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LEGAL UNCERTAINTY AS THE IMPEDIMENT TO ECONOMIC GROWTH OF SERBIA

Pravna nesigurnost kao prepreka za ekonomski
rast u Srbiji

Abstract

Legal uncertainty represents one of the major impediments to sustainable economic growth of transition countries. Inadequate legal framework is often the source of legal uncertainty and strong impediment to effective rule of law and efficient judiciary. The purpose of this paper is to investigate the effect of penal policy on the prevention of tax indiscipline. The improvement of legal framework and tax discipline creates a synergistic effect for attraction of FDI, enhanced allocation of resources and higher economic growth. The analysis of the shortcomings of the existing legal solution is accompanied by the assessment of the prevailing case law and tax evasion criminalization in the selected European countries. Holistic approach to research allowed for the development of a specific proposal for the enhancement of legal framework and, consequently, the increase of legal certainty with positive effects on the economic growth of Serbia in the medium and long term.

Keywords: *legal uncertainty, economic growth, tax evasion, tax fraud, criminal policy, tax discipline.*

Sažetak

Pravna nesigurnost predstavlja jednu od najvećih prepreka za održiv ekonomski rast u zemljama u tranziciji. Neodgovarajući pravni okvir je često izvor pravne nesigurnosti i nepremostiva prepreka za efektivnu vladavinu prava i nezavisno sudstvo. Svrha ovog naučnog rada je istraživanje uticaja kaznene politike na prevenciju poreske nediscipline. Unapređenje pravnog okvira i poreske discipline stvara sinergijski efekat za privlačenje stranih direktnih investicija, unapređenje alokacije resursa i snažniji ekonomski rast. U radu su analizirani nedostaci postojećeg zakonskog rešenja, sudska praksa i kriminalizacija poreske evazije u odabranim evropskim državama. Holistički pristup u istraživanju je omogućio definisanje konkretnog predloga za unapređenje pravnog okvira i posledično povećanje pravne sigurnosti čime se pozitivno utiče na ekonomski rast Srbije u srednjem i dugom roku.

Ključne reči: *pravna nesigurnost, ekonomski rast, poreska evazija, poreska prevara, kaznena politika, poreska disciplina.*

Introduction

Legal uncertainty represents one of the major impediments to sustainable economic growth in transition countries [35]. Inadequate legal framework is often the source of legal uncertainty and strong impediment to effective rule of law and efficient judiciary. The improvement of legal framework and tax discipline would create a synergistic effect for attraction of FDI [2], [3], enhanced allocation of resources and higher economic growth. After its decline in the 1990s due to wars in former Yugoslavia and international sanctions, GDP growth was predominantly positive in the 2000-2019 period with the negative growth episodes in 2009, 2012 and 2014. GDP per capita in Serbia increased more than three times due to the positive economic growth and demographic decline (from EUR 1943.9 in 2001 to EUR 6137 in 2018) [23]. On the other hand, numerous external and internal factors, especially the economic crisis of 2008-2009, prevented quicker economic convergence of Serbia towards the EU-27 average. Potential remedies leading to enhanced economic growth of Serbia include the development of the industrial policy [12], new growth model [13], attraction of FDI [31], shadow economy formalization [18], innovation [30] and digital transformation [27]. However, the aspect of legal uncertainty was not in the focus of any research study, especially bearing in mind that it is found at an extremely important crossroads dividing tax discipline, company business operations and penalty policy. In order to further investigate this issue, our qualitative research follows quantitative, econometric analyses which have proved that Serbia's growth is currently two percentage points below its potential (it is above 3% instead of being around 5%) and that roughly one half of the growth gap could be explained by underperforming institutions (1 p.p.), while the other half could be ascribed to low investment (0.7 p.p.) and poor education (0.2 p.p.) [26].

