Babeș-Bolyai University
Faculty of Law

DOCTORAL THESIS

The Tax Evasion Offences Laid Down in Article 9 of Act 241 of 2005 on the Prevention and Fight against Tax Evasion

(Table of Contents and Abstract)

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KEYWORDS

tax evasion, hiding assets or concealing taxable sources of income, accounting records or other legal documents, omission to account for the commercial transactions or income made, booking expenses which are not based on actual transactions or accounting for other fictitious transactions, creating two sets of books, evading audits, replacement, deterioration or alienation of seized assets, money laundering, de facto director, participation, loss, damages, sanction, grounds for a reduction in sentence.

ABSTRACT

Tax evasion is an issue occurring at global level, and as long as taxes exist, then this phenomenon will carry on. The importance and topicality of the issue were therefore one of the reasons behind our scientific research, in the hope that, through its findings, it will be able to contribute to the fight against tax evasion.

This paper is intended as a radiography of the provisions laid down in Article 9 of Act No. 241 of 2005 on the prevention and fight against tax evasion [hereinafter referred to as the 'Tax Evasion Act'], in order to determine to what extent the existing legal norms, which criminalise this phenomenon, are appropriate, meet the requirements for clarity and predictability, and respect the principle of subsidiarity in criminal law. Undeniably, this paper is not the first ever to be written on the matter. Nonetheless, on reviewing the existing doctrine and observing the complexity of the evasion schemes that have emerged in the relevant jurisprudence, we reached the conclusion that there was still a need for a further – and this time more detailed – analysis of the incrimination norms, going beyond the scope of criminal law to find and provide real solutions and concrete answers to the issues which occur or may occur in practice, including in relation to other areas of the law, particularly to tax law.

The criminal jurisprudence, which is quite a good barometer for identifying possible deficiencies in the incrimination norms, also proves – in our opinion – that there still are lingering issues with the comprehension and implementation of such norms, and this is a reality which oftentimes generates non-unitary practices. We've analysed the pertinent case law and spotted a series of relevant rulings, but also many which are rather problematic or in which the courts delivered differing solutions to similar matters. This finding, in corroboration with the fact that the duty to uncover solutions to the problems occurring in the judicial practice is not incumbent only upon the lawmaker and the judicial bodies, is another reason why we deemed our research to be of some interest or use in this

field.

And last, but not least, our intention with this study is to also bring to light the potential deficiencies in the incrimination norms, and to formulate certain proposals, aimed to improve the current legislative framework.

This paper is structured into three chapters. In **Chapter I** we presented some introductory aspects. Since this phenomenon may have one or several causes, first and foremost we wished to refer to the factors which generate tax evasion, and of course to its effects on society. Then, after an incursion into the legislative evolution of the matter, we delve into the notion of 'tax evasion', a concept which gives rise to several, debating opinions. This is where we make the distinction between the notions of 'tax evasion', 'abuse of rights' and 'tax optimisation'. And given the context, we couldn't leave out the use of offshore entities. Although broadly perceived as tools for criminal behaviour, the actual schemes enabled by their use can be classified under any of the three categories we mentioned above, ie tax evasion, abuse of rights or tax optimisation.

Chapter II stands as the 'core' of our paper, and is dedicated to the concrete ways in which a person may commit the offence of tax evasion, as defined by the provisions set out in Article 9 (1) of the Tax Evasion Act. Since a review of any criminal offence must depart from the legal good that is protected by the incrimination norm, the ***first section*** of the chapter deals with the legal object of this particular offence. We believe that by criminalising tax evasion, the State aims to protect its own budget, and the forms of tax evasion stipulated under Article 9 take into account the various components of this safeguarding mechanism. Therefore, by looking at the specific legal object, we identified three categories of forms in which tax evasion may be committed, namely: 1. Forms which mainly target the recorded accounting data, and interfere with the State's tax collection activity [those provided under Article 9 (1) paragraphs (a), (b), (c), and (e)]; 2. Forms which interfere with the relevant authorities' process of reviewing taxpayer accounts, for the purpose of correctly assessing their fiscal situation [those provided under Article 9 (1) paragraphs (d) and (f)]; 3. Forms which interfere with tax enforcement proceedings [as provided under Article 9 (1) paragraph (g)].

