

## FISCAL RISK ANALYSIS – REASON FOR DANGER OR OPPORTUNITY FOR SAFEGUARDING?

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### **Abstract**

*This paper aims to provide an x-ray of the fiscal legislation regarding fiscal risk and the risk analysis that becomes the main (only) criterion for the development of the fiscal inspection program carried out by the fiscal bodies of the state. Thus, the work includes an analysis of concepts such as: taxpayer's fiscal behavior, fiscal risk, risk criteria, risk classes and subclasses, all intended to provide tools for carrying out a risk analysis based on special procedures.*

*The fiscal legislation adopted up to this moment allows us to understand the goal pursued by the national legislator starting from the recent regulations adopted at the European level. It is about the efficiency of tax debt collection activities, about the efficiency of the exchange of information in fiscal matters between the fiscal authorities of the member states, as well as about the profound and essential change in the fiscal behavior of taxpayers.*

*At the same time, this analysis highlights the shortcomings of this new taxpayer evaluation system, its transparency, as well as the means and instruments of defense in the face of pressures that may be exerted by the fiscal body, or even in the face of possible abuses that could directly and majorly affect some taxpayers.*

*Therefore, this paper presents all the relevant information in this matter, but also includes a critical analysis of the national regulations that were recently adopted in the context of the European regulations of recent years. These are intended to limit or even eliminate the erosion of tax bases in the effort to combat tax evasion or even tax fraud, that which affects national public budgets, but also that which directly or indirectly affect the budget of the European Union.*

**Keywords:** *fiscal behavior; fiscal risk; evaluation criteria; risk classes; risk analysis; fiscal inspection.*

**JEL Classification:** K34, H26.

### **1. INTRODUCTION**

It is an axiomatic reality that the fiscal system of each state provides it with the largest part of its financial resources and, therefore, independence and development. At the same time, certain types of behaviors have become increasingly evident, as a result of investors' desire to potentiate their profits.

Thus, amid changing the types and complexity of financial transactions, corroborated with the application of aggressive tax optimization schemes, fiscal regulations were seen a few steps behind the reality of the market. It was possible to notice frequent operations of transfer of profits from the jurisdictions where they would normally be taxed, to more favorable areas from a fiscal point of view in the context of an apparent compliance with legal provisions.

In the current context in which multinational companies generate a significant part of the world's gross product, cross-border transactions have dramatically diversified and evolved in volume and complexity. Operations with specific national characteristics have been gradually replaced by a global model, based on certain management schemes and integrated supply and development chains that centralize certain functions globally. The intangible component of benefits and the growing share of digital services delivered through virtual environments have significantly changed the structure of national and global economies, allowing the location of production or supply centers to be at a great distance from the beneficiaries, obviously in order to maximize their profits.

The governments noted the fierce concern of companies in minimizing their tax burden, but not through brutal non-compliance or ignorance of legal provisions, but through abuse of interpretation, by dissimulating the substance and transforming the architecture of transactions compared to the facts reality. Tax advantages were thus obtained by “optimization”, which allowed companies to display an apparent image of a good taxpayer. The process took place over several decades and manifested itself globally, and its initiators and creators raised to the rank of art the ability not to violate the letter, but only the spirit of the law. This is how the only one who was defeated in this process was ethics, but who still cares about morality when the stake is exponential growth is real profits? The answer should, of course, be the states to which significant amounts of money would have been due on the basis of the principle of fiscal sovereignty.

In this climate of the current globalization, the OECD started in 2013 the project “Erosion of the Imposition Base and Profit Transfer” (OECD, 2013) aiming to analyze the phenomenon leading to a double non-taxation, or to much lower taxation of cross-border transactions. In 2015, “Action Plan ” was issued containing 15 actions to counter that aggressive tax planning committed in order to escape by avoiding the payment of direct taxes (OECD, 2016).

