

CONCEPTUAL APPROACHES OF THE RELATION BETWEEN TAX EVASION AND TAX BURDEN

Vasile Birle
Technical University of Cluj-Napoca, Romania
vasile.birle@yahoo.com

Mihai Bănică
Technical University of Cluj Napoca, Romania
mihai.banica@cunbm.utcluj.ro

Abstract:

The degree to which fiscal policies are attuned to the real economy can be assessed more precisely from the perspective of tax burden: a) the convergence of the rate of tax burden with the taxpayer's ability to bear taxation, and b) the loss of income as an effect of changes in tax burden.

Identification, analysis and detailed knowledge of the impact of tax burden on the tax evasion rate provides decision-makers proper arguments when deciding upon corrections to the specific legislation. I consider that the government should show more interest in these conditionings, which should benefit both the government and the taxpayers, in such a way that fiscal relations at this level become normal and efficient.

The relation tax burden/tax evasion is one of conditioning, with directly proportional impact. From this perspective, associating the concepts may be of special interest both for the government and for the taxpayers.

Why? For at least the following reasons: tax efficiency (higher budget cashing in with constant or lower costs), tax equity (an optimal dose of taxation in relation to the tax capacity) and fiscal responsibility (a more active voluntary conformation).

Keywords: tax burden, tax evasion, fiscal coefficient, public finances

1. RESEARCH METHOD

The qualitative aspects of the research require the presentation and interpretation of the thematic approaches, being inevitably subjective.

All experience gathered along the years of taxation practice on various decision-making levels, on the one hand, and the theoretical interests regarding tax evasion, equity and burden, on the other hand, provide solid ground for my assertions on the cause-effect type of relationship between tax evasion and tax burden.

Consulting, analysing and criticizing opinions on tax evasion and tax burden expressed by individuals and personalities with special interest in this domain, represented both the foundation and the raw material of this scientific approach aimed at the link between tax evasion and tax burden.

2. TAX EVASION AND TAXES

One of the questions regarding tax evasion, which is frequently seen in professional literature, is as simple as it is controversial, causing frequent arguments. This question is: *What is tax evasion?*

"... running away from taxes ..." (Cordescu, 2005, pp.98); "... avoiding to pay taxes one way or the other ..." (Tulai, 2003, pp.297); "... the procedures through which those interested steal part of or all the taxable matter ..." (Cordescu, 2005, pp.98); "... the manner in which business and individuals react to tax burden ..." (Dinga, 2008, pp.20-50). The presentation of opinions and approaches on this subject matter may continue.

Legally speaking, the concept "tax evasion" is defined quite clearly (Law on tax evasion, no.87/1995): "*circumventing by any means the partial or total payment of taxes, fees and dues owed to the government, local budgets, social security and other special funds, by individuals or businesses, domestic or foreign, otherwise called taxpayers*".

We noticed that most of the above-mentioned theoreticians, especially the legal bodies, consider that the essence of tax evasion is represented by *the circumvention of paying taxes*.

Professional practice in public finances and researches carried out so far on this topic approaching tax fraud, evasion or equity, entitle me to an opinion on the essence of tax evasion. It is this essence that I will use as convergence point and partial causality with tax burden.

In this approach, in support of my opinion, I will consider certain legal assertions: taxes, duties, circumvention/appropriation, and conditions for something to occur.

Taxes are the subject and the stake of tax evasion. Consequently, a short presentation of defining concepts is as necessary as it is useful in explaining the essence of tax evasion. Thus: *What are taxes?* Taxes are classified both in the common language and in the professional literature, as *financial obligations or duties*. Iulian Vacarel defines taxes as being "... a form of deduction of a part of an individual's or a business' revenue or assets which is at the government's disposal..." (Vacarel, 1994, pp.213), and Gaston Jeze states that: "taxes are defined as a pecuniary payment, required from individuals through authority...". Professor Tulai, in his exquisite work entitled "Public finances and taxation" performs a well-supported x-ray of theories about taxes, closing it with a synthetic definition: "*nowadays taxes are pecuniary obligations, legally requested by the public authority over individuals and businesses, in terms of their contributively capacity [emphasis added], taken over for the state budget, forcefully and without any immediate service rendered...*" (Tulai, 2003, pp.297)

The above-mentioned illustrious authors, but not only they, generally agree on several terms which capture the essence of taxes, such as: compulsory and *incontestable* taxation of taxpayers, the existence of a *definitive, non-refundable title and without any service rendered in return*, etc. In conclusion, taxes are duties imposed by the government, as supreme authority, upon natural and legal persons which produce taxable matter. Thus, the tax is a compulsory duty of a special sort which is not a priori assumed by taxpayers, the former being apodictic and incontestable about legal norms. This feature irrevocably eliminates the hypothesis of assumption, making room for the free rider behaviour about social norms. Somewhat like the army discipline, taxes "... are to be carried out, and not debated upon".

