

# Tax evasion in Bosnia and Herzegovina

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## Abstract

*Tax evasion and other prescribed fees constitute a harmful, illegal and dangerous activity of the individuals and groups that undermine the basic fiscal interests of the society. In addition, tax evasion directly affects many state functions and therefore all contemporary states impose very strict sanctions to natural and legal persons who are the perpetrators of tax-related offences. By having strict sanctions for tax-related offences prescribed, one aims to provide a lawful and efficient criminal liability of the tax-related offenders on one hand, and to act preventively with the aim to raise the general tax discipline in the society on the other hand. Nevertheless, if citizens in one country can be imposed different sanctions for the same criminal offense, it is their legal security and equality that is under the question. This is exactly the case with citizens in Bosnia and Herzegovina. For this reason, the aim of this paper is to point out the differences in existing criminal legislation at different levels of authority in Bosnia and Herzegovina. The author's position is that these offences cannot be considered only by the increase in penal sanctions, but it requires a wider approach of a combination of criminal and other measures, such as information, education etc.*

**Keywords:** tax evasion, tax fraud, criminal penalties

## 1. Introductory remarks

There are two forms of tax evasion, lawful and unlawful<sup>4</sup>. A lawful tax evasion is when individuals as taxpayers stay within general terms set by law or other general regulations of fiscal or taxation system, but in various ways try to avoid the full or partial payment of taxes and other prescribed fees. Practically speaking, these represent different forms of using tax incentives (exemptions from or advantages), or when existing legal gaps in tax and other laws and regulations are used precisely due to high level of abstraction, generalization or inconsistency of the used words, expressions or concepts or the imperfections of the language used by the legislator. This is especially the case in those systems where, due to rapid and sudden radical changes in business in the country or abroad, tax regulations themselves are being changed in order to adapt to

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<sup>4</sup> D. Jovašević, Z. Nikolić, *Tax evasion as a way of imperilment of the functions of social state*, in Political Review, Year (XXI) VIII, Vol. 22, No. 4, 2009, pp. 125-148.

new social, legal and economic framework. Namely, lawful or permitted tax evasion, as it is called by some authors<sup>5</sup>, includes procedures by which a taxpayer avoids paying taxes in whole or in part in one of the following ways: 1. changing the place of permanent residence or place of temporary residence, 2. reducing or abandoning the consumption of taxable products or services and 3. finding the gaps in the law. A taxpayer gets into tax debt at the moment of the debt maturity. And this maturity refers to the final payment date of a tax debt – which is otherwise determined by the law and is harmful and unlawful if missed<sup>6</sup>.

Another form of tax evasion is an unlawful or illicit evasion. In an unlawful evasion, an individual as a taxpayer comes under the law and penal repression. Namely, in this case, there is a more or less significant violation of regulations, whereby immediate and direct damage is inflicted to the community. These constitute unlawful, illegal, illicit and punishable activities aimed against the tax (fiscal) system of the country. This unlawful tax evasion can occur in two forms the most prominent of modern legal and social systems. The first form of this unlawful tax evasion is tax evasion, tax fraud, that is, the avoidance to pay taxes. The other form of unlawful tax evasion is the smuggling or contraband of various goods, products or services across the borders of one or more states.

Unlawful tax evasion is punishable. Tax-related offences and tax evasion in particular, are extremely serious, unlawful and dangerous behavior of individuals and groups, or legal entities, which directly or indirectly threatens the financial interests of the entire community, primarily through the infliction of large damage to the fiscal system and the public revenue system in general, and through direct or indirect damage to all the budget users<sup>7</sup>.

Over the past five centuries, three main views have emerged on the ethics of tax evasion. One view, which might be called the absolutist view, holds that tax evasion is always, or almost always, unethical. At the other extreme is what might be called the anarchist view, that tax evasion is always ethical. The third view takes a middle position, that tax evasion might be ethical in some cases and unethical in others. It is this third view that has been the most prevalent in the literature. The survey conducted among the students at the University of Sarajevo in Bosnia and Herzegovina from 2009<sup>8</sup> indicate that the majority of respondents do not believe that tax evasion is ethical. However, the ethical attitude toward tax evasion is more complicated than that. The responses to the survey indicate that tax evasion is frowned upon in some cases more than others and that the attitude toward tax evasion differs depending on the issue. The strongest arguments justifying tax evasion occur in cases where the government is perceived as being corrupt or when the tax system is seen as unfair or even when tax funds are spent on projects that the respondent does not approve of. There is a higher probability that tax evasion will be seen as unethical when a taxpayer evades taxes for selfish reasons.

<sup>5</sup> See: B. Jelčić, *Nauka o finansijama i finansijsko parvo*, Zagreb, 1990, str. 183-184.

