

Some Considerations Regarding the Influence of Tax Evasion on Fiscality

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Abstract. *Tax evasion can be defined as representing those acts or illegal actions of certain natural or legal persons who try to avoid paying fees or taxes. Tax evasion is encountered both nationally and internationally. It is one of the most widespread economic crimes. We can say that a measure of the degree of tax evasion is given by the value of undeclared income, which represents the difference between the amount of income that should be reported to the tax authorities and the actual amount reported. Currently, the tax evasion does not know "borders", the methods and means used by the evading criminals stretching in Romania, in the space of the European Union, but also the countries considered "tax havens" outside the European Union. Tax evasion can never be eradicated regardless of the legislative, economic, political or social framework of the country of which we are citizens. The state, through the competent bodies and the education of the citizens, must limit the fiscal evasion, to a level accepted by the general consolidated budget of the state.*

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JEL Classification: H68, K34.

1. Introduction

Law no. 241/2005 for the prevention and combating of tax evasion represents the legal framework regarding the prevention, combating and bringing to criminal liability the natural or legal persons committing acts of tax evasion, in accordance with the provisions of the Criminal Code and the Criminal Procedure Code.

Taxes, like any other tax, are part of the heritage of each individual, natural or legal person, which they pay to the state in order to enjoy what remains after their payment.

The fiscal policies of the state, through their representatives from the highest levels, lead to a legislation in which the fees, taxes and any other contributions are established. They specify, among other things the persons who have the duty to pay them, under what conditions and during what periods.

Including by the fundamental law of Romania, the Constitution of Romania, in article 56, article 11 stipulates that "Citizens have the obligation to contribute, through taxes and taxes to public expenses".

In fact, taxes and fees can be charged as a taxpayer's price for how he uses the assets held under a title or under the law.

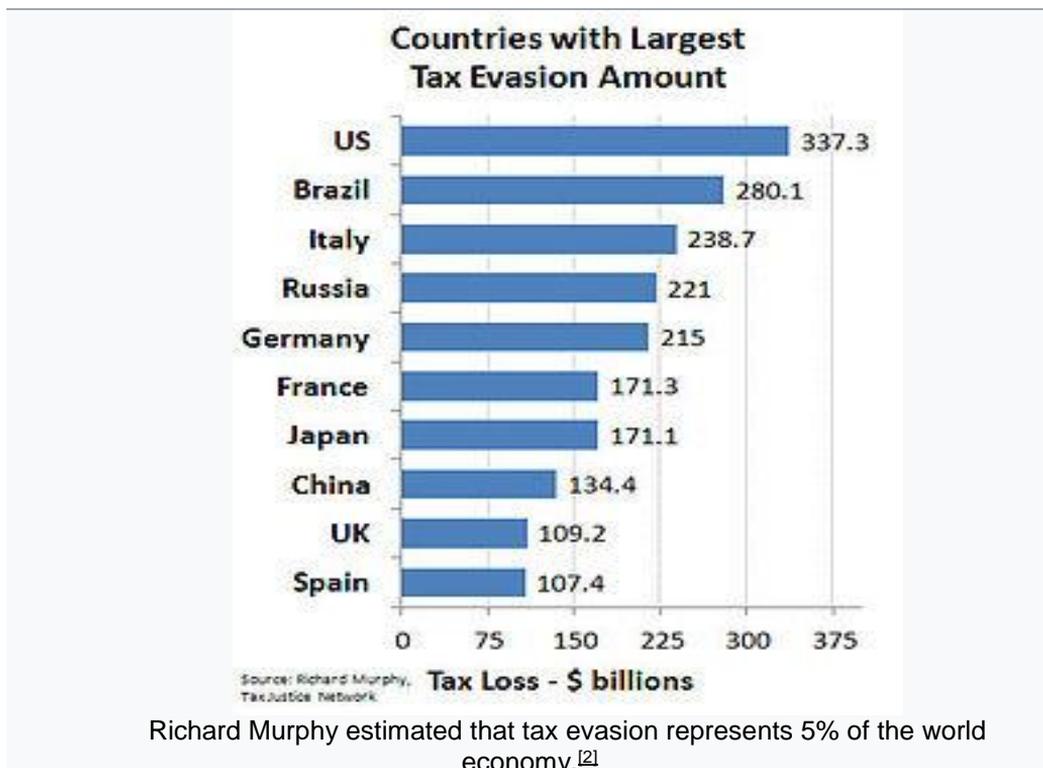
Public institutions provide the necessary standards to use these goods.