Section II focuses on a thorough analysis of the first set of tax evasion schemes, which mainly target the actual recorded accounting data, and which basically interfere with the tax collection process. Firstly, at *Point I* of *Section II* we proceeded to review the specific legal object, as well as the tangible object of the forms of tax evasion stipulated by Article 9 (1) (a), (b), (c) and (e). Next,

considering that both doctrine and case law hold a variety of opinions expressed in regard to the active subject of an offence, we chose to first determine which are – in general – the specifics of the offences that have a special active subject. We began by examining several theories found in the foreign doctrine, and then completed our journey by proposing a new criterion designed to distinguish between the crimes with a special active subject and those with a general active subject.

Given that tax evasion, in some of the forms stipulated in Article 9 (1) of the Tax Evasion Act, is a criminal offence with a special active subject, we naturally contemplated to what extent it may be possible to hold the de facto director criminally liable for it. Thus, noticing the presence of some deficiencies in the incrimination norms, we believe a legislative revision would be rather expedient, and therefore we showed how the Italian legislation could actually constitute a 'starting point' for such an endeavour.

In this section, we further inspected the issue of a legal person's criminal liability, and its participation in the case of the situations presented under Article 9 (1) (a), (b), (c) and (e) of the Tax Evasion Act. Also, since we found that in both doctrine and case law, the greatest dilemmas are generated by the possibility where the offences are committed in a concerted action, we focused our analysis mainly on this particular point.

Finally, and just as importantly, we identified the passive subject of the criminal offence, and examined the subjective component of the tax crime. In this matter again, the opinions found in the relevant doctrine are quite divergent. Moreover, bearing in mind that tax evasion, as an offence, cannot exist without the prior existence of a tax liability, we looked deeper into the latter notion.

Our analysis of the tax evasion crime, committed in the form described in Article 9 (1) (a) of the Tax Evasion Act, and detailed by us at *Point II* of *Section II* of this thesis starts with some observations on the notion of 'asset or taxable source of income'. In our research, we've noticed that there are some confusions, as well as differing opinions on this matter, and the courts sometimes have trouble identifying the asset subject to taxation or the taxable source of income. Hence our desire to, first and foremost, clarify this aspect. The discussion around this subject doesn't reside only in the theoretical realm, because the accurate identification of the asset or of the taxable source enables a delimitation between behaviours with a criminal trait and those which are exclusively within the purview of tax law. Furthermore, in the same context, since the criminal doctrine doesn't provide thorough analyses of two problematic issues, which could be resolved by reference to the notions of 'asset' or 'taxable source', we therefore chose to focus on them:

unreported employment, and the possibility of holding an offender criminally liable for having committed tax evasion by concealing revenues derived from criminal activities. In the latter case, we included references to the relevant case law of the Court of Justice of the European Union with respect to the taxation of revenues generated from criminal activities, and then we completed this enterprise with a lex ferenda proposal.

We proceeded further to review the objective component of the offence, establishing, before everything else, the extent to which the physical concealment of an asset could have some criminal relevance. We also looked closer to determine to what degree the failure to register an economic activity or to register for VAT purposes or the application of tax to profit margins could support – or not – a case for tax evasion. Concerning the failure to report revenues, the relevant doctrine didn't place specific emphasis on it for the simple reason that it deems such an action to be a crime. Since we believe the situation is not so black and white, we identified several hypotheses which might occur, and we provided solutions to each one, including by referencing the relevant jurisprudence and the foreign legislation.

The next step in our analysis was to establish whether this offence is a formal crime or a material crime, an undertaking which involved referencing tax regulations, as well as the case law of the administrative and tax courts, the latter proving to lack unity with respect to the moment when the tax debt materialises. This moment is actually quite relevant from the point of view of the incrimination norm, because the adoption of one or another of the tax-related opinions on this matter will lead to diametrically opposed rulings in criminal law (ie acquittal or conviction).

