

TAX EVASION IN ALBANIAN ECONOMY AFTER '90

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Abstract: Albanian economy has gone through some difficult processes during different periods. For 45 years, it was a centrally planned economy, because of the dictatorial system. Albanian economy suffered a defeat during its adoption from centralized economy to a liberal economy. The main difficulty was the concentration of the Albanian economy in the cooperative system. In this type of system, all properties were owned by the state, there was no right of privatization. After '90 the identity of properties was returned. The banking sector, as one of the most important sectors of economy, was not having an appropriate development. Not only inflation would be the problem of the economy, but also the loss of trust for the deposit of money in the second level banks that could be opened, which would lead to the failure of the financial sector. An important factor which characterizes the economy is the informality. This article seeks to explain the factors that influenced informality in economy, in specific, tax evasion. Tax evasion is an illegal action as it constitutes a deed where the person is breaching the provisions found in the Tax Procedures Law and Penal Code. This paper shall discuss such provisions in the Albanian legislation.

Keywords: tax evasion, legislation, liberal economy, informality, economic growth

JEL Classification: K4

Introduction

Recently, we have been witnesses to a significant increase in the quantitative and qualitative level of tax evasion and tax avoidance. Often, the "battle" between fiscal system and contributors in bad faith (or suspected as such) is made on the basis of power of probation (burden of proof) regarding the elements of the transaction that must be verified by the tax administration. Nowadays, tax evasion is leaving more and more space to avoid refined, in contrast to what might generally be thought, it is not only the prerogative of big companies, corporations or powerful groups of business, but it's become a common management tool for small and medium enterprises and in some cases for natural persons.

Economy evolved with the same steps with the evolution of mankind. The need for economic change and the adoption of economic was the result of evolution of the society. Application of transition in Albania was very difficult, because Albania was one of the poorest country of Europe. It was a communist country with similar features with other socialist countries but with a centralized economy, in other words Albanian people did not have the right to have a property.

Structural changes in the banking system started since 1992 with the economic reforms, which began with the change of legal basis. The structure changed with the adoption of the law on 'Bank of Albania' and the approval of the law "On the banking system in the Republic of Albania". The banking system with its inefficiency as a financial intermediary created spaces for pyramids (in 1997) to absorb the growing

savings, especially savings of immigrants. Interest rates on deposits offered by these companies were too high and ranged from 6-8% per month. Main causes of pyramid schemes were lack of appropriate legal framework and political factor.

The developments in the real sector, during '92-96' were characterized by a sensitive economic increase of 9 % per year, a decline in the average level of inflation of 17.5 % , and a sensitive improvement of current account and budget deficit. Progress in the macroeconomic stabilization was based on the design and implementation of strong monetary and fiscal policies and also on rapid privatization in agriculture, retails, wholesales, small and medium enterprises which helped economic growth of the country. The desire and effort to fill the budget theoretically one side and ignorance of the Albanian reality, made to fixed quotas excise arbitrary values, provoked by withholding production firms or tax evasion.

Referring to the Working Document of the Secretariat of the Investment Council (SIC): *Informality, A Common Government-Business Challenge, December 2015*, since the 1st of September 2015, the Government officially initiated an extensive campaign against informality in the country. This campaign was preceded by public statements during July–August 2015 on the necessity to fully establish rule of law in the economic and commercial sphere of the country. The campaign was also preceded by a series of concrete, but not published, steps by the Government, including the establishment of a working group within the Council of Ministers, discussions in the Inter-ministerial Strategic Planning Committee (SPC), and the presentation of the campaign to the National Economic Council (NEC).

The process was accompanied by a large number of on-site tax inspections (fiscal visits) aimed at scanning the informality situation, numerous media statements by all stakeholders, followed by a series of legal initiatives. A “unique” intensity of debate and reaction was observed concerning this campaign, involving the Government, the business and its representative associations, as well as international institutions.

Informality and the tax system

The informality in Albania is identified mainly in the form of unregistered businesses, fiscal evasion, and informal employment.

An important aspect of “*informal economy*” is “*criminal economy*,” the kind of economy resulting from the illegal production of products and services and activities forbidden by the law. The difference between the two is that in *criminal economy*, what is forbidden is the activity itself, but in *informal economy*, the activity itself is legal, but the income is concealed and avoided through illegal means.

Tax evasion, as a phenomenon of corruption overall economy of our country, in this extended period of transition, tends not only by moral anti-law to benefit, above all, the adoption of the law, not in the real conditions of development our economic, mentality, transitions and versatile infrastructure fiscal.