¹Constituția României, publicata in M.O. nr.767 din 31 octombrie 2003cu modificările și completările ulterioare.

2. Specialty literature

In 2013, tax evasion in Romania amounted to about 16% of GDP, i.e. over 100 billion lei. In 2014, Radu Timiș, the vice president of the Romanian Meat Association and the president of Cris-Tim, said that in Romania there is a tax evasion of about 13 billion Euros, which represents 75% of the VAT that should be collected..

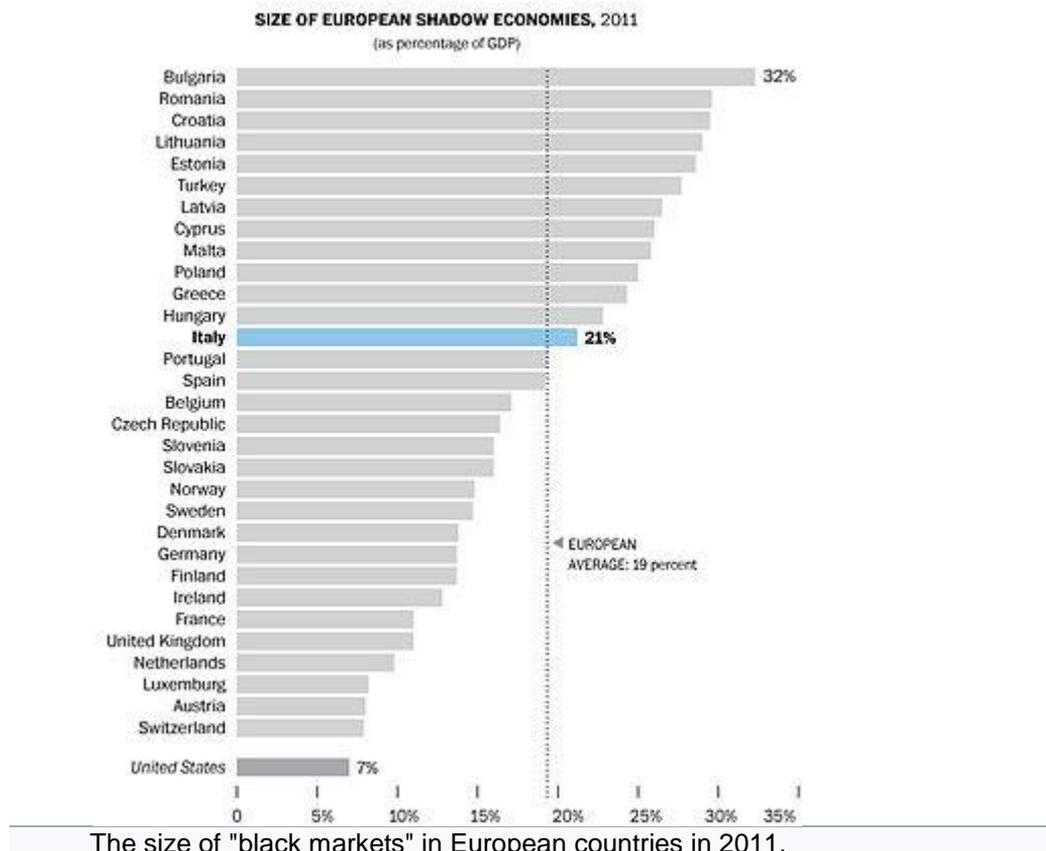
According to Richard Murphy estimates, the top 10 countries with the largest tax evasion in absolute terms, are according to the graph:



The level of evasion depends on a number of factors, including the amount of money that a person or company owns. The tendency to commit tax evasion decreases when the amounts involved are small.

The underground economy at the level of the European Union is presented below and shows the concern regarding the harmonization of the Romanian legislation with the developing countries with regard to combating tax evasion and related facts (especially corruption in the field of financial administration).

The tax administrations developed from the point of view of increasing the revenue to the state budget, use different means to reduce the tax evasion and to increase the level of tax collection, including the privatization of the tax execution.