The persistence of shadow economy and consequently tax evasion represent a persistent impediment to higher economic growth, efficient allocation of resources, sound budgetary balance and improvement of living standards for the vast majority of citizens in Serbia. Analyses based on macro-fiscal data indicate that in the period from 2012

to 2017 there was no significant reduction in the shadow economy in Serbia [1]. In 2012, it amounted to around 30% of GDP, which was by one-sixth higher than the CEE average and by almost 50% higher than the European average [18].

Illegal tax evasion is one of the drivers of shadow economy, which is very prevalent in all Western Balkan countries and ranges from 25% to over 30% of GDP according to various studies [22, p. 18]. One of the consequences of such a high degree of shadow economy is lower fiscal revenues than was actually possible. Analysis at the EU level shows that budget losses from tax evasion on average amount to around 22.1% of overall budget revenues [24, p. 16]. The lack of revenue often leads to high budget deficits in these countries. The analysis shows that the loss of revenues resulting from tax evasion was almost the same as the budget deficit in 16 out of the 26 analysed EU countries [24, p. 14]. In addition, a high degree of tax indiscipline makes it difficult to plan and implement fiscal policy, because no change in the fiscal policy will have the desired effect, since some of the taxpayers will go into the grey zone. All this results in lower GDP growth and lower standards of living.

In countries with poor tax discipline, such as Serbia, tax collection is a continuous challenge. In addition to an effective tax administration and a clear legislative framework, an adequate policy of sanctioning illegal tax evasion is the key to increasing tax discipline. Therefore, the subject matter of this paper will be the analysis of the adequacy of penal policy and its compliance with tax regulations. The aim is to determine the manner in which an adequate penal policy would affect tax discipline and to investigate whether the existing description of the criminal offence of tax evasion is an adequate solution for the fulfilment of two basic goals: the increase of public revenues and the efficiency of court proceedings. In other words, the analysis is focused on whether it is necessary to propose a new criminal offence to be introduced with the aim of severely sanctioning illegal acts with a higher degree of negative social impact. We will focus on adequate punishment of illegal tax evasion, legislation and case law, as well as recommendations for improving these segments. Also, adequate international practice, especially in the

EU, will be analysed in order to find examples of good practice in this field.

Tax evasion and penal policy in Serbia

Effective tax policy and public revenue generation are essential for the provision of necessary funds and implementation of economic and social policy goals [28, p. 464]. Bearing that in mind, as well as the constitutional obligation to pay taxes and other duties [4, Article 91], an adequate penal mechanism is necessary to provide the tax system with sufficient protection. Failure to comply with tax obligations and the obligation to pay certain contributions is punishable. Depending on the amount of these obligations, the act may be considered a misdemeanour or a criminal offence [35, p. 66]. The basic instrument of criminal law in this area is the criminal offence of tax evasion [9, Article 225], which belongs to the group of criminal offences against the economy. In general, tax crimes in the Republic of Serbia are stipulated by the Law on Tax Procedure and Tax Administration (hereinafter ZPPPA) [20] and the Criminal Code (hereinafter CC) [9]. They all have a number of common characteristics, regardless of the regulations governing them, beginning with the fact that almost all crimes are blanket, include solely intent as a form of guilt, the existence of a specific intent, etc. [35, p. 66].

A crime called tax evasion first appeared in Serbian legislation in 1959. With the entry into force of the ZPPPA in 2002, the offence was renamed tax avoidance (Article 172). However, the new Criminal Code of 2005 provided for the criminal offence of tax evasion, thereby returning this incrimination back to basic criminal legislation [19, p. 322]. In addition, it should be emphasized that the term 'tax evasion' is not quite adequate (the adoption of this term in Serbia was probably influenced by German law, since in Germany this offence is also referred to as tax evasion - *Steuerhinterziehung*); one should rather talk about tax fraud, since the taxpayer falsely presents or conceals facts relevant to determining their tax liability, as opposed to appropriating a movable thing which was entrusted to them or which they found, which basically represents evasion. That was, at the time, the reason why

tax legislature coined the term 'tax avoidance' for this crime, not tax evasion [16, p. 41].