Albania, with the entry into the market economy felt a duty to adopt Western laws in various sectors of the economy, and specifically, in the fiscal sector. Western Europe, in reality it enforced these laws for a long period, subject to supply and demand. This resulted in the harmonization of the price upon request. Due to the low level of life and fiscal mentality, excises were put under a strict technical control, not produced rampant evasion. They defined levels of tax payable and especially, excise duties to

achieve the objective of their optimum absorption by the state, to realize not only the budget revenues (out lower).

In order to create an anti-evasion atmosphere because populations larger than our country and not only that, but the state tradition most part, these countries rushed to recognize capitalists young and teach the masses, with the tradition of the new tax reduction tax evasion by using tax policy carefully.

The tax system represents one of the main pillars that facilitates or impedes the formalization of economy, also making the business climate more attractive or not. Regarding the tax system, businesses have identified the following concerns: tax burden, fragmentation of the tax system, tax administration, and tax procedures.

The administration of taxes is mentioned as an issue in different recent reports of international organizations on the business climate of Albania. As it's stated in the Working Document of SIC, businesses have continuously emphasized and made different comments, generally negative ones, over the capacities of the administration, interpretation of the legislation, and frequent tax inspections.

Tax avoidance is one of the most difficult issues with which they are confronted tax authorities, courts and legislation throughout the world, especially in places where it is hard to believe or doubt that the tax system is the main instrument to increase revenues that support government investment (Orow, 2000). Tax avoidance and other forms that deviate from the failure of taxes or reduce them can be called without hesitation more widespread phenomenon in recent centuries.

Tax avoidance involves arranging a transaction or a series of transactions, as to obtain a tax advantage, distinguishing the tax planning, which is lawful and tax evasion, as the incidence of serious violations of tax rates.

Increasing cases of avoidance must be given a choice and must take immediate and concrete measures. This poses a serious challenge against the effectiveness of the tax laws.

In all the multitude of books, articles or reports on this subject are noticed contradictions and different currents of thought on the nature and causes of tax evasion, ways of responding to it or address it, citing the fact that some perpetrators tax avoidance is a problem which requires a response by the legislation.

The divergence in the views of different groups of researchers, doctrine or jurisprudence come as a consequence of the legal traditions of the countries that belong or individual rights and obligations in tax law.

The main issues and the most vulnerable areas (Palumbo, 2011) which have been and continue to be problematic for Albania, as well as for other countries include:

- The lack of a clear and coherent policy to tackle the structural choices provided by tax legislation;
- The fact that the tax system exists as an economic reality in the business world and as a real and substantial cost affects the shape of the majority of transactions;
- The existence and application of formal principles characterizing many of the transactions and creating differences which are more formal than substantive;
- Different taxes for different businesses and the lack of a coherent framework of income tax on investment.

Ways that are followed to address tax avoidance have been different. Abuse of the law doctrine is used in all areas of law, including the right to tax. The European Court of Justice (De La Feria & Vogenauer, 2011) alluded to more than thirty years connected with the terms "abuse or abusive practices", but for a long time the meaning of these references has been unclear. Recent years there has been a radical change in attitude, mainly due to the development by the Court of a test for finding of abuse and its application in the field of taxation. The European Court of Justice has formulated a principle of general anti-avoidance according to this doctrine. The principle of prohibition of abuse of rights can be used as an effective basis for addressing tax avoidance, which is a manifestation of abuse of the right of the taxpayer.

The principles that govern tax avoidance and evasion are provisions that prohibit the performance of complex structured transactions intentionally by the taxpayer, to divert from paying the tax.

Before determining these principles, we need to make the difference of the behaviors of the taxpayer, in order to better understand the link between the illegal conduct and general principles.

One of the manners of tax benefit, which is in any case illegal is tax evasion.

Tax evasion is the taxpayer's behavior (Galdieri, 2009), that consists in a direct violation of tax liabilities as a result of existence of some elements related to the birth of the tax. In practice, the taxpayer avoids the payment, wholly or partially, of the tax liability using tools / illegal ways to hide all or part of the taxable base.

These behaviors of taxpayers, which are illegal, can come as a result of gross negligence or intent on committing acts or omissions e.g failure of invoices or lack of billing transactions (such as omission of the taxpayer), or may result in active actions as fulfillment of invoices for transactions that are really nonexistent (Caraccioli, 2009). In this way the definition of conduct for tax purposes is very simple: there is tax liability specified in the relevant rules, the person/business is not aimed at changing the legal structure, but illegally, evading this obligation.