For an overview of tax evasion in some developing countries in Europe, we want to point out that the UK tax collection agency (the ANAF equivalent), estimated that tax evasion cost the government £ 5.2 billion in fiscal year 2014-15. In addition, the tax gap (the difference between the amount of tax that should, in theory, be collected by the HMRC and the amount actually collected) was much larger: £ 36 billion.²

In the United States, federal tax evasion is defined as the conscious attempt to evade the payment of a tax imposed by federal law. In the US, tax evasion is punishable by a fine and imprisonment.

The US Internal Revenue Service has identified small businesses and individuals as the largest contributors to the difference between the taxes that should be collected and the actual value collected. Small and individual businesses are part of tax evasion as it is difficult for the government to find out about non-reporting of incomes without launching investigations.

A study from 2008³ estimated a tax gap (tax evasion) of \$ 450-500 billion, and undeclared revenues of about \$ 2 billion, accounting for 18-19% of total reportable income.

² „Watch out, the taxman's about: HMRC ordered to bring in £18bn in government crackdown". Mail Online. London: dailymail.co.uk. 17 martie 2011. Russell, Jonathan (10 iunie 2011). „HMRC opens 16 criminal cases over tax evasion". The Telegraph. London: telegraph.co.uk.

³Cebula, Richard; Feige, Edgar L. (n.d.). „America's Underground Economy: Measuring the Size, Growth and Determinants of Income Tax Evasion in the U.S". Ideas.repec.org.

3. Research methodology

The research aimed to identify those hypotheses that have a significant degree of importance in combating tax evasion through the modalities of its execution and the legislative, human and those of the competent authorities in the field.

Also, were considered the specialized literature, the legislation in force in Romania on tax evasion, as well as the practical aspects encountered resulting from personal or authors' experience.

As a research methodology, the analysis of the data and information existing in the databases from the Ministry of Finance, the Ministry of Internal Affairs or other databases containing data essential for analyzing the analyzed economic and legal situation is considered.

4. Theoretical aspects

In order to be able to understand the tax evasion and the methods of committing it, it is necessary to present the main terms and expressions, within the scope of this law: general consolidated budget - all public budgets, components of the budget system, aggregated and consolidated to form a whole; taxpayer - any natural or legal person or any other entity without legal personality that owes taxes, fees, contributions and other amounts to the general consolidated budget; legal documents - the documents provided by the Fiscal Code, the Fiscal Procedure Code, the Customs Code, the Accounting Law no. 82/1991, republished, and the regulations elaborated for their implementation; standardized forms with special regime used in the fiscal field - legal documents whose printing, insertion and numbering are carried out according to the normative acts in force; fiscal obligations - the obligations provided by the Fiscal Code and the Fiscal Procedure Code; fictitious operation - concealment of reality by creating the appearance of the existence of an operation that does not actually exist; competent bodies - the bodies that have the powers to carry out financial, fiscal or customs checks, according to the law, as well as the criminal investigation bodies of the judicial police.

In order to be committing the tax evasion offense, the evasionist, through his criminal activity, must commit the crime for the purpose of evading the fulfillment of the fiscal obligations.

The main ways of committing economic offenses stipulated in the tax evasion law and the most common ones in practice are those listed in art. 9, respectively: the concealment of the goods or of the taxable source; the omission, completely or partially, of the bookkeeping in the accounting documents or other legal documents, of the commercial operations carried out or of the income realized; legal documents, expenses that are not based on real operations or highlighting other fictitious operations; alteration, destruction or concealment of accounting documents, memories of taxpayers or electronic tax markers or other means of data storage; execution of accounting records duplicates, using records or other means of data storage; theft from financial, fiscal or customs checks, by not declaring, fictitious or inaccurate declaration regarding the main or secondary premises of the verified persons; substitution, degradation or alienation by the debtor or by third parties of the retained goods in accordance with the provisions of the Fiscal Procedure Code and the Criminal Procedure Code.

Interestingly, although Romania does not have the necessary amounts of money for good administration, laws such as that of tax evasion are not harmonized so as to correspond to the requirements of efficiency in collecting the criminal income. We consider that the payment of taxes and taxes due to the state as a result of crime should be the main concern of the state in case of tax evasion. The cases by which an

accused is sentenced to imprisonment should be diminished, one of the criteria for individualizing the punishment or even not punishing the offender being the full or partial recovery of the damage, supported by increased interests, accessories or penalties in such a way to "convince" the evasionists that the "price" of their freedom is too high in relation to the illicit income that they can obtain after committing the tax evasion act.

