access into the premises or the seats or on lands, in view of performing certain on-site acknowledgments, to the extent that this is necessary in order to make acknowledgments for a fiscal interest. In the case of the legal persons, the fiscal bodies have the right to enter the seat of the legal persons without the authorization of the court. Nevertheless, the natural persons shall be notified about the fact that they are entitled to refuse entry to their domicile or residence. Thus, entering the domicile or the residence of the natural person shall be made only with the agreement of the competent court, the dispositions of the Code of Civil procedure being applicable (Cârlescu,2015). Thus, even if there are comprehensive indications that the natural persons carry out undeclared activities, holds goods without documents of origin, the fiscal body cannot enter his/her residence without a court order, which is a major impediment in carrying out the control action and an opportunity for those who carry out illegal activities to circumvent the verifications.

#### **4. Methods of evading according to types of taxpayers and fields of activity**

At the level of the European Union, of which Romania is a part of, one of the classifications of the underground economy, a great generator of tax evasion, has in view two activities of the informal economy, classified in two distinct categories: licit (legal) undeclared productive activities (black-market economy) and illicit (illegal) productive activities of goods and services (Olteanu and Pascu, 2017). This begs the question of what kind of taxpayer resorts most frequently to carrying out illegal or undeclared activities. One of the criteria for

classifying tax evasion in the specialty literature is precisely this function of natural or legal persons activating in the underground economy, respectively the author of the tax evasion deed, the classification distinguishing between the tax evasion committed by the natural person and the tax evasion committed by the legal persons.

Regarding the matter from this perspective, it is evident that the small evasion encountered in the case of the self-employed persons, individual enterprises and family enterprises cannot be compared from the point of view of the amounts involved with the large evasion produced by fraud schemes or by the large companies. Under the aspect of not declaring/hiding the taxable sources, it is obvious that non-taxation and fueling the underground economy by the small evaders amplifies the field of evasion and it deprives the state's budget of considerable amounts, however, the commercial companies that are involved in the chains of fraudulent transactions, in community fraud, produce a much more powerful impact upon the economy and the state budget.

Regardless from the activity carried out, if it is generating income, the taxpayer has the obligation to register with the competent fiscal body. According to the data existing at the National Agency of Fiscal Administration (NAFA) from the middle of 2020, in Romania there were 2,140,982 of which 640,706 with independent activities and the difference of 1.500.276 as legal persons, as it results from the table below.

**Table 2**

**The number of registered taxpayers according to the type of taxpayer, on June 30 2019 vs. 2020**

Type of taxpayer 30th June	Total taxpayers	
	2019	2020
<b>Total</b>	2,079,843	2,140,982
<b>Self-employed/ Family/ Individual enterprise</b>	625,813	640,706
<b>Legal persons</b>	1,454,030	1,500,276

*Source: authors' work, NAFA (2020)*

The major problem for the empowered bodies is to answer the question "which is the number of taxpayers that are not registered as carrying out economic activity?" and subsequently, "which are the modalities by which they could be identified and/or determined to declare themselves to the fiscal bodies?"

From the practice in the field, as a typology for not declaring the activity carried out, taking into account the frequency of these cases, the trade with second-hand cars is highlighted. In the past 20 years, this activity flourished in Romania, Bulgaria and other countries in progress of development. Together with the development of this kind of business, the number of persons that practice it increased considerably, however, without registration at the fiscal authority and at the Trade register Office under any kind of organization. The sale of second-hand cars is an extremely profitable activity for the traders in this sector, that either do not declare these activities at all, or they use various natural or legal persons as a shield, in order to hide the activity carried out and its volume.

Another field of activity hidden from the eyes of the fiscal administration is that of the consumer goods and services offered directly to the population, where the collection is made in cash.

Of all the deeds that a taxpayer commits with the purpose of circumventing taxation, not declaring the income is by far the most serious of them all. The deed is difficult to discover by the control bodies and it generates high costs, the amounts recovered being often insignificant in relation with the prejudices brought to the general consolidated budget of the state and with the generated costs. Often, the cases of circumvention of declaring and paying the fiscal obligations are discovered and solved in an untimely manner, after many years, when the taxpayer can no longer be held liable from a contraventional, fiscal or criminal point of view and the goods and the amounts, in many cases, can no longer be identified, seized, or capitalized upon. Having in view the matters shown, the law maker provided Law 241/2015, under article 1, letter a, not declaring income as being the most serious form of circumventing the payment of the fiscal obligations, the tax evasion deed, and sanctions proportional with the seriousness of the deed are also provided, respectively imprisonment for a period from 2 to 8 years.