Tax evasion is a blanket offence. In order to determine whether the criminal law norm has been violated, the criminal court should find a violation of some other non-criminal regulations which supplement the norm envisaging the criminal offence and more closely determining the nature and content of tax liability. For example, taxes, contributions and levies are defined by the ZPPPA [29, p. 6]. Thus, it is the duty of the taxpayer to present accurate and true information on the facts relevant for determining their tax liability, in accordance with the ZPPPA, but, depending on the case, other regulations and accounting standards also have to be taken into consideration [28, pp. 465-466].

The act of committing this offence can have multiple definitions and may comprise the following: a) providing false information about the generated income, obtained objects or other facts that influence the determination of such obligations, b) failing to declare (in the case of compulsory declaration) the income or objects acquired or other facts that have an effect on the determination of such obligations or c) otherwise concealing information relevant for the determination of such obligations.

Providing false information implies that the taxpayer files a tax return with the competent authority, presenting false information in it. This is most commonly encountered in practice and presupposes active performance. This criminal conduct means that the perpetrator formally acts under the legal obligation to report to the tax authority facts relevant to determination of their obligation to pay taxes, contributions or other prescribed duties, but does not fulfil this obligation materially, as the tax authority is misled when it comes to the amount of the tax base, making it a false presentation of facts, which gives this act the character of a particular form of fraud [35, p. 66]. Committing the offence in this way primarily relates to the taxpayer's income (showing less revenues or higher expenses than the real ones) or to items subject to taxation, but false information may also refer to other facts, depending on a particular type of taxes or contributions relevant to proper determination of the liability amount (e.g., number of

employees, number of family members, etc.) [17, p. 461]. It is indisputable for this form of offence that it is necessary to file an application with the competent tax authority [21, Article 38], regardless of the form and manner, as well as to provide false information on facts that do not influence the determination of tax liability. Also, it is the dominant standpoint in our criminal law theory that if the crime is done by falsifying certain information, there will be no criminal offence for that, only for tax evasion [29, p. 6], [35, p. 69].

The second manner of committing this offence includes omission. Unlike the previously described form, here the offender does not report the income or other facts that influence the determination of tax liability. Failure to do so constitutes an act of committing this offence only if there is a legal obligation to file a tax return in particular case. It is considered that the offence is committed at the moment of missing the deadline for filing the tax return for income, objects or other facts in order to avoid payment of prescribed duties. In addition, this offence will also exist when the perpetrator files a tax return, but does not enter into it the information on facts pertaining to a particular tax base or relevant for determination of contributions (e.g., in the annual personal income tax return, one can declare only personal income, but not other incomes) [17, p. 461].

The offence may also comprise concealing other data related to the determination of the obligation. Although the legislator specified typical manners of committing this crime, it left the possibility of the offence being committed in some other way, i.e., by concealing relevant information. This manner of offence committal is mainly reflected in incorrect calculation of tax liabilities, followed by misrepresentation of individual financial statement items, keeping two sets of books, etc. [25, p. 143]. According to the case law, this offence is being committed when the director of a company conceals data relevant for determination of the obligation to pay taxes and contributions by making payments to employees on the basis of advance payments for tasks that had not been performed yet [32, p. 160].

Before adoption of amendments to the Criminal Code in 2016, it was necessary for the income related to a criminal act to be lawfully obtained. Specifically, the legislative description of the offence explicitly stated

that it must be related to legally acquired income. Since this condition confounded and impeded the work of the courts, which were obliged to determine the legality of the obtained income, the legislator has now removed it from the definition of the criminal offence (there was a strong case-law view that the failure to establish that the proceeds were lawfully obtained led to the conclusion that not all the essential elements of the crime of tax evasion had been materialised (the judgment of the Appellate Court in Kragujevac, Kž. 187/14 as of 27 February 2014) [33, p. 757]). However, this does not mean that from now on there is an obligation to also report income from illegal activities (in some countries, some illegally earned income is subject to taxation and failure to report it may constitute the criminal offence of tax evasion, but this is explicitly provided for in tax regulations) [33, p. 757], but that whether income has been obtained legally will not be considered an essential element of the crime, i.e., it goes without saying that the income is legitimate, because if it is illegally obtained, there will be no tax evasion, but some other criminal offence to which some other sanctions from the CC (confiscation of illegal assets) or other laws (Law on Seizure and Confiscation of the Proceeds from Crime) are applied.