<sup>6</sup> O. Buhler, G. Strickdrodt, *Steuerrrecht, Band 1, Allgemeiner Steuerrrecht*, Wiesbaden, 1960, p. 365. According to: D. Jovašević, Z. Nikolić, *op. cit.*, p. 129.

<sup>7</sup> D. Jovašević, Z. Nikolić, *op. cit.*, pp. 129-130.

<sup>8</sup> W. Mcgee, R. Bašić, M. Tyler, *Tax evasion in Bosnia*, in *Journal of Balkan and Near Eastern Studies*, vol. 11, No. 2, 2009, pp. 197-207.

## 2. Unlawful tax evasion

Among criminal offenses against the economy, the nature and character of tax crimes distinguishes them from the others. There are several types of tax crimes. The basic crime of this kind is tax evasion. In other words, this crime implies providing false information about one's legally acquired income, objects or other facts relevant to incurring tax obligations, or failure to declare tax when it is compulsory, or concealing information related to the tax liability in order to completely or partially evade payment of taxes, contributions or other prescribed fees<sup>9</sup>. It turns out that this is a *sui generis* criminal case, but the criminal law theory also claims that this is a specific form of fraud, where the fraudulent act is damaging to the society as a whole<sup>10</sup>. The thing that needs to be protected with this criminal offence is tax, fiscal system, a system of public revenues, which is a foundation of the country's economic system. The thing that needs to be tackled is being alternatively determined. It can be: a tax, a contribution and other prescribed fees (which represent public revenue). In doing so, it is irrelevant whether these obligations relate to natural or legal persons.

There are three types of activities that can be undertaken: 1) giving false or incomplete data, 2) failure to declare revenue when it is compulsory, and 3) the use of tax relief contrary to the conditions under which it was granted. Considering that this is a specific form of fraud, it can often be found in the criminal justice theory that this criminal act is a fraudulent activity. It can be manifested in two ways: as an active, positive activity (doing) - *delicta commissiva* and as a passive, negative activity (omission, failure to act) - *delicta omissiva*. In doing so, giving false revenue data is considered an active form of this criminal offence, and failure to declare revenue as the passive form<sup>11</sup>.

In order to say that a criminal offense of tax evasion exists, it is necessary to fulfill a few more cumulatively conditions in addition to the offence itself being committed. Firstly, the act is committed only in respect of proceeds and objects legally acquired. This is logical since unlawfully, illegally acquired assets and other objects or revenues cannot be taxed. Secondly, the perpetrator must act with a certain subjective element - that is there should be an intention that he or another person evades the payment of taxes, contributions or other prescribed fees in whole or in part. Therefore, there should exist this intention, as a subjective element, of the perpetrator at the time of committing a crime. And finally, thirdly, it is necessary that the amount of the obligation failed to be paid exceeds the amount of law-prescribed 10,000 BAM. This represents an objective condition of incrimination, that is, the legislative motive for punishment. The person performing the offence can be any person<sup>12</sup>.

## 3. Tax evasion or fraud in Criminal Codes of BiH

Bosnia and Herzegovina is a complex state union, composed of two entities and one district and in which state functions are divided among 4 different levels of authority. In

<sup>9</sup> D. Jovašević, Lj. Mitrović, V. Ikanović, *Krivično pravo Republike Srpske, Posebni deo*. Banjaluka, 2017, str. 186.

<sup>10</sup> Z. Stojanović, O. Perić, *Krivično pravo, Posebni deo*, Beograd, 2000, str. 244.

<sup>11</sup> D. Jovašević, *Komentar Krivičnog zakona Republike Srbije sa sudskom praksom*, Beograd, 2003, str. 556.

<sup>12</sup> D. Jovašević, *Leksikon krivičnog prava*, Beograd, 2006, str. 469.

this regard, there are four independent criminal legislations in Bosnia and Herzegovina as they follow:

- criminal law at the level of Bosnia and Herzegovina<sup>13</sup>/state level,
- criminal code at the level of the Republic of Srpska<sup>14</sup>/entity level,
- criminal law of Federation BiH<sup>15</sup>/another entity level and
- criminal law at the level of the Brčko District of BiH<sup>16</sup>/district level.