At the central and local level, there are databases and studies that can be carried out to ensure an overview of the criminal phenomenon, in particular through the criminal acts of economic nature committed by legal persons or natural persons. After consulting several databases, the decisions of the courts and the specific methods and techniques for preventing and combating tax evasion, money laundering or corruption, establishing the main weaknesses and strengths to be considered in the analyzed context, shall be taken into consideration.

5. Practical aspects. Examples:

In practice, it is also encountered the legal tax evasion, which ensures, through different economic and fiscal procedures, the possibility of removing from taxable character some income, parts of certain goods or certain assets, so that they respect the legal framework regarding the payment of fees and taxes due to the state budget.

We are in a situation of legal tax evasion in case of imposing income norms for certain categories of taxpayers, natural persons, taxation that has the effect of reducing the taxable mass for taxpayers who obtain incomes above this average. Thus, the difference between the taxable threshold imposed and the actual income achieved is not taxed by the Romanian state. On the contrary, in the event that a taxpayer obtains income below the established threshold, he will pay a higher tax than the factual income collected.

Also as a legal tax evasion, we can as well discuss about certain tax facilities granted to taxpayers in the form of tax reductions, compensation, exemptions of interest and penalties for certain categories of persons.

➤ Example 1⁴:

The Commercial Enterprise A Ltd., headquartered in Targu Mures, Mures County, having as main activity the trade in meat products, in order to avoid the payment of fees and taxes due to the state, in particular the related VAT, of profit tax, and wage income, buys the goods from a Hungarian company, through a circuit of "ghost companies".

Thus, although the merchandise purchased from the Hungarian company is transported directly to the beneficiary which is A Ltd., by creating a fictitious circuit of accounting documents, the actual ownership of the goods is intended to be hidden. Specifically, the Hungarian company issues the invoice to the company B Ltd. from Romania, which in turn issues the invoice to the company C Ltd., the company C Ltd. to the company D Ltd. and the latter issues documents originating from the company A Ltd. Transfers between Romanian companies are made by bank, through fictitious documents, and one of the other "ghost companies" in Romania does not record the commercial operations carried out, in order to deduct from the payment of fees and taxes due to the state.

Usually, the managers of these fictitious companies are vulnerable people (alcoholics, homeless people, people without any kind of school preparation, etc.) and who do not know the real reason why they were put administrators of these companies.

➤ Example 2⁵:

4 Processing of information from the databases of the Ministry of Internal Affairs and the Ministry of Justice.

In order to be able to win the public auctions organized by the contracting authorities, the winning companies must pay bribe amounts (in some cases, between 10% and 70% of the contract value) to the representatives of the public institutions that have designated the winners (even legally, in some particular cases).

Because the amounts of money given as bribe must be removed from the accounting records of the company, in practice, the issuer uses a fictitious circuit of accounting documents through which he transfers money to the account of ghost companies, amounts that are subsequently withdrawn (" bleached ") in cash for the payment of bribes or other payment obligations that do not wish to be taxed (for example, salary income).

In addition to the illustrative aspects mentioned above, aspects concerning tax evasion under the aspect of the subjective side, against which specific methods of combating must be found, we continue to provide examples of tax evasion under the aspect of the objective side - against which methods of remedying the related regulations must be found. These refer, on the one hand, to the actual application of the existing legislation, and on the other, to its modification, according to each case.

➤ **The Principle of legality of taxation**

I.C.C.J., complete of 9 judges, decision. no. 82/2004 by the sentence no. 1279/2000, the Bucharest Court of Appeal, dismissed the action as unfounded, declaring the appeal for annulment to be founded. It was held that by art. 139 para. (1) of the Constitution it was established that "taxes, taxes and any other income of the state budget and the state social insurance budget are established only by law".

Consequently, against all these constitutional provisions, the I.C.C.J. considered the following: "the matter of taxes and duties (the legal regime applicable to them) has its source in express legal provisions. This conclusion results from the constitutional provisions that stipulate that taxes and duties are established by law; in this matter, the method of interpretation by analogy is not admissible, because as we have shown above the will of the legislator must be articulate, and not implicit. In other words, in the matter of taxes and duties the will of the legislator cannot be deduced ⁶, induced, alleged or presumed. In this matter, the will of the legislator is express and specialized. It is express, because, as we have shown above, the legislator should focus only on this area and must not be vague, ubiquitous and diffuse. These two conditions - articulate and specialized will - must be met cumulatively".