Without the intention of critically analysing the above definitions, the temptation is stronger than reason. With all due respect for Professor Tulai (whose student I once was), I cannot help but notice the statement about the conditioning of taxation by applying the equity principle "...in relation to the contributively capacity..."; pragmatically speaking, taxation is carried out under different auspices. Here are only a few theoretical counterarguments regarding the dear professor's idealistic opinion:

- ✓ *tax efficiency is primordial for the modern fiscal systems, yet this principle goes against equity;*

- ✓ *indirect taxes hold ever higher percentages of the total fiscal coefficient, these being devoid of any “trace” of equity, being even “insidious” about the contributively capacity;*
- ✓ *is anyone in modern economies still interested in the contributively capacity, even empirically!?*

I highly appreciate the “fiscal idealism” of the Professor when he believes in fiscal justice.

Returning to the approached topic, I state the obvious: taxes were never desired by taxpayers, yet they have always been accepted... as compulsory. Being provisioned by law, they become mandatory; therefore, they are also called *fiscal duties*.

As regards the voluntary conforming to paying taxes, a certain type of acceptance intervenes which has its origin in the feeling of fiscal civism; tax payment is carried within a process of assuming the *obligation*, not as a feature which appeared out of the blue, but as a consequence of the coercive force exercised by the government in the fiscal relations it has with the citizens. Consequently, the object of the fiscal relation is the tax as direct duties and not the nature of positive conditioning. Thus, the fiscal obligation imposed by the fiscal law acts upon the constraint leverages. It is true that in some countries fiscal obligation is more easily accepted, either due to a better understanding of the role taxes play, or to the existence in society of a more accentuated fiscal civism – a characteristic “gained” through country-specific means.

Even in the countries where there exists a higher civic spirit, within the fiscal relations classified as unquestionable *the power of the law* is used, i.e. *constraining people to pay taxes*. Constraints in fiscal relations differ from other since they refer to taxes as fiscal duties. Generally speaking, there exist types of relations between the government and the citizens that are mandatory without having anything to do with taxes, and which act in a different manner. In the same context, there are various relations between natural and legal persons that are also perceived as mandatory, and they differ from the fiscal ones.

Thus, not every breach of an *obligation* represents an act of tax evasion by evading the law. Evading the law (dodging it, avoiding or intentionally ignoring it) (Romanian Explanatory Dictionary) is, generally speaking, a widely spread action within the relations of the government with the citizens. For example, evading the law regarding traffic on public roads: “all vehicles travel on the right-hand side of the road”.

In order for an act of not fulfilling an obligation within the relation government-citizens to be considered tax evasion, the manner in which it is performed has to be in relation to breaking the taxation law and has to generate material-financial effects, eventually materialized in not obtaining revenue. An act of law evasion by *avoiding the gravitational pull of the taxation law* does not generate loss to the public revenue due to the simple fact that taxes have never been stable, thus no specific payment obligations to fall under someone’s duty have ever been constituted. Generally speaking, the amount obtained through evasion (avoiding or ignoring the law) cannot be quantified because they were not constituted as fiscal duties, they were not envisaged when revenues were estimated.

In order to better grasp the essence of tax evasion and avoiding semiotic confusion, we can admit that tax evasion is strictly, directly and indissolubly linked to TAXES. The fact that taxes are also called fiscal duties has nothing to do with tax evasion. The object of evasion is taxes, and the subjects are the taxpayers... *forced* by the state to pay them.

What is appropriation?

Appropriation, according to the dictionary definition, means “to take without permission or consent; seize by fraud an object which belongs to someone else” (Romanian Explanatory Dictionary).

Thus, the manner in which taxes are “appropriated” makes reference to fraud. If we refer to the appropriation of taxes, it means that before the action, taxes were very well defined, evaluated and set into someone’s trust.

In any corner of the world, taxes a) belong to the state as unique beneficiary, b) are legally defined based on an appropriate fiscal regulation act, and c) are communicated to the taxpayer one way or the other. If under the above-mentioned circumstances an act of tax appropriation occurs, what we are dealing with is an act of ... theft.

The manner or the conditions under which the tax “theft” occurs seems to be the most controversial aspect related to tax evasion. Often the means of the appropriation are mistaken for the essence of tax evasion. It is not the means that define the action; the same action can be carried out in numerous ways. In order for an act of tax *appropriation* to be considered tax evasion, according to the established fiscal customs and practices, as well as the semantic analysis of the term, the subject of taxation has to be convergent and indissolubly linked to the taxable matter. Does one speak of tax evasion when one appropriates the taxable matter legally carrying taxes? Absolutely, for the simple reason that the tax was determined upon the taxable matter, as well as known, evaluated and taxed, by applying certain legally defined calculation formulas. Yet what if a certain type of taxable matter is not regulated as tax bearer and is... appropriated? Well, in such situations one cannot speak of tax evasion simply because there is no object of the appropriation, i.e. the tax or the taxable matter, these not having been identified, legalized, taxed. If the law did not “require” a certain tax for a certain revenue-producing activity (taxable

matter), it does mean that the individual carrying out that specific economic activity commits tax evasion; at most such an entrepreneur capitalizes on an “omission of the fiscal law” or an “omission of the legislator”, and can in no case be held responsible for circumventing the payment of a tax: if there is no taxable matter, there are no taxes either, therefore there is no... tax evasion!