And ultimately, we took a closer look at the moment of consummation of the criminal offence. Thereafter, considering that from a practicality standpoint, one of the most important problems is the relationship between tax evasion, in the form provided under Article 9 (1) (a) of the Tax Evasion Act, and other crimes, we decided to go further into this matter. Consequently, we examined its links to other crimes such as forgery, stipulated in the Criminal Code, and to the offences described under Article 270 (3) of the Customs Code[1], Article 452 (1) (a)[2] and (h)[3] of the Tax Code.

We move on to *Point III* of *Section II,* where we discuss another form of tax evasion, as indicated in Article 9 (1) (b) of the Tax Evasion Act. We begin by defining the terms 'accounting records' and

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1 Smuggling

2 Manufacturing excise goods that are subject to warehousing rules outside of an authorised tax warehouse.

3 Holding outside of a tax warehouse or selling in the Romanian territory excise goods subject to tax marking without having been marked, or carrying incorrect or false markings.

‘other legal documents’, drawing attention to the possible issues of predictability of the incrimination norm. For a better understanding of the accounting records notion, as well as to clarify under what terms the omission to record income or transactions could become criminally relevant, we identified several hypotheses and, as before, provided solutions for each of them. With respect to ‘other legal documents’, we noticed that the current interpretation, given to this notion in the relevant doctrine and existing case law, could lead to absurd situations in practice; therefore we submitted a new proposed interpretation for the incrimination norm, however without overlooking the consequences which this newly contemplated view may generate.

We further showed that, in the given context, the omission of recording a transaction in the books doesn’t fall within the purview of criminal law every time that happens. As a matter of fact, from the perspective of the incrimination norm, relevant are only the transactions which, were to be booked, would lead to an increase of the tax base. Hence, we identified and analysed some situations that are rather problematic, such as the failure to report certain purchases (mostly intra-Community acquisitions), the special VAT regime for intra-Community acquisitions, the situation of reverse invoices, keeping income from criminal activities off the books, not recording ‘revenue’ from statute barred debts, as well as the failure to record both an undue payment and the associated transactions to return such amount.

The precise moment when this form of tax evasion is consummated has never been comprehendingly studied in the relevant doctrine. The existing opinions merely converge to show that the offence occurs when the deadline set for the recording of a transaction expires, without however concretely specifying what that deadline is. The actual determination of this moment has proven to be one of the most difficult undertakings to carry out. In light of the extra-criminal legislation, and having regard to the fact that we previously identified the actual accounting records and tax statements which bear relevance for the incrimination norm, we thus managed to ‘build’ a reasoning which, we believe, clarifies this issue. And last, but not least, since the application of this reasoning might generate certain dilemmas regarding the continued form of the crime, we also made sure to explore this aspect too.

The next step in our thesis was to delve into the existing relationship between the form of tax evasion described in Article 9 (1) (b) and other violations or criminal offences which may be difficult to legally classify. The one that poses the most problems is the relation to the offence stipulated in Article 8 of the Tax Evasion Act. What we’ve noticed here is that quite a few times the courts had an inaccurate understanding of the notion ‘to offset’, and this affected the legal

classification of certain deeds. It is precisely for this reason why we sought to shed some light on this notion. And, for enhanced clarity of the solutions proposed, we further explored the relationship between these crimes in relation to various hypotheses which, in our opinion, will facilitate a better understanding of the norm that criminalises these behaviours.

With regard to the offence committed in the form stipulated in Article 9 (1) (c) of the Tax Evasion Act, explored hereunder at *Point IV* of *Section II,* we embraced what we consider to be an innovative approach, which leads to a rational application of the norm. After defining the notions of 'transaction' and 'expenses', we proceeded to analyse the notion of 'fictitious transactions', and thus determined that not every fictitious item included in the accounting records should lead to the conclusion that the conditions for the objective component of the crime are met. To that effect, we proposed to use, as differentiator, the transaction's economic component.