BEPS aims, at the international level, to eliminate errors and to cover gaps in national tax legislation. The G20 Group of States supported this project, and the first implementing measures started in 2016 for the states involved in the project, OECD members and more. In this regard, on 24 November 2016, the Multilateral Convention for the Implementation in Tax Treaties of Measures to Prevent the Erosion of the Tax Base and the Transfer of Profits (OECD, 2016) was adopted at OECD level and by Romania in Paris on June 7, 2017 and ratified by adopting Law no. 5 of January 4, 2022 (Law no. 5/2022).

At the level of the European Union, the European Commission's constant efforts to combat tax evasion and tax fraud can be seen, not just on European funds, but also on national funds, especially as a percentage of VAT revenues are made to the EU budget, along with import duty revenues. This makes successive European regulations join the OECD's effort to limit the harmful effects of non-compliant tax practices.

DAC is an acronym for a series of seven European directives on administrative cooperation in the field of taxation (Administrative Cooperation), which reflects the authorities need for access to as much information as possible on taxpayers' business activities. Through these directives, the tax authorities of the Member States have agreed to cooperate with each other in order to correctly calculate the tax burdens they owe and to combat tax fraud and evasion.

Since the first directive from the series (EU Council, 2011), which introduced the automatic exchange of information of interest for the tax authorities, has been published, fiscal transparency standards have expanded more and more.

The following directives include financial information in the reporting standard, then the individual advance tax solution and the price agreement in advance, after which country-by-country reporting, and next directives includes standards for authorities' access to information so as to avoid money laundering. Based on these directives, tax information on taxpayers in a given country can move freely between EU tax authorities.

DAC 6 (EU Council, 2018) establishes the obligation to report cross-border modalities with fiscal risk, this information can obviously be exchanged between authorities. This directive requires special attention to the importance of the measures it establishes. Thus, it was established that *not only taxpayers but also certain third parties (intermediaries) should report to the tax authorities information on tax risks in cross-border transactions*. This directive aligns the EU's objectives with the OECD's objectives and covers the rules for disclosing aggressive tax planning strategies. Even if the objectives are common, *DAC 6 (EU Council, 2018) seems to go beyond the aspirations of the OECD by establishing better-defined rules to be transposed by Member States into national law in the very near future*.

DAC 7 (EU Council, 2021) is Directive no. 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, focuses its attention on revenues generated through digital platforms and on tax evasion that can be committed by hiding these tax bases. In Romania, DAC 7 was implemented one month late compared to the deadline, DAC 7 rules being included in the Fiscal Procedure Code at the beginning of 2023 (Law no. 207/2015).

It is supposed that 2023 will also mark the first European regulations on the taxation of revenues resulting from transactions with crypto coins, as DAC 8 will be a pioneer in this complex, difficult and very damaging matter for the public budgets of all the states of the world.

## 2. CONCEPTUAL CLARIFICATIONS

We believe that in a democratic state where public authorities act correctly, efficiently, predictably and above all transparently, the planning of the specific activities of the state tax body (ANAF) and in particular of the tax inspection body must be based on objective criteria and must be carried out in conditions of transparency and equidistance towards all taxpayers.

In this context, since the beginning of 2019, the National Strategy and Forecast Commission (CNSP) and National Agency for Fiscal Administration (ANAF) have initiated a collaboration to identify taxpayers with high tax risk, in order to streamline checks and reduce tax evasion. This collaboration directly resulted in the establishment of a risk analysis direction within ANAF. The analysis performed at the level of this structure are of a statistical nature and refer to the fiscal behavior of the taxpayers viewed from this perspective. These analyses are made available to the state fiscal body, so that it can plan its fiscal inspection activity and direct it to those taxpayers who present a high fiscal risk.

Therefore, from the perspective of national tax authorities, every small or large taxpayer, companies or individuals is included on a scale of risk, depending on the tax behavior regarding the declaration and payment of taxes and duties, their amount, irregularities identified in previous controls and other circumstances that raise suspicions about voluntary tax compliance. For example, the ANAF Activity Report for the first half of 2021 (ANAF, 2021) states that „The major risks identified in the first half of 2021 are the risk of under-declaration of tax obligations, as well as the risk of non-payment of payment obligations, respectively: the risk of non-payment of tax obligations, the risk of late payment of tax obligations, the risk of causing insolvency or the intentional reduction of financial capacity”.