One of the serious tax evasion offenses, as it is qualified by the specialized doctrine, is represented by the act of recording within the accounting documents or other legal documents, of the expenses that do not have real bases or the highlighting of other fictitious operations, these being committed by legal persons.

As a solution for combating tax evasion in the fields with a high degree of evasion, in a generalized manner, the legislator applied measures of fiscal relaxation, so as to make this segment less

attractive for the taxpayers, less corrections (the share of 5% VAT for bakeries, vegetables, fruits, tourism) or fiscal measures of VAT simplification (delivery of ferrous/non-ferrous waste, wood pulp, IT products), specific taxation- tax on the activity in the field of hotels, HORECA restaurants) or the minimum salary according to the branch (constructions- with granted fiscal facilities).

From the recovery of the amounts owed to the state budget, the control body can institute ensuring measures, when there is the danger that the persons involved in committing the tax evasion deeds to circumvent or to hide or to waste their assets, endangering or considerably hinder collection.

The importance and the efficiency of the control actions is noted by way of a simple analysis of the tax on VAT consumption, thus analysing the part from the VAT which the state expects to collect in a certain period (in one year, for example) and by comparing the VAT which in not collected or which is not reflected in the treasury accounts, results a difference, called VAT GAP.

Starting from the final consumption, which generates the VAT part that becomes income to the state budget through the trading to the final consumer who does not have a right to deduct VAT (the final consumers being identified as buyers without a deduction right, as well as natural persons, public institutions, economic entities that carry out VAT exempt activities- banks/ educational establishments/ hospitals) VAT which should be found in the accounting budgets paid by the taxpayers is determined.

From the data provided by NAFA it results that for the year 2019, VAT payable (awaited to be collected) is in amount of 82,5 billion lei, this being expected to be collected from the following categories: households, public institutions, other entities.

At the level of 2019, the state collected 65.4 billion lei VAT, the resulting difference represents GAP VAT, amounts that evaporated to a great extent in the underground economy and across the tax avoiding chains.

Having in view that the obligation to manage, determine, declare, and pay VAT to the state budget is that of the natural/legal persons registered for VAT purposes, the control bodies should direct their verifications towards these institutions that collect VAT from the final consumers presented above and who no longer transfer these to the state budget.

Thus, the retail companies can artificially diminish the VAT

owed by way of two methods:

- non-taxation of the income/partial taxation, the activity which is generally specific to the small traders.

- registration of certain purchase invoices with an artificial VAT deduction, realized through acquisitions that are not destined for economic activities that generate taxable income and/or fictitious purchases.

Having in view the weight of the sales generated by the small traders in the last years in comparison with the great trading chains it results that the activity to combat VAT tax evasion should be directed mainly to the companies that diminish their VAT on the trading chains, having in view the above-mentioned reasoning.

Whereas the endeavours performed by the tax authorities were focused on combating evasion by non-taxation of all of the income (cash register with an electronic journal / many verifications in a significant number of taxpayers), while the real-time verification (at the time when the economic operations are produced) of certain trading chains would probably involve a lower consumption of resources with concrete results in the diminishing of the uncollected VAT.

### **5. Legislative gaps favouring the tax evasion and optimization**

The fiscal optimization or, as it is called in the specialized doctrine, the legal tax evasion, is the result of certain legal processes that offer the taxpayer the occasion to circumvent the payment of fiscal obligations “decently” and cleverly towards the state, without contravening the legal provisions. Even if any type of tax evasion implies a disregard of the law, the reduction of the taxable base can be regarded as an exercise of a right by the taxpayers who, in agreement with the law, many times, pay lower taxes, diminishing the taxable base in compliance with the limits of the law, this procedure being considered by some authors a legal tax evasion. Thus, the legal tax evasion represents that evasion by which the payer of taxes and duties manages to avoid the payment of the fiscal obligations (in full or in part) by the goodwill of the law, benefiting from certain legislative “loopholes”, a fact that leads to the diminishing of the withdrawals by the state. A legal fiscal evasion means fiscal evasion realized by complying with it, not by breaching it, by exercising a right by the taxpayer and not by violating an obligation by it.