We further sought to establish which fictitious transactions, recorded in the books, could be relevant from a criminal law perspective. We consequently found that the transactions with relevance in this respect are only those which have the ability to diminish the tax base. Therefore, the action of recording fictitious transactions which, according to the Tax Code, do not diminish the tax base (namely they are booked as expenses which, even if real, wouldn't be deductible) is not treated as a criminal offence under the applicable incrimination norm. We also examined those situations where taxpayers book non-deductible expenses as deductible and make fictitious intra-EU deliveries, and we made the distinction between tax evasion, as an offence committed in the manner stipulated under Article 9 (1) (c) of the Tax Evasion Act, and those cases where we are in the presence of an abuse of rights or an act of poor management.

Our examination of the tax evasion offence, committed in the manner indicated in Article 9 (1) (c) of the Tax Evasion Act, ends with several observations on the topic surrounding the moment of consummation of this crime, and of course on its relationship to others. Although, at first glance, it could seem that its relation to forgery is rather straightforward, however things become more complicated when we take into account the complex mechanisms which involve the participation of a 'chain' of taxpayers in committing this offence. Precisely for this reason, we decided to analyse several distinct hypotheses that may occur in practice, and for every such hypothesis we identified a solution that we deemed appropriate.

The notion of 'two sets of books' has received a non-unitary interpretation throughout the criminal jurisprudence, so this is where we decided to focus our attention next, while reviewing the form of

tax evasion stipulated in Article 9 (1) (e) of the Tax Evasion Act, and explored it in more detailed at *Point V* in *Section II* of our thesis. We actually consider that clarifying the notion of 'two sets of books' might be the most important element in the case of this particular tax evasion scheme. We then went further to explore the objective component of the offence, showing in what way should the term 'creating' be really understood. In our opinion, the fact that the text of the incrimination norm specifies how the second set of books should be created, ie by using written documents or other data storage means, is quite frankly redundant and questionable.

In this situation again, the actual moment when the offence occurs – its moment of consummation – raises some issues, because it basically depends on pinpointing the exact time when it can be ascertained that 'two sets of books' exist. This is precisely why we stressed earlier that the definition of this notion might actually be the most crucial part, as it determines the moment of the consummation of the offence. To that effect, we introduced concrete hypotheses to show our opinion of when this form of tax evasion occurs.

Another problematic aspect in our research was to establish the nature of the crime committed in the form stipulated in Article 9 (1) (e) of the Tax Evasion Act. The relevant doctrine qualifies it as being continuous or continued. Our stance in the matter was to actually refrain from acquiescing in either, and instead to adhere to a new vision, ie that tax evasion, in this particular form, constitutes a crime of habit. By looking at it from this angle, we believe that things are starting to clear up, both in terms of the moment of consummation, respectively moment of completion, as well as with regard to the significance of the material acts committed along the way. And just as importantly, we highlighted the insufficiencies of this incrimination norm, showing why we believe that the regulation of this specific form of tax evasion is not only unnecessary, but that its application actually creates points of contention, especially in relation to the other forms laid down under Article 9 (1) of the Tax Evasion Act.

The relationship between tax evasion and money laundering is in our opinion quite problematic. Consequently, we decided to look further into it, dedicating the entire *Point VI* of *Section II* to its examination. The criminal doctrine and jurisprudence generally conclude that the two offences may be held concurrently, though oftentimes this happens in a completely erroneous fashion, since the relevant bodies don't focus on identifying the asset which is subject to money laundering, and despite the fact that the premise for money laundering requires the existence of an asset which originates from the commission of a crime. But, in the context where the consequence of tax evasion, committed in the forms provided under Article 9 (1) (a), (b) and (c), is the decrease of the

tax liability, and the sums of money thus concealed had been earned by the offender during the normal course of business and not as a result of tax evasion, then holding these two offences concurrently is no longer as easy to maintain as before. Therefore, we endeavoured to examine, by referencing also the foreign doctrine and case law, the arguments in favour of upholding a judgment for money laundering where the prerequisite offence is tax evasion, as well as to present the arguments in favour of the opposite point of view.