➤ **Community principle of legal security**

According to R. Bufan, M.S. Minea, Fiscal Code Commented, ed. Wolters Kluwer, 2008, in an administrative appeal, elaborated by Prof. Radu Bufan, it is seen as violated the community principle of legal certainty which refers to the "pre-eminence of the law" in the sense that an adequate protection against arbitrariness is an obligation for any State who wishes to consecrate the "pre-eminence of the law".

This position is supported by the fact that although in the meat industry it is not found in the annex invoked to art. 3 of D 96/71, regarding the guarantee of the rights of posted workers, however, the tax authorities include EX OFFICIO, this area in the applicability of the respective regulations. The respective regulation from D 96/71 (extract) is shown:

Article 3

Working conditions and employment

1. Member States shall ensure that, irrespective of the law applicable to employment relationships, the companies referred to in Article 1 (1) shall guarantee, to posted workers on their territory working conditions and employment on the following matters established within the Member State on whose territory work is performed:

5 Processing of information from the databases of the Ministry of Internal Affairs and the Ministry of Justice.

6 P. Serlooten, Droit fiscal des affaires, 3 ed. , Precis Dalloz, 2003.

- through laws, regulations and administrative acts
and
- by collective agreements or arbitral awards of general application within the meaning of paragraph 8, insofar as they refer to the activities mentioned in the annex:
 - (a) maximum working periods and minimum rest periods;
 - (b) the minimum duration of paid annual leave;
 - (c) minimum wage, including overtime pay; this letter does not apply to supplementary pension systems;
 - (d) the conditions for making available the workers, in particular by the companies with temporary employment;
 - (e) safety, health and hygiene at the workplace;
 - (f) protective measures with regard to working conditions and employment of pregnant women or women who have recently given birth, children and young people;
 - (g) equal treatment of men and women, as well as other provisions on non-discrimination.

➤ **The relationship between National law and Community tax law**

In the case of Ikea Wholesale (decision of 27 September 2007, C - 351/04), the Court held that, taking into account their nature and economy, the World Trade Organization (WTO) agreements do not, in principle, fall between the rules on which the Court controls the legality of the acts of the Community institutions. The Court is competent to control the legality of the Community act in relation to WTO rules only if the Community has understood to fulfil a specific obligation assumed in the WTO or if the Community act expressly refers to precise provisions of the WTO agreements.

In a very different register, the decision of 28 June 2007 (Internationale Hilfsfonds v Commission, C-331/05 P) represented for the Court the opportunity to rule in the sense that the costs related to the proceedings before the European Ombudsman are not reimbursable. as recoverable expenses, they cannot be charged to the respective institution under the Community's non-contractual liability, given that the causal link between the damage and the wrongful act in the case is lacking, the respective expenses being incurred as a result of the free choice of the persons concerned.

➤ **Legality of the fiscal administrative act**

In van der Weerd and Others cases (decision of June 7, 2007, C-222/05-C-225/05), the Court was referred in particular to the question whether, in a judicial procedure regarding the legality of an administrative act, the right Community law requires the national court to carry out an ex-officio check on the basis of criteria that were not included in the original dispute, but based on Directive 85/511 establishing Community measures to combat foot-and-mouth disease. The Court replied negatively, considering that neither the principle of equivalence nor the principle of effectiveness, which the case-law establishes, requires the national judge to invoke ex officio a plea alleging infringement of Community law.

➤ **Freedom of movement of goods and tax law**

In the area of free movement of goods, the European Court of Justice was asked to rule on the compatibility of the various national regulations with the provisions of the Treaty. First, we will note the decision of Rosengren and others (decision of 5 June 2007, C-170/04), which was issued following a request for a preliminary ruling on the compatibility with the EC Treaty of a Swedish law which prohibits individuals from importing alcoholic beverages, the retail of which is subject to a monopoly regime in Sweden established by the same law. The Court considered this prohibition as incompatible with the Community law, having determined that it should be examined in the light of art. 28 EC and not on the basis of art. 31 EC, regarding the national monopolies of commercial character, as they do not constitute a provision for the existence or the functioning of this monopoly on the retail sale, except for the import.