Neculai Cârlescu defines fiscal optimization as being “the possibility offered by the law maker to pay lower taxes and duties” (Cârlescu 2015) thus, due to such a favourable conjuncture, to a combination of the taxpayer’s abilities with the inabilities of the law maker to predict the modus operandi of the taxpayer, it is created a framework that is favourable for the optimization, to open the “loophole” to optimization.

According to Dinga (2008), in such situations, the good faith of the lawmaker must be weighted as well, since there are situations in which it could be proven that the law maker has willingly left those loopholes within the context of the law. This behaviour could be generated, most likely, by the pressures exerted by certain economic interest groups (lobby). Although these actions have effects against the best interest of the state, optimization does not automatically pass into the category of the illegal tax evasion, since the taxpayer interpreted and used it without violating any legal text. However, the question whether it is about incompetence or interest arises, whether the action of the lawmaker can or cannot be qualified as an act of corruption, leaving a clear path for circumventing the payment of the budgetary obligations.

In theory, three types of fiscal optimizations are distinguished:

1. The fiscal optimization through inaction is manifested by the taxpayer’s abstain to conclude or to realize a judicial document that would give rise to a fiscal obligation. The purpose of optimization through inaction results from the analysis made by Stéphane Detraz - “the one that is interested shall abstain from performing an activity that generates tax, with the purpose of not exceeding one or two thresholds of taxation, beyond which tax shall be owed or it will have an increased level” (Detraz, 2004, p. 6). In many situations the taxpayer chooses or not to carry out an activity if it is susceptible to be subjected to taxation, a modality removed from the sphere of optimization and considered inly an instrument to situate the payer beyond the norms of the fiscal law.

2. The fiscal optimization through manipulation is the form of fiscal optimization chosen by the taxpayer through which it ignores certain legal provisions form the fiscal system or chooses to take into consideration only certain provisions of taxation, without corroborating them with other legal provisions. It is not by chance that in the French literature, this form of optimization is called „la véritable évacion fiscale” (Costea, 2017)

Fiscal optimization through manipulation is the procedure by which the entities, be they natural or legal persons capitalize upon, for their own benefit, the lacks, and the gaps of the fiscal system. As a result of applying this technique, the taxpayer shall find himself when it eliminates taxation in full or, most likely, the taxation will be less onerous. The basic characteristic of this type of optimization is that the taxpayer uses the norms in force by exploiting exactly what the law maker did not foresee.

According to Ungureanu et al. (2017), in this situation, the following hypotheses can occur:

- ✓ The exploitation of the inadvertences of the fiscal system,
- ✓ The interpretation of the fiscal system,
- ✓ The exploitation of the legislative imperfections,
- ✓ The interpretation of the fiscal law,
- ✓ The abuse of rights,
- ✓ The abnormal act of management.

The fiscal optimization through option is, in fact, a fiscal ability through which the taxpayer chooses to adopt which is the most favourable fiscal solution proposed by the law. In manifesting his options, the taxpayer can choose either specific national procedures, or specific community or international procedures.

In choosing the form of organization, the taxpayers consider mainly the costs for constitution and the level of the taxes and duties according to the category of taxpayer. However, the manner of administration, in the case of the self-employed person being characterized by simplicity, is not to be neglected either. The Self-employed form of organization comes with the advantage of the single-entry accounting, be it that the chosen taxation system is that according to the real income or the standard income, the bookkeeping does not involve professionals from the field of economy, as in the case of a limited liability company.

In what regards choosing the way the tax is paid by a self-employed person, here, too, there is room for optimization, the persons who pay tax according to the income standards having a greater advantage than those who pay tax according to the real income. More precisely, the persons who pay taxes according to the income standards pay flat-rate amounts established locally, regardless of the amounts they submit for taxation purposes until reaching the plateau of 100.000 euros, which determines their switching to the actual

income system as of the year following the one in which the plateau was exceeded. At the same time, in the case of the persons who pay tax according to the income standards, the amounts they owe to the state budget are decreased or increased percentage-wise, depending on certain criteria, of which: whether they have employees or whether the holders have the capacity of employee within another company, depending on the age, period of inactivity etc.