In our opinion, contrary to the 'traditional' view, the object of money laundering cannot be goods derived from the commission of tax evasion, precisely for the reasons explained in our thesis. Under these circumstances, we subsequently analysed the degree to which another incrimination norm could apply here, one that allows the relevant bodies to hold an offence of money laundering for amounts transferred under a tax evasion scheme. We then further explored in which situations could the commission of tax evasion, in the form indicated in Article 9 (1) (c), and the payment of possibly fictitious invoices lead to the holding of an offence for embezzlement, and, in the case of an affirmative answer, then under what conditions could the relevant bodies maintain the perpetration of money laundering, whose object consists of amounts obtained from the perpetration of embezzlement.

Section III of Chapter II sets forth a review of the tax evasion forms which interfere with the relevant authorities' process of reviewing taxpayer accounts, for the purpose of correctly assessing their fiscal situations. In this category, the lawmaker decided to include the specific forms of tax evasion laid out in Article 9 (1) (d) and (f) of the Tax Evasion Act. Following an analysis into the special legal object and the tangible object, in the context of our review of the active subject of these two forms of tax evasion, as a matter of particularity, we stressed that in certain circumstances tax evasion, in the form stipulated in paragraph (f) of Article 9 (1), may not be retained as having been committed by the legal person.

The next step in our doctoral undertaking was to analyse the objective component of the offence described in Article 9 (1) (d) of the Tax Evasion Act, which we presented in detail at *Point II* of *Section III*. First and foremost, we believe that it is worth having a conversation on the predictability of the incrimination norm, with regard to the notion of accounting records. Subsequently, we aimed to establish what the incrimination norm deems as relevant accounting records. Since the manner in which the lawmaker understood to criminalise this deed may give rise to absurd situations where, although all the elements of a tax offence are met, nevertheless the application of criminal law would be rather excessive, we therefore proposed another, more rational

interpretation of the norm, and provided examples to that effect, according to several hypotheses.

We moved on to examine the three concrete ways in which this crime may be committed. With respect to 'alteration', we highlighted the manner in which this action must be distinguished from those stipulated at paragraphs (b) or (c) of Article 9 (1) [Tax Evasion Act]. Furthermore, 'destruction' – as a form of perpetrating tax evasion – does generate some issues in terms of holding the offender criminally liable where the deed is committed by omission, specifically in light of the dispositions set out by Article 17 of the Criminal Code. Consequently, we resolved to further explore this aspect that has yet to be tackled in the doctrine.

In order to analyse the act of concealing accounting records, for tax evasion purposes, we focused on the so called 'judicial concealment' that may occur, according to some authors, in the context of perpetrating the offence stipulated by Article 280[1] of Act No. 31 of 1990, a view that is shared by the criminal jurisprudence. Based on the reasons explained in our theses, we resolved not to acquiesce to that point of view and concluded that, in the case of tax evasion committed in the form described in paragraph (d) of Article 9 (1) of the Tax Evasion Act, what's relevant is the physical concealment of accounting records, of memory devices of electronic cash registers tills or sales machines or of any other data storage means.

While analysing the moment of consummation of the offence, as well as the degree to which tax evasion is either a formal crime or a material one, we further showed that it is also a criminal offence with alternative content. Therefore, in the context where the relevant doctrine doesn't offer thorough analyses of all the situations that might come up, we demonstrated that, albeit in the presence of an offence with alternative content, this doesn't mean that the relevant bodies should hold it, in its continued form, in all the cases where the offender commits alternative kinds thereof, at various moments in time and with the same criminal intent. It should therefore be held in such continued form only when the protected legal good is harmed again.

Finally, yet just as importantly, during the course of our examination into tax evasion committed in the form set out at paragraph (d) of Article 9 (1) of the Tax Evasion Act, we explored its relationship to other violations or crimes which may potentially prove problematic in terms of legal classification.