Because the legislation adopted at EU level uses concepts such as “erosion of tax bases”, especially in connection with direct taxation and in particular in connection with the taxation of profits of both the smallest and especially of multinationals with many elements of extraneity, we will also find such notions in the content of national regulations.

Another concept very often used, in this context, is that of the “taxpayers' fiscal behavior”, which may prove to be appropriate, and hence another concept, namely that of “tax compliance”, or the tax behavior may be inappropriate. In this situation, an opening to two hypotheses is created, namely: on the one hand, it can be a harmful fiscal behavior for public budgets, located at the lower limit of legality, but without prejudice to legal rules. The second hypothesis refers, however, to fraudulent tax behavior, a circumstance in which it is a question of flagrant violations of the tax law, with harmful consequences for public budgets.

It has to be mentioned that the amount of damage caused is less relevant in the analysis of these concepts, all the more so as it is sometimes difficult to assess. The emphasis lays rather on the moral conduct of taxpayers and on the idea of

respect of the principle of fiscal equity. In practice, it has proven that even a tax behavior at the limit of legality can also be extremely harmful to public budgets, which has forced states to react vigorously, both at EU level, as well as at a wider, global level.

Therefore, “inadequate tax behavior of taxpayers” can have many forms of manifestation, starting from hiding or diluting the tax mass, going on with the capitalization of more convenient tax legislation, or with evasion of payment by hiding the patrimonial assets from the forced execution and ending with the simple delay of the procedures for the administration of the fiscal receivables, without necessarily violating tax law.

The generally accepted premise refers to the impossibility of the national tax administration to fully verify the mass of declarations submitted by taxpayers, taking into account its staff and means. For this recital, the only criterion the legislator agrees with is that of the level of risk, which is established on the basis of the risk analysis.

The various forms of tax inspection discuss the organization and planning of the process of control files' selection. The competence to select the taxpayers to be verified belongs exclusively to the tax inspection body according to art. 121 Code of Fiscal Procedure (Law no. 207/2015), and the taxpayer does not have a right to appeal the selection procedure used and, therefore, it may not submit to any verification the way in which it was selected.

So here are many new concepts worth focusing on, for we are witnessing a resettlement of the paradigm in which the tax inspection and other instruments used to improve the risk of tax evasion will take place in the future.

Although the legislator does not define the notion of fiscal risk, from all the national regulations recently adopted by Romania, as well as from the analysis of the existing European regulations on this topic, we can draw the conclusion that the tax risk is directly related to the risk of tax evasion, which in turn is seen as the action / lack of action to avoid the effects of taxation on taxpayers' assets, without defeating the tax law, but only by speculating, harmful to public budgets, the inaccuracies between national tax laws, or within each of them.

On the other hand, art. 1 point 3 of the Code of Fiscal Procedure (Law no. 207/2015) defines the risk analysis as the activity carried out by the fiscal body in order to identify the risks of non-compliance with the fulfillment by the taxpayer of the obligations provided by the fiscal legislation, to evaluate them, to manage them, as well as to use them for the purpose of performing tax administration activities.

Based on the active role of the fiscal body provided in art. 7 of the Code of Fiscal Procedure, it has the right and obligation to examine objectively the tax situation, namely in the conditions and limits established by law. So, the fiscal bodies entitled to examine, ex-officio, the real situation, to obtain and to use all the information and documents needed to determine correctly the fiscal situation



of the taxpayer, and in the analysis the fiscal body is obliged to identify and to take into consideration all the clarifying circumstances, for each case.

Line (5) of the same art. 7 of Code of Fiscal Procedure establishes the fact that in the case of tax receivables administered by the state fiscal body, the administration procedures are performed according to the tax risk class and subclass in which taxpayers are included as a result of the risk analysis carried out by the tax body. This tax risk analysis is performed periodically to establish, or to review, the tax risk class and subclass of each taxpayer, which is published on its own website. Taxpayers cannot object to the determination of the tax risk and the class or subclass of risk in which they have been classified.