Criminal law, at the level of Bosnia and Herzegovina, in the Chapter XVIII “Criminal Offences Against Economy and Market Integrity, and Customs Crimes”, in Article 210 prescribes criminal offense of Tax Evasion or Fraud<sup>17</sup>. For this criminal offense, whoever evades the payment of duties required under the tax legislation of Bosnia and Herzegovina by not submitting the required information, or by submitting false information on the acquired taxable income or on other facts which may affect the determination of the amount of such liability, if the amount evaded exceeds the sum of BAM 10,000, shall be punished by imprisonment for a term of between six months and five years. Also, this punishment shall also be imposed on whoever, with the aim of exercising the right to tax refund or indirect tax credit provided under the tax legislation of Bosnia and Herzegovina, files a false tax return with the amount of the presented tax refund or indirect tax credit exceeding the sum of BAM 10,000. At the other hand, whoever perpetrates these two criminal offences and if the evaded liability exceeds the amount of the sum of BAM 50,000 or indirect tax credit exceeds the sum of BAM 50,000, shall be punished by imprisonment for a term of between one and ten years. Whoever perpetrates this criminal offence and if the evaded liability exceeds the amount of the sum of BAM 200,000 or indirect tax credit exceeds the sum of BAM 200,000, shall be punished by imprisonment for a term of not less than three years.

On the other hand, sanctions for this criminal offence in the new Criminal Code of the Republic of Srpska are prescribed in Chapter XXI „Criminal Offenses Against Economy and Payments” in Article 264 named “Evasion of Taxes and Contributions”. It is set out that whoever, in the intent of him or any other person, in whole or in part, avoids payment of taxes prescribed by the acts regulating the tax area of the Republic of Srpska, or the contribution of health or pension insurance, gives inaccurate or incomplete data on income, objects or other facts that influence the determination of the amount of tax liability or the contribution of health or pension insurance or who in the case of a compulsory application does not report revenue, object or other facts that

<sup>13</sup> Criminal Law of Bosnia and Herzegovina (Official Gazette of BiH, 3/2003, 32/2003 - 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 and 35/2018).

<sup>14</sup> Criminal Code of the Republic of Srpska (Official Gazette of the Republic of Srpska, 64/2017).

<sup>15</sup> Criminal Law of Federation of Bosnia and Herzegovina (Official Gazette of the FBiH, 36/2003, 21/2004 - 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017).

<sup>16</sup> Criminal Law of Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko distrikt BiH, 33/2013 – revised text, 47/2014 - 26/2016 i 13/2017).

<sup>17</sup> When people knowingly or purposely give false details, it may be considered tax fraud. Those are situations when people provide incorrect information on their tax returns. This includes preparing their records to overstate their expenses, neglecting to report their full income, failure to file tax returns altogether or claiming to live in one state while residing in another. On the other hand, it is generally okay for people to reduce or otherwise limit their obligations through legitimate means. However, they may be charged with tax evasion if they use deceit, concealment or other affirmative acts to dodge or defeat their taxes. For example, intentionally understating income, claiming fake or inappropriate deductions, or concealing their assets may be considered forms of tax evasion.

influence the determination of the tax liability or contribution of health or pension insurance, and therefore deduction or failure to determine of tax obligations or contributions of health or pension insurance exceeding the sum of BAM 10,000 occurs, shall be punished by imprisonment for a term between one and five years and a fine. The same punishment is prescribed for whoever uses tax relief in the amount of more than the sum of BAM 10,000 contrary to the conditions under which the tax relief was granted. And whoever commits these criminal offenses and if the amount of the avoided obligation exceeds the sum of BAM 50.000, shall be punished by imprisonment of two to ten years and a fine, and if that amount exceeds the sum of BAM 200.000, it shall be punished by imprisonment for not less than three years and a fine.

Regarding the criminal law of Federation of Bosnia and Herzegovina, in the Chapter XXIII "Tax Related Criminal Offences", Article 273 prescribes the criminal offence of Tax Evasion. It sets out that whoever evades the payment of duties or contributions to pension schemes or health insurance required under the tax legislation in the Federation of Bosnia and Herzegovina, by failing to submit the required information, or by submitting false information on the acquired taxable income or on other facts affecting the determination of the amount of such liability, and where the liability evaded exceeds the sum of BAM 10,000.00, shall be punished by imprisonment from six months to five years. Also, whoever perpetrates this criminal offence and where the liability evaded exceeds the sum of BAM 50,000.00 shall be punished by imprisonment for a term of between one and ten years, and where the liability evaded exceeds the sum of BAM 200,000.00, he/she shall be punished by imprisonment for a minimum term of three years. On the other hand, whoever issues a false document required under the tax legislation in the Federation of Bosnia and Herzegovina or whoever fails to issue any document required under the tax legislation in the Federation of Bosnia and Herzegovina, shall be punished by a fine or imprisonment for a maximum term of one year, and who commits this criminal offence involving multiple documents, or if his offence results in the loss of substantial public revenue, shall be punished by a fine or imprisonment for a maximum term of three years (Article 274). Also, a responsible person in a legal entity, who is particularly responsible for the tax liabilities of that legal entity under the tax legislation in the Federation of Bosnia and Herzegovina and who approves the appropriation of funds for purposes other than the payment of tax liabilities of that legal entity, thereby rendering that legal person insolvent and is unable to pay his tax liabilities on time, shall be punished by a fine or imprisonment for a maximum term of three years (Article 275). Article 276 prescribes that whoever files a false tax return or other false information required under the tax legislation in the Federation of Bosnia and Herzegovina, shall be punished by a fine or imprisonment for a maximum term of three years.