The difference between the forms of organization has effects including in the commercial relations with the partners.

The taxpayer opts for certain fiscal solutions in compliance with the regulations of the fiscal legislation at different levels, having in view different criteria, such as the field of activity in which it operates, the entity's form of organization, the volume of business and the duration of the activity. Thus, taking into consideration the above factors, a taxpayer can choose his favourable fiscal regime as a form of fiscal optimization, respectively he decides whether he will carry out an activity as a natural person being a person who pays tax according to the income or he chooses to carry out the activity as a legal person, following that he becomes a payer of profit tax or income tax for micro-enterprises, according to the norms in force, respectively according to Law 227/2015 rep. concerning the Tax Code.

According to the same legal regulations in the matter of taxation, respectively the Law no. 227/2015, on indirect taxation, a taxpayer may opt to register as a VAT payer- according to article 310, paragraph (3) from the law 227/2015 concerning the Fiscal Code or it can benefit from applying the special regimen of exemption, in the conditions in which, if when his economic activity begins, he estimates and declares that he will obtain an annual turnover under the provided exemption plateau, the one below 88.500 euros and he/she does not opt for applying the normal taxation regime, according to article 310, paragraph (4).

At the same time, the taxpayer has at his disposal, according to the fiscal legislation, the possibility of opting for a specific fiscal regime, a specific accounting regime, also opting in what regards the fiscal registration or the declarative regime, i.e. the monthly or quarterly declaration of the contributions for the salaries or the monthly or quarterly declaration of the value-added tax.

Analysing the opportunities offered by the fiscal regime to the taxpayers, several factors can be distinguished that influence the typology of optimization chosen by them. Thus, a first factor is the legal



form of the taxpayer, his field of activity and his sphere of taxation, the activity's mobility degree and of the capital thereof (optimization on a national or international level). (Costea, 2019)

Within the fiscal regime, a taxpayer opts in what concerns different solutions concerning the accounting regime. A taxpayer has a right to opt even within the fiscal procedure, be it on the matter of the voluntary execution of the fiscal receivables, or on the matter of the forced execution.

The following forms of fiscal optimization are known in practice:

- ✓ The establishment of offshore or onshore companies with a favourable fiscal climate, through the means of which real operations are carried out

In what regards the types of taxpayers that choose to carry out their activity through the means of tax heavens, it is very clear that, mainly, the international companies prefer operation through the means of an off-shore branch (the tax savings realized is much higher for them and the cost of using a tax heaven has a much lower weight than for other companies with a reduced turnover), but even those companies that carry out intense research and development activities, especially high-tech companies (Ghinea, 2013). The companies should pay their taxes in the country in which the profits are generated. Combating tax evasion and avoiding fiscal obligation is essential for the European Commission.

- ✓ The legal production of goods and the provision of services, using operational structures that allow the application of certain diminished taxes and duties;
- ✓ The payment of reduced fiscal obligations by using the "legislative loopholes".

#### **6. The necessity of the existence of a sanctioning and control framework both for natural, as well as for legal persons**

The multitude of the legislative changes and the ambiguity of certain normative documents were and still represent a factor that favours the development of the evasion phenomenon. The commercial exchanges have diversified in the past years, becoming more and more complex under the conditions of a legislative instability, so that the tax evasion and optimization grew at the level of both the legal persons, and the natural persons, manifesting its negative effects upon the national economy and, implicitly, upon each of us.

The literature considers that the notion of control has powerful effects due to the powerful connotations referring to constraint. The entities subjected to the control are not rigid systems that respond strictly to some commands, they are not mechanisms, they are based on the individual, so that the control systems, by their purpose, tend to constraint the behaviour of the people. Even so, controlling human behaviour is extremely difficult and it can be sometimes particularly controversial through the characteristics given by the specificity of the field in which they act. The control activity must respond to the rigors imposed by the decisional factors, having in view the tasks and the purposes pursued by the institution or the organization that adopts a certain form of control (Hoanță 1997).