Furthermore, line (9) establishes the fact that the procedure to solve appeals is not done according to the class/subclass of risk.

So, through art. 7 line (6) of the Code of Fiscal Procedure, three main risk classes are consecrated, in which the taxpayers may be framed, namely the taxpayers with little fiscal risk, the taxpayers with average fiscal risk and the taxpayers with high fiscal risk.

From a procedural point of view, the selection of taxpayers subject to tax inspection is an exclusive attribute of the tax administration. The latter may receive information from other natural or legal persons regarding the regularity of the activity of a particular taxpayer, but the notification is made exclusively ex officio. The tax body has the right to withhold certain files for control, despite complaints from a third party

According to art.121/1 of the Code of Fiscal procedure, the taxpayers presumed to be the subject of a tax inspection are sent, by the tax inspection body, a compliance notification concerning the tax risks identified in order to re-analyze the tax situation and, if the case, to submit or to correct the tax declarations. The same notification notifies that, in 30 days since the date of the notification, they have the possibility to submit or to correct the tax declarations. Until this deadline expires, the tax inspection body does not take any action for the tax inspection selection. The submission or the correction of the tax declarations by the taxpayer does not prevent the selection for tax inspection but after the abovementioned deadline is over. After this deadline the taxpayers with high tax risk who have not corrected the tax risks they have been notified for, are mandatorily submitted to a tax inspection or to a documentary verification.

### **3. CLASSES AND SUBCLASSES OF TAX RISK**

The general criteria according to which the fiscal risk class is established are established by par. ( 7 ) of art. 7 of Code of Fiscal Procedure. The development of the main risk classes in risk subclasses and the development of the general criteria in the sub-criteria, as well as the procedures for establishing the subclasses and sub-criteria were achieved by the Order of the President of ANAF no. 2,017 of

November 14, 2022 on the approval of risk sub-criteria developed from the general criteria.

Therefore, the tax risk sub-criteria called upon to develop the general tax risk criteria are the following:

- a ) for the tax registration criterion:
  - 1. the sub-criterion concerning non-registration for VAT purposes;
  - 2. the sub-criterion regarding the non-registration as a profit tax payer;
  - 3. the sub-criterion regarding the non-registration as a specific tax payer;
  - 4. the sub-criterion regarding the non-registration as a taxpayer on the income of micro-enterprises;
  - 5. the sub-criterion regarding the non-registration as an excise payer;
  - 6. the sub-criterion regarding the non-registration as a taxpayer of income tax, as well as of compulsory social contributions;
  - 7. the sub-criterion regarding the non-tax registration in case of carrying out activities, obtaining income and other situations provided by law for which there is an obligation to register tax;
  - 8. the sub-criterion regarding the risks associated with shareholders / associates / administrators / other persons, from the perspective of the fiscal registration;
- b ) for the criterion regarding the submission of tax returns:
  - 1. the sub-criterion regarding the late submission of tax returns;
  - 2. the sub-criterion regarding the non-submission of fiscal declarations;
  - 3. the sub-criterion regarding the erroneous submission of tax returns;
  - 4. the sub-criterion regarding the risks associated with shareholders/ associates/ administrators/ other persons, from the perspective of submitting the fiscal declarations;
- c ) for the criterion regarding the level of declaration:
  - 1. the sub-criterion regarding the inconsistency of the data from the fiscal declarations compared to the data from other forms provided by law, submitted by the taxpayer;
  - 2. the sub-criterion regarding the discrepancy of the data from the fiscal declarations and other forms provided by law submitted by the taxpayer, compared to the data and information transmitted by third parties;
  - 3. the sub-criterion concerning the incorrect declaration of the quota and amount of taxes, duties and contributions by the taxpayer;
  - 4. sub-criterion regarding the profitability reduction;
  - 5. the sub-criterion regarding the risks associated with shareholders / associates / administrators / other persons, from the perspective of the level of declaration;
- d ) for the criterion regarding the fulfillment of payment obligations to the general consolidated budget and to other creditors:
  - 1. the sub-criterion regarding the late payment of tax obligations;

2. the sub-criterion regarding the non-payment of fiscal obligations;
3. the sub-criterion regarding insolvency;
4. the sub-criterion on the risks associated with shareholders / associates / administrators / others, from the perspective of fulfilling the payment obligations.