In addition to the above, in order for tax evasion to be a criminal offence, it is necessary that the amount of fiscal liability evaded exceed one million RSD. If the amount of such obligation does not exceed one million RSD, it will not be considered a criminal offence under Article 225 of the CC, but will be deemed a tax misdemeanour depending on the conditions. Previously, this amount was slightly lower and amounted to one hundred and fifty thousand RSD. After the amendments to the CC in 2016 it was increased to 500,000 RSD, only to be raised to one million RSD after the last amendment to the CC in May 2019 (the amendments came into force on 1 December 2019). One can accept the standpoint recently adopted in Serbian literature that raising the amount, as a necessary condition for establishing the existence of an offence, is a justifiable move by the legislator, since in practice it is often more efficient to conduct misdemeanour proceedings than criminal proceedings [35, p. 72]. As regards this element of the crime, it is important to

emphasize the prevailing opinion that this is actually the so-called objective condition of incrimination. This means that the offender does not have to be conscious of the amount of the evaded tax obligation; it is sufficient for the existence of the offence to objectively fulfil this condition, irrespective of whether the offender has been conscious of it. However, such predominant opinion in our theory and practice deserves a more detailed analysis. If it follows from the stated view that for the existence of the offence it is irrelevant whether the perpetrator is aware of the amount of the obligation to be evaded, it means that the offence would exist even if the perpetrator had the intention to evade payment of a smaller amount, but as circumstances would have it that amount exceeded one million RSD. When the perpetrator intends to commit the crime and is aware of all its elements, it practically means that they must be aware that they are committing tax evasion that exceeds the statutory amount [35, p. 73]. Also, the amount to be evaded is the amount pertaining to one calendar year. If the offender avoids paying taxes for several years, this can be construed as a continuing offence [9, Article 61].

The perpetrator of this offence is the taxpayer who provides false information or fails to report the income, objects or other relevant facts about lawfully obtained property or a person who otherwise conceals the information relevant for determining taxes, contributions or other prescribed duties. In addition to the aforementioned, the perpetrator may also be a person who has a legal obligation to report this information as the legal representative of a natural or legal person [28, p. 470]. For the basic form of the offence, the Criminal Code stipulates a cumulative sentence of one to five years and a fine (amendments to the CC from May 2019 increased the special minimum for the basic form of the offence, which previously amounted to six months in prison). Tax evasion also has two aggravated forms which differ from the basic form in the amount of the taxable obligation. Qualified form exists if the amount of evaded liability exceeds five million RSD. Previously, this amount was lower and amounted to one million five hundred thousand RSD. Imprisonment of two to eight years and a fine are stipulated in this case (prior to the

changes, the law provided for a sentence of one to eight years and a fine).

The most serious form includes evading the payment of more than 15 million RSD (previously 7.5 million RSD), which the law sanctions with a prison sentence of three to ten years and a fine. It is noticeable that the legislator tightened the prescribed penalties for all forms of this offence on several occasions, beginning with the amendments introduced in 2009 and ending with the changes from 2019. The tightening of the penal policy indicates the legislator's increased awareness of the importance of the object of protection and the need for more severe penalties as a response to the forms of manifestation of this offence. However, it is also noticeable that there is a huge discrepancy between the prescribed and imposed sentences for this crime. On the one hand, by expanding the range of prescribed penalties, the legislator seeks to tighten the criminal policy of courts, which, on the other hand, often do not use sufficiently wide ranges of the sentences and weigh them closer to the specific minimum. Although for the general preventive effect of the punishment, its extent is only one of the possible factors of influence, there is an opinion that the strengthening of the legislator's penal policy in this area should be accompanied by adequate court practice in order to enhance the preventive effects in the field of financial crime [28, pp. 470-471].