Thus, we conclude that the control institutions cannot control the individual actions, they only offer a framework governed by rules of work, managed distinctly and, obviously, subjectively, both by the taxpayer, as well as by the state. The rules constrain, but they also allow action in an equal measure. Commons concluded that the institutional rules were inherent and ambiguous, resuming his findings through a famous notion of the four verbs, analysing the individual action through the means of what the individual can, cannot, must and must not do under the influence of the environment in which he activates, under the influence of the collective action. Referring to the way the taxpayers act under the influence of the environment in which they activate, the behavioural economists study the way the legal person that trade interact, thinking that they submit themselves to certain rules that force them to do or not do something, that tell them what they can, what they cannot, what they must and what they must not do. On a different note, even when they comply with the rules, the natural or legal persons, the actors of economy, still have many choices to make (Hoanță, 1997). As a consequence, in order to provide an as coherent, regulated, equitable and unitary as possible framework in what regards the activity in the economic environment, the presence of the control bodies is absolutely necessary, without which any economic operator would act according to its own liking, according to the manner in which it interprets the activity of its business partners, to how it interprets the legislation, to their fiscal morality, depending on the level of awareness and consciousness of its representatives.

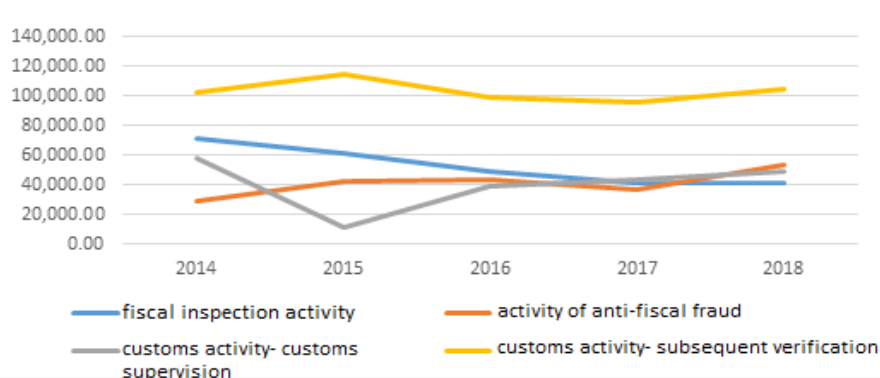
The number of control actions and its results, according to the data available at NAFA level, for each year, give us the possibility to measure the magnitude of the phenomenon of evasion.

**Table 3**  
**The number of the NAFA control actions in the period 2014-2018**

Number of control actions	2014	2015	2016	2017	2018
Fiscal inspection activity	70,912	61,053	48,676	41,396	40,952
The fiscal anti-fraud activity	29,052	42,963	43,665	37,216	53,019
Customs activity - the surveillance at the customs	57,608	11,378	39,469	43,102	49,117
Custom's activity - subsequent control	102,898	114,937	99,262	96,282	105,179

Source: authors' work, based on the NAFA data

**Figure 1**  
**The evolution of the number of NAFA control actions in the 2014-2018 period in Romania**



Source: authors' work, based on the NAFA data

Analysing the above graph, it is noted that during the first year of activity since its establishment, in 2017, the Fiscal Anti-fraud General Directorate realized the smallest number of verifications. The number of taxpayers verified having an ascending trend in 2018 more than 53000 control actions (Figure 1).

The increase of the number of verifications is based on several factors:

- it was achieved against a backdrop of the institution's development from a professional perspective;
- a better identification of the risk areas;

- the increase in the number of verifications was also due to the change in the institution’s decision-makers’ vision about the manner in which the taxpayers are selected and verified;
- a large number of controls being requested with minimal objectives, make the institution to be as visible as possible and to influence the voluntary compliance.

It is very important to understand that, regarded from the two perspectives, that of the natural person vs. that of the legal person, the sanctioning systems is distinct, the legal framework provides distinct sanctions for the same offenses, having a very clear example of the Law no. 12/1990 rep. where the limits of the fines are much reduced for the natural persons or the special laws that provide sanctions in addition to the main sanctions and the complementary sanctions (such as the seizing the agricultural products without documents of their origin) for the legal persons and, for the same offense, the natural persons are sanctioned with moderate amounts, the complementary sanctions not being mentioned within the context of the law.