Criminal code of Brčko District of Bosnia and Herzegovina in Chapter XXIII "Criminal Offences Involving Taxes" prescribes criminal offence of Tax Evasion in Article 267. A person who himself or on behalf of other person, evades payment of amounts required under the tax legislation of the Brčko District, or social contributions prescribed by the Brčko District legislation, by not submitting required information or by submitting false information on acquired taxable income or on other facts which may affect the determination of the amount of such taxes, and the obligation that is evaded exceeds the amount of the sum of BAM 10,000, shall be fined or sentenced to up to three years in prison. Also, if a person perpetrates this offence and the evaded obligation exceeds the amount of the sum of BAM 50,000, he shall be sentenced to prison from one

to ten years and where the evaded obligation exceeds the amount of the sum of BAM 200,000, he shall be sentenced up to three years in prison. In Article 267a it is prescribed that whoever prevents the collection of declared taxes prescribed under the tax legislation of the Brčko District with transfer or alienation of property, shutting down the economic entity or otherwise, and the evaded obligation exceeds the sum of BAM 50,000, shall be fined or sentenced up to three years in prison. Also, if a person perpetrates this offence and the evaded obligation exceeds the amount of BAM 100,000, he shall be sentenced to prison from one to ten years and where the obligation exceeds the amount of the sum of BAM 200,000, he shall be sentenced to prison at least three years. At the other hand, a person who issues a false document which is to be submitted under the tax legislation of the Brčko District, or a person who fails to issue a document the issuance of which is required under the tax legislation of the Brčko District, shall be fined or sentenced up to one year in prison. If this criminal offence involves a large number of documents, or the collection of large amounts of public revenues is brought into question, the perpetrator shall be fined or sentenced up to three years in prison (article 268). If a responsible person within a legal person, who is personally responsible for tax obligations of the legal person under the Brčko District tax legislation, approved allocation of the legal person's funds for the purposes other than tax obligations thereby causing legal person's incapacity to settle its tax obligations timely, he shall be fined or sentenced to up to three years in prison (Article 269). In Article 270 it is prescribed that whoever submits to a tax authority a false tax report or other false information required under the Brčko District tax legislation shall be fined or sentenced to up to three years in prison.

#### 4. Conclusions

Legislators in Bosnia and Herzegovina, at different levels of authority, anticipate different penalties for the same criminal offence. The criminal codes of the state level and the level of Federation of BiH have the same criminal sanctions, while the Republic of Srpska regulations are stricter than those in terms of imprisonment and fines. Brčko District of BiH criminal sanctions differ from the other criminal codes. So, it is possible for citizens to be punished in a different manner for the same criminal offences. Regarding this, it is necessary to point out that all four laws should be mutually consistent, even they are not, in order to have legal security and equality of citizens in Bosnia and Herzegovina at place.

The other issue we wanted to draw the attention to is whether the criminal sanctions themselves are enough to prevent the committing of this criminal act. In those terms, some recent research has suggested that penalties and sanctions can only be an effective deterrent to the extent that offenders believe they can be caught and successfully prosecuted. The rational choice view of deterrence suggests that compliance will increase to the extent to which the costs of offending outweigh the benefits. But there is little evidence to support the view that increasing the levels of sentences will deter an individual from becoming an offender in general. Especially there is no proof that harsh penalties for tax offences increase compliance.

Prevention of these offences in the form of repression should be accompanied by an increase in general tax discipline with taxpayers on one hand and with social community authorities such as tax authorities, internal affairs authorities etc. on the other hand. The

latter should employ a variety of general and specific preventive measures to prevent this kind of behavior. Better economic and social circumstances in a society would also to a great extent contribute to the better environment where tax evasion offences and the number of the offenders would decrease.

Herewith, one can make a conclusion that sanctions should be used in conjunction with other deterrence measures to improve overall compliance.

However, it was the exposure of the sanction for noncompliance throughout the taxpaying community that was emphasized in particular. That is, in eliminating the current vagueness and misunderstanding about sanctions, taxpayers should be better informed as to the consequences of any non-compliance when carrying out their tax obligations. This appears to be an option for increasing deterrence that is feasible and affordable. On the other hand, the strategies required to chase those taxpayers who operate outside the system are more difficult, and could become a resource issue.

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