In theory, when it comes to amounts stipulated in aggravated forms, the legal nature of these elements is debatable. There is an opinion that this is also an objective condition of incrimination [17, p. 463], which therefore means that the perpetrator's guilt does not apply to it. This would be unacceptable, since the severity of the act and the duration of the sentence would depend on an objective circumstance in relation to which the perpetrator may not have had intention. Therefore, in theory, the prevailing opinion is that in qualifying forms the amounts are considered qualifying circumstances, to which the perpetrator's guilt must apply, with no need for the perpetrator to be aware of the specific amount of tax evasion, but to be generally aware that they are committing an aggravated form of the crime by evading the payment of a larger amount [17, p. 463], [21, p. 625], [28, p. 470], [33, p. 759]. Although correct, this view runs

counter to the view that, with respect to the basic form of the criminal offence, the amount of evaded obligation is considered an objective condition of incrimination in relation to which the existence of a subjective element is not required. Finally, it may be difficult to justify these double standards and different treatment on the basis of the same characteristic, because the difference is not qualitative, but purely quantitative. Therefore, it would be more correct to require the existence of intention in relation to the amount of fiscal obligation even with regard to the basic form.

Summary of international experiences

Based on the analysis of the legal framework in the following countries: Germany [14, article 370], Austria [15, article 33], Finland [6, Chapter 29], Norway [8, Section 378], Montenegro [7, Article 264], Croatia [5, Article 256], it can be concluded that the crime of tax evasion is usually regulated by the criminal code, although in a few countries it is regulated by another law, primarily the one governing tax matters (Germany, Austria). There is a clear similarity among the presented legislations regarding the act of committing this criminal offence, consisting either in a fraudulent act or in the omission or failure to file a report in case of duty to report income, contributions, etc. It is also noticeable that in some countries for the criminal offence to exist the perpetrator's conduct needs to result in tax evasion, in whole or in part (Austria, Croatia), while in most legislations it is sufficient for the perpetrator to act towards that goal. It is also significant that for the existence of the offence the existence of a certain amount whose payment has been avoided or attempted is not, as a rule, required as an additional condition (except in Montenegro and Croatia). Legislation providing for an easier form of tax evasion (Finland) is rare. In addition to the basic form, there are usually aggravated forms that exist due to the higher amount of the evaded obligation, when the offence is committed over a longer period of time or by perpetrators with a special connections, or when the offence is committed by abusing power or authority, that is, by using forged documents, books, etc. (in the last case mentioned a separate, aggravated form of the

crime is stipulated in Austria). German legislation even provides for criminal and political reasons to be released from punishment in the event that the perpetrator acts appropriately, i.e., corrects inaccurate information submitted to the competent tax authority, completes information or submits a missing application. On a subjective level, intention is always required. Legislation that penalises negligent committal of the offence (Norway) is rare. When comparing the prescribed sentences, one can note that, in addition to imprisonment which in some legislations goes up to 10 years for the most aggravated forms, a fine is envisaged (except in Croatia) as an alternative to or cumulatively with imprisonment. At the very end of this summarised comparative view, it can be concluded that the form of tax evasion as envisaged by Serbian CC is closer to that stipulated in the countries with which we had shared the same legal order for decades. However, in some respects, it does not differ much from that envisaged by other systems which, in other respects, may serve as a model for future reform. It is particularly evident that with regard to assessment of the social danger of tax evasion and corresponding penalties, our legislation is ranked among the most stringent in Europe.

Possible reforms of penal policy in Serbia

Tax offence detection falls within the jurisdiction of tax police which have the same pre-investigation powers as the regular police (except for movement restrictions) [33, p. 759]. The law defining the jurisdiction of the tax police and control thereof is the Law on Tax Procedures and Tax Administration (ZPPPA). Significant changes in the tax audit procedure were introduced by amendments to the 2012 Law, which enabled more efficient control over unregistered and undeclared activities and illegal work. The changes refer to the possibility of performing an unannounced audit, outside the working hours and premises owned by the taxpayer, which was impossible until then.