So, as it is explained in art.2 of the ANAF President Order no.2017 from November 14, 2022, the development of the risk sub-criteria are done by reporting them to the risks of non-compliance regarding the fulfillment of the taxpayer of all obligations mentioned by the fiscal legislation, associated with the four general criteria. These risks of non-compliance are risks that concern the tax registration, the submission of tax declarations, the level of declaration and fulfillment of payment obligations to the consolidated general budget and to other creditors.

The risks concerning the tax registration aim at the aspects connected to the taxpayers' non-compliance, regardless the juridical aspect, from the perspective of the respect of tax obligations' registration

The risks concerning the tax declarations' submission aim at aspects in connection with the non-compliance of the taxpayers, from the perspective of the respect of obligations of submission, with full information and in due time, of the tax declarations.

The risks regarding the level of declaration aim at the aspects connected to the taxpayers' non-compliance, from the perspective of the correctness, coherence, concordance of the share and of the amount of the interests, taxes and the contributions declared in the fiscal declarations and in other forms provided by law, submitted by the taxpayers.

The risks concerning the fulfillment of the payment obligations to the consolidated general budget and to other creditors aim at the aspects connected to the taxpayers' non-compliance, from the perspective of the fulfillment of payment obligations to the consolidated general budget and to thirds, as well as the aspects connected to their solvency and creditworthiness.

#### **4. OBSERVATIONS FROM PRACTICAL ACTIVITY**

Because the grid of indicators applied by ANAF in the analysis of calculating the degree of fiscal risk of Romanian taxpayers has not been public for a long time, in terms of practice, certain patterns of tax behavior have been identified, some of which may be associated with transfer prices (by definition, transfer prices are the prices at which transactions take place between companies that are parties to the same group, also called related parties). From the practice of tax law can be extracted and highlighted certain situations that can attract the attention of the fiscal bodies as likely to hide non-compliant fiscal behaviors.

The recording of the accounting losses in recent years, especially in cases where related party transactions have an increased share of the company's turnover or of a taxpayer who is captive in the group he belongs to. Accounting losses can



attract the attention of tax authorities, because they can hide situations of non-compliant tax practices and therefore of fiscal risk.

On free market, some companies can give up the business partners who are the source of these losses and can completely get off the market. In order to understand the source of the continual losses of a related partner who, sometimes, has not the same freedom to chose his partners as an independent company has, the fiscal authorities can ask for the file with transfer prices. Although there are cases when these continual losses are from operational and commercial reasons, they should be documented in order to avoid possible adjustments of transfer prices in the transactions with related parties, respectively penalties.

The refund requests of VAT from the state budget may represent another opportunity of fiscal risk. Any taxpayer who has to recover VAT from the state budget is at risk regarding a possible fiscal inspection of transfer of prices. Even if the tendency, in the past few years, is of VAT refund, with notification for a further on fund fiscal inspection, the presence of the transfer prices file may determine the authorities to not ask for a later control.

Declaring profit margins below the average of margins reported by other companies having the same CAEN Code (Classification of Activities from the National Economy of Romania Code) is another circumstance that can attract the attention of tax authorities. Perhaps one of the main reasons why fiscal inspections are started is represented by obtaining lower profit margins compared to other companies with the same CAEN code corroborated with the existence of an affiliation relationship identified in the databases. In fact, in ANAF's risk department lists of affiliated companies and their financial indicators are extracted. These lists are filtered function of the code CAEN and then the average of profitability indicators is calculated. Based on these analysis, the companies recording a profitability less than the average profitability of the companies with the same CAEN code can be framed in an average or big class of risk and further on they may become the object of a fund fiscal inspection because the transfer prices file will also be checked.