Moving on, we arrive at another form of tax evasion, stipulated by the lawmaker in Article 9 (1) (f) of the Tax Evasion Act and analysed by us at *Point III* in *Section III*. Although seemingly clearly

regulated, however, as we've showed throughout our thesis, this incrimination norm generates numerous issues in terms of application and interpretation. Firstly, in the context of an imprecise extra-criminal legislation, with contradictory provisions which may be found in multiple pieces of legislation, including infralegal, it is difficult to establish which are the relevant bodies to whom a taxpayer is required to report their tax domicile. Under these circumstances, our proposition was to resolve the situation in a different manner, depending on the taxpayer, namely where the taxpayer is required to register their address for tax purposes with the tax authorities or also with the relevant Trade Register.

Secondly, an even more laborious undertaking was to identify the timeframe during which taxpayers were required to report the address of their business seat, considering that one of the tax evasion forms stipulated by the law is omission – the failure to report. Therefore, in order to shed some light on this matter, we concluded that the analysis had to be conducted in relation to the categories of taxpayers referenced above (who are required – or not – to file their tax domicile with the Trade Register too), as well as according to the moment when the taxpayers omit to report their address, whether it is upon incorporation of the entity / at the start of the actual business activity or at a later time. Thus, the applicable solutions differ depending on such moment. In our endeavour to go beyond the mere statement that, in its omissive form, the offence is consummated when the deadline for reporting expires, and while attempting to actually identify such moment, we found that the incrimination norm is profoundly disputable, not only from the standpoint of its lack of predictability and clarity, generated by the supplementing extra-criminal legislation, but also in terms of the fact that the same behaviour is designated as a tax evasion crime for some taxpayers, but not for others.

Furthermore, we also looked into the moment of consummation of the offence, which is certainly neither clearer, nor less problematic than the ones previously referenced. And finally, we carried out an analysis of this form of tax evasion, as stipulated under Article 9 (1) (f), in terms of how it relates to other criminal offences.

We dedicated ***Section IV*** of Chapter II of our thesis to another form of tax evasion, committed in the manner described in Article 9 (1) (g) of the Tax Evasion Act, which has the potential to interfere with a tax enforcement proceeding.

A rather important element, which we specifically underlined, is the identification of the offence's tangible object. A question that so far has yet to be answered is whether tax evasion can be claimed

where it is committed with respect to a seized asset, regardless of why the precautionary measure was instituted in the first place. Based on the special purpose provided by the incrimination norm, our conclusion was that only the assets which are subject to precautionary seizure, aimed at remedying the damages caused by the offence, could be a tangible object for it. We further examined to see how the High Court's Decision No. 19 of 2017, delivered in the case of an appeal in the interest of the law, might influence the applicability of the incrimination norm. The answer is, again, negative. Therefore, given this context, we accentuated the fact that the premise for committing this form of tax evasion is the existence of a seized asset that was individualised by the relevant authorities.

Moreover, since both the criminal doctrine and jurisprudence discussed the issue of the effects generated by a potential vitiation of the seizure process, we decided to explore this matter further. After an analysis of the active subject, passive subject and of the subjective component of the offence, we proceeded to examine the concrete ways in which it may be committed.

With respect to deterioration, as a form of tax evasion, we identified three issues which we believe require specific attention, namely (i) whether the offence can still be held if an asset has been deteriorated, but its economic value wasn't affected, (ii) whether deterioration is also taken to mean complete destruction of the asset, and (iii) whether the offence, in this particular form, may also be committed by omission, in light of the provisions laid down in Article 17 of the Criminal Code.

And last but not least, we showed that in our opinion, contrary to some of the opinions found in the relevant doctrine, this offence is a formal crime. We also reviewed the relationship between tax evasion, perpetrated in the form stipulated at paragraph (g) of Article 9 (1) of the Tax Evasion Act, and other offences stipulated in the Criminal Code.

Section V is dedicated to the criminal sanction set out by the law for tax evasion, to the aggravated forms provided under Article 9 (2) and (3), as well as to the mitigating circumstance laid down in Article 10 of the Tax Evasion Act.