Many of the above-cited authors classify tax evasion as being of two types: “licit” and “illicit”.

Such an approach is connected rather to the perspective and approach angle of the appropriation act, and less to the essence of the appropriation. Classifications of this type generated a lot of debate over the concept of tax evasion which generated phrases such as “legal tax evasion”, “evasion under the protection of the law”, “legal elusion ways” etc. such associations suffer linguistically, not only legally.

Fiscal practice proves that, when the requirements in point c) above are not met with cumulatively, one can *avoid the gravitational field of the fiscal law* without this action being considered tax evasion. And this is so because there is no appropriation of taxes, thus the capitalization on the deficiencies of the law on the part of the tax payers is not an act of tax evasion, but rather an entrepreneur’s ability to organize their activities or businesses in relation to the fiscal regulation with the aim of ensuring... non-taxed revenue. Some revenues are not taxed because the taxable matter itself was not included in the fiscal regulation framework!

The ways, methods and procedures through which appropriation is carried out are numerous and diverse, depending on the appetite for evasion, the amount of risk-taking, the general economic context and especially... the level of tax burden.

We would like to conclude on the above points with the following:

- a) tax evasion is a process within which taxpayers do not (totally or partially) pay the taxes whose legal subjects they are;
- b) the object of tax evasion are taxes and other types of duties;
- c) avoiding the tax law does not mean tax evasion.

The tax evasion phenomenon is a real one and manifests itself in the fiscal relations between the state and the taxpayers in a regime of compulsory commitment to paying the duties, a process which is under the pressure of consequences.

The manner in which the fiscal duty is set up, explains to a wide extent the taxpayer’s behaviour related to taxes, coupled with the psychological and cultural structure of the environment wherein he/she lives and carries out his/her activity.

Forcing the taxpayer to pay taxes, in association with the sanctions he/she faces for not complying, represent the subjective aspect of taxation, and the size of the fiscal duty shows the quantitative side of the taxation regime. The two aspects of the taxation regime considered separately, but especially when put together, generate fiscal pressure over the taxpayer who, naturally, will try to avoid it. How? By using a wide range of methods, procedures and techniques of escaping the pressure.

3. THE CONCEPT OF TAX BURDEN

How many and/or how substantial – from the perspective of taxation rates – should taxes that the government imposes on the citizens be in relation to the taxable matter?

An unequivocal response to this question may coincide with the discovery of the “philosophical stone” in the field of taxation. It is not our intention to find it throughout this paper, yet we think it is worth taking a few steps towards it.

Generally speaking, tax burden is considered a *rapport between the total revenue and the absolute sum of the Gross National Product (GDP) at the level of a fiscal year.*

From this generic formula, theoreticians and participants in the field of taxation walk separate ways when defining fiscal burden: a) depending on the calculation formula of the initial GDP (value added plus import and production taxes minus subsidies) or by adding the total consumption and investments plus the difference between exports and imports, and b) depending on the number format: total public revenue or only revenue resulting from taxes!!!

Starting from here, opinions on the concept of tax burden become quite diverse: “... *the degree to which taxpayers (based on the results of their activity)... bear taxes, as duties imposed by the state*” (Georgeanu, 2012) or “*the rapport between the total collected revenue and the GDP*” (Mosteanu, 2005, pp.171), but also “... *the percentage of revenue (collected in a compulsory manner by the government from the legal taxpayers) within the respective tax base (income, assets, sales etc.).*” (Dinga, 2008, pp.20-50) And the list of definitions given to tax burden may continue.

In my opinion, tax burden can be associated with the *government’s intervention power in the economy exercised by taxing the income and assets of the citizens.*

Fiscal burden is a field of research for which studies are quite advanced, deeply rooted in the classical, liberal or non-liberal economic thinking.

In 1776, Adam Smith (Smith, 2011) proved that an increase in the tax burden can lead to the destruction of the taxable matter especially, but also of taxes in general.

David Ricardo (Ricardo, 1871) considers that a higher tax burden will determine the taxpayer to “*move his/her capital from his/her country to another country where he/she will be exempt from such a burden*”.