After the tax audit, tax police can file a criminal complaint against the taxpayer and participate in the procedure, as well as cooperate with the prosecution and the police in the investigation procedure. The ZPPPA sets

forth four cases in which criminal liability exists and the corresponding penalties. The first concerns the unfounded disclosure of the amounts for tax refund and tax credit. Furthermore, jeopardizing tax audit and illegal trade in excise goods are also criminal offences, the latter because it leads to frequent tax evasion. Finally, illegal storage of goods also constitutes a criminal offence.

However, there are still certain paradoxes in the ZPPPA that indirectly discourage legal business. Namely, according to Article 179 of the ZPPPA, if a taxpayer fails to fulfil one of the technical requirements (e.g., fails to submit some documentation within the prescribed deadline), a fine of up to 2 million RSD will be imposed. On the other hand, if they work illegally and get arrested, they are allowed a period of 30 days to register their business and continue with their activities after paying the prescribed fine. We believe that this indirectly discourages legal businesses, especially micro-enterprises and entrepreneurs, and directly contributes to tax evasion. These provisions should be reconsidered.

In addition, better cooperation between the tax police and the prosecution in the investigative process is necessary in order to improve the audit process and increase the efficiency of application of criminal provisions, with the aim of increasing the degree of tax discipline. In this regard, further training of the judiciary to handle tax evasion cases may be necessary. This is especially true of procedures related to excise evasion, since the level of tax evasion in this segment is high.

The first step towards increasing tax morale involves improving the ability of public administration to perform its task effectively. At the same time, it is also necessary to improve the penal policy. The analysis of the case law shows a marked difference in the number of defendants and convicted persons in tax evasion proceedings. In 2017, only one-third of defendants were convicted in the

Belgrade Court of Appeal, which generally coincides with the data on the total number of complaints and convictions throughout the country. In 2018, 967 criminal charges were filed and only 27% of defendants were convicted of tax evasion. All of the above is a clear indication of how difficult it is to prove this crime in practice and of the difficulties encountered by courts in practical application of imprecise, broad-ranging and vague regulations, in the light of disparate case law, all of which results in legal uncertainty. In addition to this, it is noteworthy to mention that all parties involved in the procedure, from public prosecutors, inspectors, court experts, attorneys to judges themselves show noticeable lack of knowledge of the relevant tax regulations [11, p. 107]. Furthermore, in most cases (70% of cases in 2018) courts pronounce a suspended sentence, and in rare cases where imprisonment has been pronounced, the sentences are usually short – up to 6 or 12 months (often in variants of the so-called house arrest – see Table 1).

Taking all this into consideration, the question could be raised whether courts implement adequate penal policy. The generally lenient attitude towards the perpetrators in practice has influenced the criminal legislator, who has repeatedly amended the Criminal Code, to increase the penalty for both basic and aggravated forms of tax evasion (in theory, there has long been a view that a stronger preventive effect contributes to greater likelihood that the sentence will be enforced than to the duration of the sentence itself, although undoubtedly both factors are significant; in the economic analysis of the penalty, it is pointed out that citizens will sooner refrain from illegal ways of tax evasion if the punishment for the offence is severe and if they are aware that they will almost certainly be punished, i.e., if the loss resulting from committing the criminal offence is greater than that which would result from following the rules (deterrence model) [10, p. 112]).

Table 1: Case law statistics related to the criminal offence of tax evasion

Year	Criminal charges	Indictments	Convicted	Imprisonment/ house arrest	Suspended sentence
2015	715	778	449	69/16	341
2016	734	643	419	73/34	300
2017	649	N/A	392	72/43	264
2018	967	N/A	266	50/17	185

Source: Statistical Office of the Republic of Serbia.