Also, one of the major problems is that those who do not have a form of organization are very difficult to sanction due to the legislative ambiguities in comparison with those who have a legal form of organization and who conduct accounting records, an approach which is at least discouraging for those who have established themselves in one form or another.

## **7. Conclusions**

Synthesizing the matters presented previously, choosing a form or another of organization has strong points and weak points (Table 4).

**Table 4**  
**Strong and weak points - legal and natural persons**

	<b>Natural persons</b>	<b>Legal persons</b>
Establishment	Taxes lower than 100 lei	Taxes of about 1000 lei
Conditions for carrying out the activity	Imposed and limited by the holder’s professional qualification.	Any legal activity provided within the Articles of Association and within the NACE nomenclature
Accounting	Single-entry, it does not require any qualified personnel, therefore it does not involve any costs.	Double-entry- it requires the involvement of the professionals. Accountants. Economists, experts, generating costs

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	<b>Natural persons</b>	<b>Legal persons</b>
Registers	There is no obligation to maintain a unique control ledger, cash book, management report, accounting journal. There is the obligation of the register of collections and payments.	All the accounting and fiscal records are mandatory. Holding a unique control ledger for each declared place of business is mandatory.
The rate of taxation	The tax is paid: - according to the flat rate income standard, until the threshold of 100,000 Euros, often having bonuses. - in a real system through - the application of the share of 10% upon the difference between the collections and the payments. - health in a share of 10% (applied upon the basis representing 12 minimum national salaries) and national insurance contributions 25% if the income exceeds 12 minimum national salaries.	Income tax for micro-enterprises 1% or 3% Profit tax 16%
Use of the liquidities available	The difference between the collection and payments is at the disposal of the holder without any limits. It is not necessary to prepare supporting document when the amounts are withdrawn.	As dividend in the limit of the profit, with a cost of 5% representing dividends.
Relation with the banking institutions	The banks are reluctant to grant loans due to the lack of certified financial-accounting data.	Easier due to the certainty given by the annual financial statements.
Liability	With the assets of the holder	With the assets of the company
Sanctions	Lower than in the case of the limited liability company	Higher than those for the natural persons

*Source: authors' work.*

The taxes must not influence the choices of the investors, the economic agents, respectively the degree of taxation must not unbalance the benefits of the taxpayers. Taxation must also take into account the difference between the legitimate and illegitimate income and aggravating as much as possible the taxation of the income obtained in an illegitimate manner, finding at the same time modalities of relation or even exoneration from taxation for the other category, the one obtaining income through work, as a result of the efficient management of the resources and by assuming certain risks. The

elimination of all the possibilities for the arbitrary interpretation of the legislation is the idea that stands at the basis of the main principle of taxation, the lack of the arbitrary, establishing the taxes clearly and unequivocally.

It is very important that the control bodies to understand the causes of tax evasion phenomenon. In this way they are capable to combat it efficiently. In this study we tried to explain some aspects from the control bodies point of view. Our study is based on practice, and we intended to show relevant aspects from legislation that makes people to choose between different fiscal methods.

In view of the efficient combating of the phenomenon of evasion, the following immediate measures are imposed:

- ✓ Diminishing the underground economy and the black/grey market labour by imposing some limitations in certain fields with a risk of evasion (extending the specific taxation and other sectors of activity which are difficult to quantify, applying the minimum wage according to the branch in several sectors).
- ✓ Diminishing, as much as possible, the differences in taxation depending on the manner of organization, in view of assuring a fair, equitable competitive framework for all the participants in the business environment.
- ✓ Granting economic and fiscal facilities in view of determining the declaration out of one's own initiative of all the activities carried out, so that carrying out an economic activity in the authorized form becomes attractive to the detriment of the underground one.
- ✓ A clear and viable legislative system;
- ✓ An efficient fiscal control, beginning from the monitoring and risk analysis phase, the update of the parameters according to which the companies are analysed;
- ✓ The professional training of the fiscal bodies must represent a priority;
- ✓ An efficient plan for the fiscal education of the citizens.

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