J.M. Keynes (Keynes, 1971) thinks that market economy can survive only if it wins “*the support of the public by increasing the standards of living*”, which is built on and consolidated by the balance between incomes and savings. Both the saving capacity and the evolution of investments are under the influence of the general fiscal coefficient fiscal general.

The concept of tax burden was developed by the American economist Arthur Laffer (Laffer, 2009), showing that “*a taxation rate which exceeds the optimum level has discouraging effects for investors and employees, bringing along a decrease in production, tax base, and thus of public income resulting from taxes*”.

At present, professional literature approaches tax burden at various tones both as regards: a) *the quantitative aspect – tax burden that is a taxpayer’s compulsory duty* – and b) *the structural and mathematical content of the rapport – how many taxes are contained in fiscal duties*.

As regards the size of tax burden in relative or absolute terms, theoreticians try to avoid making concrete predictions and practitioners ignore the concept altogether, focusing on the need for covering budget expenses. Why? Because of the practice and reasoning that govern the annual budgetary construct: for starters they add the expenses that are envisioned and then they look for sources of covering those expenses.

As regards the structure of the rapport in terms of its components, usually they ignore some of the elements of taxation known under the name of “parafiscality”, the taxes that employers and employees pay. In taxation practice, the determination of tax burden is done separately (fiscal and parafiscal) or just at the level of fiscal income.

Pushing it a little bit, I think that the level of the fiscal coefficient applicable in one economy depends to a great extent on the government’s capacity of administering its fiscality over a certain period of time.

Thus, high efficiency of the fiscal administration would have at least the following desired consequences:

- ✓ a higher degree of collecting the established taxes;
- ✓ a constant supply of the government with revenue from taxes, close to the value estimated in the budget;
- ✓ a significant reduction of the evasion phenomenon;
- ✓ an increase in the level of conforming voluntarily;
- ✓ a decrease of the fiscal administration costs etc.

All these effects are meant to lead to a greater fiscal stability (constant fiscal coefficient) under the conditions of economic growth. Economic growth based on a constant coefficient of tax burden leads to an increase in public revenue, which can cover the increase on public expenses, without requiring correction in tax burden.

4. WHY DO TAXPAYERS COMMIT TAX EVASION?

The causes of tax evasion are multiple, correlated with the diversity of economic activities, as well as with various levels of tax burden in economic fields.

- 1) Generally speaking, the inclination towards tax evasion can be associated with the **level of tax burden** in the sector where the taxpayer operates. If one tries to get an answer relative to the quantitative level at which the taxpayer decides to commit tax evasion, the reasons become more complex, and are not necessarily related to the value of the fiscal coefficient; these may be psychological or cultural, and harder to quantify.
- 2) **The weakness of the fiscal administration**, with reference to the intransigence and professionalism with which the fiscal law is enforced, is a significant factor which leads to tax evasion: a) with effects in the reduction of the level of tax collection and b) an increase of tax evasion, a situation when tax evaders bet on the inefficiency of the fiscal apparatus in detecting tax evasion, with similar effects on the side of tax revenue.
- 3) Another reason for tax evasion is **imitation**. Competition on the market makes players observe one-another and imitate certain types of behaviour, among which tax evasion. Thus, they can “catch” the inclination towards tax evasion from the others, and the speed and intensity of the contagion contributes to the extension of the phenomenon to a high degree.

The above-mentioned causes, which I consider essential, act in direct proportion on the tax evasion phenomenon: the more they grow, the higher the degree of the tax evasion phenomenon. Of the three causes mentioned, the weakness of the fiscal administration is the one that amplifies the imitation process, increasing the taxpayer’s degree of inclination towards tax evasion.

Opinions related to the causes of tax evasion are numerous and nuanced, introducing into the equation: tax amenities, economic globalization (transfer of profits through prices), legal inconsistencies (atemporality of the law in relation to the evolution of economic phenomena) economic crises and financial recessions, political instability, scarcity of resources etc.

CONCLUSIONS

The subject approached cannot be considered fully elucidated.

The diversity of the economic spectrum, its evolutions and especially the expansion it has recorded over the past years, makes tax evasion an ever more complex phenomenon. Yet the essence of fiscal relations carried out between the government and the taxpayers is given by the existence of taxes, which appeared at the same time as the state, and will only disappear once the state will cease to exist. Taxes are not anted by those who have to pay them, considering that they represent an “attack” on their property, which is the reason why some taxpayers will try to pay taxes as little as possible or not at all. Circumventing the payment of fiscal duties is an act of evasion, no matter the formula under which it is carried out, whose outcome is non-achievement of public revenue at the level estimated in the budget. The higher the number of taxes and their burden, the more intensely will the taxpayer try to exit the sphere of tax burden, trying a vast diversity of methods meant to circumvent the payment of taxes. The weaknesses of fiscal administration in the process of tax collection are capitalized on by taxpayers, thus the tax evasion phenomenon can increase significantly.

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