However, this only widens the gap between the prescribed and imposed sentences. It is indisputable in criminal law that, on the one hand, intensifying repression in certain areas can have the opposite effect to the desired one and, instead of being generally preventive, it could result in even more frequent offences, especially if the competent authorities do not apply the law in most cases, i.e., when the addressees of Criminal Law norms are not aware of an almost certain punishment as a consequence of criminal behaviour. On the other hand, an overly selective and lenient penal policy remains without particular influence on the behaviour of citizens as potential perpetrators of criminal offences and has no preventive effect. Therefore, in the area of tax delinquency, and above all in relation to the crime of tax evasion as the basic offence in that group, it is necessary to find a balance between a preventive and a repressive approach.

One of the recommendations for improving penal policy is to replace the nominal limit of a criminal offence with a relative one and/or to set different limits for different taxpayers. Although some changes to Criminal code were made in this regard in 2019, when the fiscal limit was raised from five hundred thousand to one million RSD, we believe that the established amount of tax liability is not suitable for all categories of taxpayers. Namely, for certain categories of taxpayers, the amount of one million RSD is very large (e.g., entrepreneurs or micro-enterprises). Therefore, despite the intention of this category of taxpayers to evade tax, they will never be held responsible for the crime of tax evasion, which will potentially be very frequent within these types of companies. On the other hand, for certain categories of companies, which discharge very high tax liabilities on a daily basis (e.g., taxpayers producing excise goods), the amount of one million RSD represents a small part of their annual tax liability. In this regard, in order to create a coherent and effective legal framework that would suit taxpayers of different sizes and economic strengths, we believe that the following should be considered as a potential solution:

- a) specified limits for different types of taxpayers;
- b) annual turnover;
- c) level of tax liability; and

- d) ratio between potential tax liability and annual turnover.

Conclusion

The basic conclusion of the paper is that the existing definition of tax evasion as a criminal offence and lenient case law create legal uncertainty and make their basic purpose, i.e., prevention of the negative impact on the collection of public revenues, impossible. One of the solutions that would strengthen the case law and remove the described normative obstacles to the more efficient work of the judiciary is the introduction of a new criminal offence of tax fraud. In addition, the presented solution also contributes to the improvement of criminal legislation and a higher degree of coordination of the goals of criminal and fiscal policies in the Republic of Serbia.

Namely, the criminal offence of tax evasion could be solely related to the avoidance of payment of public revenues caused by the failure to act (omission), while for the existence of the criminal offence of tax fraud it would be necessary for the perpetrator to actively commit the offence. Furthermore, in addition to the amount of evaded public revenues which should exceed 10 million RSD, tax fraud should also take into account the ratio between the value of the evaded liability and the total business income of the company. Namely, when an identical amount of liability is stipulated, in the case of a large company, failure to pay public revenues may be the result of an accounting error, which is ruled out in the case of companies with smaller business income on an annual basis. Therefore, the existence of a criminal offence would require the following prerequisites to be met:

- specific intent to avoid payment of public revenues;
- the amount of evaded public revenues exceeds 10 million RSD on an annual basis;
- in case the legal entity has avoided payment of public revenues in the amount of more than 10 million RSD on an annual basis, it is necessary for the condition that the stated value is greater than or equal to 1% of the average operating revenues in the previous three years to be fulfilled.

The proposed introduction of a new offence (tax fraud) would allow taxpayers to be divided into two groups:

1. Taxpayers who, by failing to discharge their liabilities, caused damage to public revenues, while committing some of the existing three forms of the criminal offence of tax evasion;
2. Taxpayers who had an unambiguous specific intent to avoid the payment of public revenues in excess of 10 million RSD on an annual basis, along with the cumulative requirement for companies that this amount is greater than or equal to 1% of the average business income in the previous three years.

It is expected that the proposed change in legislation, followed by more efficient case law and enhanced tax administration digitalisation, would contribute to a more effective and efficient functioning of the penal policy and consequently to an increase in tax revenues. Finally, enhanced legal certainty would create and strengthen the preconditions for the sustainable economic growth in Serbia in the forthcoming period.

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