The recording of voluntary internal adjustments of transfer prices in other accounting periods, whether we are talking about adjustments to initial purchase prices in related party transactions, or about the year-end adjustments of the profitability margins obtained by the local entity in terms of group policies, they are of increased interest for the tax authorities. Invoices with positive values paid to foreign entities, for any reason other than strictly commercial, generate an increased tax risk and they need to be supported by correct reasoning and supporting documentation in the transfer pricing file. Also, the taxpayers should take into consideration the way these invoices are recorded, because a recording in another year than the one for which the adjustments for transfer prices are done is a behaviour that may, indirectly, lead to a fiscal inspection because it has the potential to generate variations in the reported financial results.

Discrepancies between the taxpayers' declared VAT obligations and the ones of their partners may raise the attention of the fiscal authorities. In the case the taxpayers have activities with affiliated entities, the value of the acquisitions and deliveries should be declared balanced by all the parts involved. Talking about a source of information directly accessible, the discrepancies that appear in case an omission occurs in the declaration between parts can be rapidly identified by the fiscal authorities.

Carrying out restructuring of the nature of mergers, divisions, dissolutions, business transfers, insolvencies can represent as many situations of fiscal risk. This kind of operations concerning the legal status of the companies leads to significant variations in the financial - accounting results they submit and such variations will be checked by the fiscal authorities. More than that, the submission of the insolvency declaration can lead to non-collection of interests and taxes by ANAF, reason for which the insolvency procedure start is often preceded by a fund fiscal inspection that checks also the file of transfer prices. And more than that, in the situation of a business or constituent assets transfer, beside the optional documentation concerning the modifications at functional level, the taxpayers must provide the fiscal authorities with an evaluation report that justifies the amount at which they were traded.

When the place of profits report is different from the one the economic activities take place, according to the CbCR reports, the national fiscal authorities should check the reason of this discrepancy that could hide an unconformed fiscal situation. The Organisation for Cooperation and Economic Development (OCDE) published statistics from the CbCR reports, the main conclusion being the existence of discrepancies between the jurisdiction where the profits are reported and the jurisdiction where the economic activities take place.

Non - submission or delay of submission of fiscal declaration or delayed payment of interests and taxes represent as many circumstances that could catch the attention of the fiscal authorities. Following the tax collection is one of the important functions of ANAF's structures. Obviously, for a most efficient collection, the fiscal authorities also have at hand the instrument represented by the fiscal inspections that can be immediately used in situations of delay of fiscal declarations submission or, worse than that, when the taxes are not payed in due time.

The recording of the administrative services with significant value represent another situation that may raise questions for the authorities. So, in the situation when, on the list of transactions with affiliated parts, there are administrative services received from an external entity, namely management, IT or accountancy, these ones can represent an increase in risk, especially if these services are justified by the taxpayer only through invoices with a limited description, that have significant values compared to the turnover of the Romanian entity or even lead to losses at local level. The taxpayers should be sure that the administrative

services received in the group bring real benefits in the local business processes and that they are able to present the fiscal authorities justifying analysis and documents to prove that the services the services received are factually provided at an appropriate price.

The discrepancy between the sums reported in the financial situations and the fiscal declarations may raise the attention of the fiscal organs that have the obligation to check. Thus, the incomes and expenses reported in the fiscal declaration and the ones reported in the company's accountancy balance could be different in certain situations, what can be the object of a fiscal inspection.

Last but not least, since September 2020, the existence of transactions with affiliated persons is a situation that should be distinctly noticed to the fiscal authorities because, if corroborated with certain financial factors, may raise the fiscal organs' suspicion.

## **5. CONCLUSIONS**

A careful analysis of the regulations on tax risk analysis seen as a tool to combat the erosion of tax bases, as well as an equidistant and focused analysis of the general criteria and sub-criteria corresponding to each, reveals a series of conclusions.