Usually these situations occur in the case of creating models or transactions, for e.g corporate mergers, divisions, transformations, created as entities without a "valid reason economic", but to take an advantage of tax. Ratio (reason) is a savings/ evasion of taxes (Terracina, 2012).

Tax avoidance and tax planning

Tax avoidance should not be confused either with tax evasion (as discussed above), which is in breach of a legal obligation to pay taxes, nor with tax saving. The taxpayer can make the choice among of the various options offered by the legal system to minimize the tax burden.

The concept of tax saving is broader and more general than that tax avoidance. Well, we can say that the tax saving is a grouping that includes all sub-groups considered. Methods, tools, techniques of conducting tax avoidance are different from those of the realization of tax planning.

In fact, there is absolutely nothing wrong in choosing between two or more different transactions that lead to the same result, where the choice of one leads to lower taxes, reduction or elimination of the tax burden.

The possibility for taxpayers realizing a savings (Pistone, 1995) allowed by the legal system (the so-called tax-free zone) is characteristic of capitalist economic systems. It is symbolic that such opportunity was given without hesitation the former communist countries after leaving the planned economy system.

The benefit of tax savings by planning when there is no exceed of the limits of legality, can be very useful and socially. It was argued that the specific weight of the tax burden is an instrument to stimulate (or discourage) a certain kind of social or economic choices of taxpayers.

Meanwhile, the essential features of tax avoidance is avoidance or deviation from the definition of tax rates or the use of legal space for the performance of certain transactions. The tax burden is not mitigated by falsifying the facts of tax relevant (as in the case of tax evasion), or through simulation of certain transactions (as in the case of fraud), but through careful use of tax rates existing gaps (Palumbo, 2011).

Often, (Galdieri, 2009) taxpayers willing to avoid taxes, create more complex schemes with the sole purpose to avoid the law. Tax avoidance, in other words, consists in acquiring a particular economic outcome, using the not the normal procedure provided for by the legal system. The main problem lies in the fact that how far can go the taxpayer, choosing less heavy taxation without avoiding the law.

Conclusions

This paper has explored a number of issues regarding shadow economy and fiscal evasion. Although in different levels and ways, shadow economy is present in every country. Tax evasion is an important and significant phenomenon that affects both developed and developing economies. Size of the informal economy and fiscal evasion associated with it should be clearly understood, in order to forecast the appropriate policies to deal with these issues.

Generally countries with low tax rate, tend to have less fiscal evasion. However, Albania is an exception, since it has or had a low tax rate, but fiscal evasion is still a major problem. As the tax rate increase, the probability of evading taxes increases, too. Tax payers lack trust on governmental institution, so they evade taxes or pay only the amount they believe they can be caught.

In order to reduce tax evasion, Tax Administration should increase the quality of audits and controls. This can be done through an improvement in tax audit methodologies and existing topics, creating a unique database with the results of inspections made on businesses and individuals. Strengthening of financial control may also help in the reduction in the size of informal economy.

Government should develop business management tools for a more precise control or a database including taxpayer's taxpaying habits. Fiscal evasion can be reduced also by the improvement of enforcement procedures. In order to control tax evasion government should:

- a) Build business- friendly policies abolish repressive practices against business and fiscal arbitrariness,
- b) Increase cooperation between different state agencies
- c) Increase the capacity and professionalism of customs and tax administration, in order to improve the control of fiscal evasion in the labor market it is required the education of both employees and employers;
- d) Strengthening the legal and financial penalties for individuals and companies who manipulate company balance sheets.

International experiences suggest that stronger penalties function better when adequate incentives have been created preliminarily for formalization purposes and when informal companies have a more successful transition towards formalization.

On the other side there are many question marks on the efficiency of the complaint system, including tax appeal procedures and complaints procedures through the judicial system.

The formalization reform must also have a goal to relieve the administrative burden for taxpayers, by promoting compliance with the tax system and the regulatory system as well as a higher standard of the final goods and services in the following aspects: For e.g. Improvement of public institutions' infrastructure in relation to application of online systems and enhancing the exchange of information in real time. More concretely, the online coordination of State Inspectors and online exchange of information on Inspections as well as coordinated registration of private entities, with institutions such as the NRC, Tax Office, Employment Office and other Inspectorates (e.g. NFA, the Environment Inspectorate, etc.) or the General Directorate of Customs for imports of raw materials (necessary for agro-business).

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