We detailed our reasons for considering that the sanction set by the law is rather excessive, and the lawmaker's propensity for adopting an authoritarian model in this matter is not really the most suitable. Beside the disproportionality of the punishment, we also showed how regrettable it is that the lawmaker seemed to focus more on punishing the offenders, rather than recovering the losses and establishing a balance between these two challenges.

With respect to the aggravated forms of tax evasion, we first asked ourselves whether in the case of this offence it is possible to really speak of *damages caused* by the commission of the deed, moreover considering that, as opposed to the more 'traditional' crimes against a person's patrimony, in the case of tax evasion the offender doesn't end up with a 'debt' toward the victim after committing it, as this debt pre-exists, by virtue of the tax regulations. Therefore, under these circumstances we further asked ourselves to what extent it could be possible and fitting for tax authorities to become a civil part in criminal proceedings conducted on the matter of tax evasion.

Also in relation to the provisions of Article 9 (2) and (3) of the Tax Evasion Act, we showed that even though they reference all the schemes specified under paragraph (1), in reality the aggravated forms could be held only on account of the provisions set out by paragraphs (a), (b) and (c) of Article 9 (1) of the Tax Evasion Act.

Bearing in mind that the aggravated forms relate to the value of the damages caused by the offence, we looked deeper into this context, and into whether, in order to determine the amount of such damages, only the principal amount should be taken into account, or also the corresponding late payment interest and additional penalties. Furthermore, we showed that the lawmaker's decision to establish the monetary thresholds, from which the aggravated forms become incidental, by reference to the Euro currency is quite questionable, because it is a source of inequalities and alters the norm's feature of predictability. Hence, after summarising the existing opinions in the criminal doctrine and case law, we formulated some conclusions on the issue of when exactly we should take into consideration the applicable Euro to Lei exchange rate.

It is in this particular section that we also included a review of the provisions set out by Article 10 of the Tax Evasion Act. First, we brought into discussion the legislative changes which occurred in the matter, also describing the debates prompted by them, in order to point out that, sadly enough, the tendency was towards establishing an increasingly repressive system, less oriented towards loss recovery. We then proceeded to analyse the applicability of Article 10, while also stressing certain aspects that raise some issues, such as the effect generated on the other participants to the commission of the offence when the defendant covers the civil party's claims, the effect generated when a third party covers the civil party's claims, and the applicability of Article 10 (1) where tax evasion is perpetrated in more than just one of the forms laid down in Article 9 (1) of the Tax Evasion Act.

Having regard to the fact that a draft law, on the amendment of Article 10 of the Tax Evasion Act, is currently before the Committee for Legal Matters, Discipline and Immunities, tasked with drawing up a report on it, after the Constitutional Court had ruled to censor a first draft of amendment, as detailed in the Court's Decision No. 147 of 2019, we formulated some remarks on this matter, by highlighting the positive elements in the draft, but also those aspects which we believe to be problematic. We then completed our analysis with our own proposal of how these dispositions should be regulated.

Section VI sets forth a cursory review of some possible alternative means to combat tax evasion. We also included a proposal for the reconfiguration of the incrimination norms, which we believe would bring the relevant legislation much closer to what tax evasion should mean, and would maybe also stamp out some of the current issues related to their interpretation and application.

And finally, in **Chapter III** of our doctoral thesis, we presented all the conclusions, and summarised both the issues we previously identified in connection to the application and interpretation of the dispositions set out by Article 9 of the Tax Evasion Act, as well as the solutions we recommended.

Our goal is that this research paper proves useful in promoting a better understanding of the incrimination norms targeting tax evasion and of the concrete schemes enabling it, and will consequently lead to a more rational application of the dispositions laid down in Article 9 of the Tax Evasion Act. Furthermore, in the event of a legislative revision, we hope that the issues identified herein, the deficiencies brought to light, the solutions proposed and the recommendations formulated will become a helpful tool for improving the dispositions criminalising tax evasion in our country.