Thus, through these criteria for tax risk assessment are taken into account the most important groups of legal obligations incumbent on taxpayers in the process of collecting tax claims, namely: the obligation to register as a taxpayer, the obligation to declare correctly and at the legal terms of the taxable mass and the obligation to pay the tax receivables. From this perspective, we have to make some remarks regarding the observance of the obligations to declare the taxable mass, because it is often the subject of extensive disputes, important and long-term among some less docile taxpayers in relation to the tax body. Who can tell if, for the past, the fiscal declarations submitted by the taxpayers have been correct or not? We ask this question being aware that some taxpayers chose to align the requests of the fiscal organ, even if they considered them wrong, just not "to bother" and to draw its attention. Others chose to lead real "battles" with the fiscal representative, that they may have won or will win, but up to then they present "a high fiscal risk" from the point of view of the criteria submitted to this analysis.

The Order of the President of ANAF no. 2,017 of November 14, 2022 regulates the sub-criteria for assessing the fiscal risk, but not the working procedures necessary for the fiscal body. We believe that, for the time being, the applicable tax legislation in this area does not create a transparent framework for work, as any taxpayer would like, all the more so as the result of the tax risk analysis is excluded by the legislator from the possibility of challenging him on the path of administrative-fiscal litigation. Arguments could be identified to justify the choice of the legislator to not allow contesting the fiscal risk analysis although we consider such a choice at least weird.

For each of the above-mentioned sub-criteria there should be further explanations on how to quantify them, for some of them seem clearer and easier to quantify, while others do not, or we believe that every taxpayer should be able to make a relative assessment on his own. This would only be possible with simple and clear criteria, based on relevant information that should be able to be collected from ANAF databases, while respecting, of course, of the legal provisions regarding the protection of personal data.

Last but not least, the legislator treats all these criteria as situations of non-compliance of the taxpayer, but a closer analysis suggests that these criteria may reveal circumstances other than non-compliance with the convertible. Also, some of the circumstances considered at the time of elaborating these criteria may highlight a constant non-compliant behavior of the taxpayer, a circumstance in which his fraudulent intention is implied, but others may hide simple negligence, which has nothing in common with constant behavior of a certain nature. Obviously, the legislator “educates” on this occasion the future behavior of taxpayers, but for the past there was no such “stake”, which, in the very near future, will create completely unjustified shortcomings for taxpayers.

### References

- 1) ANAF - National Agency for Fiscal Administration (2021). *ANAF Activity Report for the first half of 2021*. [online] Available at: [https://static.anaf.ro/static/10/Anaf/Informatii\\_R/Raport\\_activitate\\_S1\\_2021\\_261021.pdf](https://static.anaf.ro/static/10/Anaf/Informatii_R/Raport_activitate_S1_2021_261021.pdf). [Accessed 7.04.2023].
- 2) EU Council Directive 2011/16 on administrative cooperation in the fiscal field.
- 3) EU Council Directive 2018/822 amending EU 2011/16 Directive regarding the mandatory automatic exchange of information in the tax field regarding the cross border modalities that are the subject of reporting.
- 4) EU Council Directive 2021/514 amending EU 2011/16 Directive regarding administrative cooperation in the field of taxation.
- 5) Law no. 207/2015 regarding the Fiscal Procedure Code amended and supplemented.
- 6) Law no. 5/2022 regarding the ratification of the Multilateral Convention for the implementation within the fiscal treaties of measures related to the prevention of the erosion of the taxable base and the transfer of profits.
- 7) OECD (2013). *Base erosion and profit shifting (BEPS)*. [online] Available at: <https://www.oecd.org/tax/beps/> [Accessed 7.04.2023].
- 8) OECD (2016). *The multilateral Convention for the implementation within the fiscal treaties of the measures related to the prevention of the erosion of the taxable base and the transfer of profits*. [online] Available at: <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm> [Accessed 7.04.2023].
- 9) The Order of the President of ANAF no. 2017/2022 regarding the approval of the risk sub-criteria developed from the general criteria.