➤ **Fiscal sovereignty in the acceptance of Community law**

The European Court of Justice has had the opportunity to have a closer look on several occasions on the competences reserved to the Member States in matters of direct taxation and on the limits of their exercise. In this regard, the Court has ruled on various national tax measures that relate, on the one hand, to the taxation of companies and their shareholders and, on the other hand, to the taxation of individuals. Some of these measures have been declared compatible with Community law and others are incompatible. The following cases are relevant in this regard: Geurts and Vogten (decision of 25 October 2007, C-464/05), Elisa (decision of 11 October 2007, C-451/05), Meilicke and others (decision of 6 March 2007), C-292/04, Rec., P. I-1835).

➤ **Proportionality in tax matters**

Certain measures have been declared partly incompatible with the fundamental freedoms of the treaty or incompatible subject to proportionality control in relation to the legitimate aim pursued. In this regard, the Centro Equestro da Leziria Grande case (decision of February 15, 2007, C-345/04, Rep., P. 1-1425) retains the attention first and foremost.

➤ **Taxation and fundamental freedoms of citizens**

In the field of taxation of individuals, several national measures were declared incompatible with the fundamental freedoms of the treaty, as they dealt differently with identical situations, without any valid justification, such as in Meindl's sentence (decision of 25 January 2007, C-329 / 05, Rep., Pp. 1-1113).

➤ **Selectivity of the definitions given by the fiscal law**

I.C.C.J., administrative and fiscal litigation, dec. Nr. 5071/2005. Law no. 64/1995 makes a clear distinction between "interest" and "expense" on the one hand, and "increase" or "penalty of any kind" on the other. Thus, if the interest is due on the basis of contractual relations, the increases and the delay penalties related to the budgetary obligations are due under express legal provisions, so that they will not be able to be removed from the task of the company entered in the judicial reorganization procedure.

6. Conclusions and critical issues:

The latest legislative changes, including the one regarding the fixed tax on the turnover, as well as the VAT deduction for certain products with high risk of tax evasion (vegetables and fruits, cereals, fuel, food, construction materials, etc.) led to a decrease in tax evasion facts.

However, we find a slow development of the Romanian economic system and of the companies that carry out commercial activity in Romania. The policies of the state for the recovery of the damage caused and especially the depravity of these facts have undergone improvements over time, but they are not yet able to ensure their effective control.

Spending public funds is the main problem in ensuring a sustainable development of the entire Romanian economic system. We consider that the solution is not to sentence the evasionsist to prison sentences that would result in the loss of jobs for the employees of the evasionsist, instead ensuring a stable and balanced competitive climate should be considered, with taxes and fees according to the economic development of the basic activity of a trading company. The evasionsist must be taught that it is easier for them to develop legally than by illicit means.

As long as the education of each taxpayer is based on practical and correct principles and the state ensures the optimal climate for the development of a living environment that most taxpayers want, the financial-accounting legislation will be easier to accept and put into practice legally to all the state taxpayers.

References

- Cebula, Richard; Feige, Edgar L. (n.d.). „America's Underground Economy: Measuring the Size, Growth and Determinants of Income Tax Evasion in the U.S”.
- Friedrich Schneider, eds., "Dimensiunile, Cauzele și Consecințele Economiei Subterane" (Ashgate Publishing).
- Hood, C. (1986) Privatizing UK tax Law Enforcement?, Public Administration, Vol. 64, Autumn, 1986, p. 319–33.
- Johnston David Cay (13 decembrie 2011). „Where's the fraud, Mr. President?”. Reuters.
- Morar Daniel, Evaziunea fiscală, în: Revista de Drept Penal nr. 2/2004.
- Russell, Jonathan (10 iunie 2011). „HMRC opens 16 criminal cases over tax evasion”. The Telegraph. London: telegraph.co.uk.
- Sabatini, Patricia (25 martie 2007). „Tax Cheats Cost U.S. hundreds of billions”. Pittsburgh Post-Gazette.
- Spiro, Petru S. (2005), "Politica Fiscală și Economia Subterană," în Christopher Gallery.
- Timiș Radu: Evaziunea fiscală din industria cărnii ajunge la 600 de milioane de euro doar din TVA, 19 noiembrie 2014, Diana State, Capital.
- Zaharia Diana. Cum vindecăm evaziunea, cancerul economiei?, 27 noiembrie 2014, Capital.