

ECONOMIC RELATED CRIMINAL OFFENCES

Applicable legislation in this field

- Law no. 59/1934 on cheque, published in the Official Gazette no. 100/1st of May 1934, as further amended and completed
- Law no. 58/1934 on bill of exchange and promissory note, published in the Official Gazette no. 100/1st of May 1934, as further amended and completed
- Criminal Code from 1968, republished in the Official Gazette no. 65/16th of April 1997, as further amended and completed
- Government Emergency Ordinance no. 58/2002 on amendment and completion of certain provisions from the Criminal Code on offences against dignity and offences against authority, as well as of certain provisions from the Code of Criminal Procedure, published in the Official Gazette no. 351/27th of May 2002
- Law no. 31/1990 on trade companies, republished in the Official Gazette no. 33/29th of January 1998, as further amended and completed
- Law no. 11 /1991 on combating of unfair competition, published in the Official Gazette no. 24/31st of January 1991, as further amended and completed
- Law no 87/1994 on combating tax evasion, republished in the Official Gazette no. 545/29th of July 2003
- Competition Law no. 21/1996, published in the Official Gazette no. 88/30th of April 1996, as further amended and completed
- Government Emergency Ordinance no. 28//2002 on securities, services of financial investments and regulated markets, published in the Official Gazette no. 238/9th of April 2002, approved as amended and completed by the Law no. 525/2002

- Government Emergency Ordinance no.26/2002 on collective investment bodies in securities, published in the Official Gazette no. 229/5th of April 2002 approved as amended and completed by the Law no. 513/2002
- Government Emergency Ordinance no. 27/2002 on regulated commodities markets and derivative financial instruments, published in the Official Gazette no. 232/8th of April 2002, approved as amended and completed by the Law no. 512/2002

1. Specification of the offences stipulated by Criminal Code

Title VIII, Criminal Code stipulates offences to legal regime for certain economic activities: speculation, measurement fraud, fraud regarding quality of the commodities, disclosure of economic secret, counterfeit of the object of an invention, releasing of counterfeited products, unfair competition, failure to observe the provisions regarding import or export operations, embezzlement, failure to observe the provisions on import of wastes and residua.

Legal object common to these offences is represented by the social relations whose existence and development impose the protection of circulation of industrial and agricultural products, of the integrity of economic operations, of the economic secret, of the use of inventions, of the activity of foreign trade.

The social value protected by incriminating these facts is the national economy. Each of these offences has also a **special legal object**.

Active subject matter of these offences may be, usually, any person that fulfills the conditions regarding to age and judgment.

In the case of the offence of disclosing the economic secret, the active subject matter of the offence in the typical variant may be an officer or an employee.

These offences may be committed in all the forms of partnership: as accomplice, complicity and incitement.

Passive subject matter of these offences is, first of all, the state whose rules established for the exercising of certain economic activities are disregarded by those committing these facts.

In certain cases, by committing these offences, certain natural or legal persons are also damaged.

Objective side – the material element of the offences stipulated in Title VIII Criminal Code consists only from one action (some of these offences, under the aspect of material element can be committed through two or many alternative actions); these offences cannot be committed by an inaction.

Offences to the legal regime for certain economic activities are offences of danger, their objective side including as **dangerous consequence** the creation of a state of danger for the social value protected by law.

It has to be a **causality relation** between the action and the consequence produced, so that the immediate consequence has to be the result of the action performed by the author and not to be due to causes independent of his will.

As concerns **subjective side**, these offences may only be committed with intention that can be direct or indirect.

In order for certain offences to exist (speculation, offence of unfair competition), the lawmaker has stipulated also the request of existence of a **purpose**.

These offences differ from other fact bringing damages to national economy, like the acts of diversion, national economy undermining which are directed mainly against the safety of the state.

2. Economic offences stipulated in special laws

There are laws incriminating and sanctioning economic offences, namely: Law no. 21/1996, as further amended and completed, Law no. 11/1991, as further amended and completed, Law no. 87/1994, republished, Government Emergency Ordinance no. 28/2002 on securities, financial investment services and regulated markets, as further amended and completed, Government Emergency Ordinance no. 26/2002 on collective investment bodies in securities, as further amended and completed, Government Emergency Ordinance no. 27/2002 on regulated commodities markets and derivative financial instruments, as further amended and completed, Law no. 59/1934 on cheque, as further amended and completed, Law no. 58/1934 on bill of exchange and promissory note, as further amended and completed, Law no. 58/1998 – Banking Law, as further amended and completed, Law no. 31/1990 on trade companies, republished, as further amended and completed, etc.

We shall try in the followings to give several examples of offences provided in the above-mentioned laws.

2.1 Offences provided by the Law no. 11/1991 on combating unfair competition

Art.5 from the Law no. 11/1991 amended by the Law no. 298/2001 for the amendment and completion of the Law no. 11/1991 on combating unfair competition:

“There shall be an offence to be punished with imprisonment from 6 months to 2 years or a fine from lei 25,000,000 to lei 50,000,000:

- a) the use of a firm, invention, trademark, geographical indication, drawing or industrial design, layout-design of a integrated circuit, of an symbol or package that may produce confusion with those legitimately used by another trader;
- b) putting into circulation counterfeited and/or pirated goods, whose trade brings damages to the holder of the trademark and misleads the consumer on the quality of the product/service;
- c) use for commercial purposes of the results of certain experiments whose obtaining has required a considerable effort or of other secret information in relation to these ones, transmitted to competed bodies for the purpose of obtaining authorizations of trading of the pharmaceutical products or of chemical products destined to agriculture, containing new chemical compounds.”

2.2. Offences provided by the Law no. 87/1994 – Tax evasion – concept

According to Law no.87/1994, tax evasion is the *avoidance by any means of the taxation or of the payment of taxes, duties, contributions and any other amounts due to the state budget, local budget, budget of the social state insurances or budgets of special funds by Romanian and foreign natural or legal persons named in the law taxpayers.*

Forms under which the fraudulent tax evasion is met in practice

- keeping unreal ledgers;
- practicing of delivery prices or of certain percentage of mark-up with higher level than of those displayed, stated or registered in accountancy;
- voluntary destruction of documents that may help finding the truth about the prices used, commissions cashed, payments made or deliveries of goods;
- drawing up of fictitious payment documents;

- unjustified modification of prices of supply of transport and depositing expenses;
- drawing up of false customs declarations at the import or export of goods;
- drawing up of false tax returns, willingly omitting to mention all the incomes obtained;
- non-comprising certain activities that are within the province of V.A.T., within the basis of calculation of the tax or non-comprising in V.A. T. of all the invoices;
- non-highlighting and non-transfer of V.A.T. afferent to the incomes received from clients;
- enforcement of zero quota provided for the operations of export in the case of those performed through intermediaries that perform export operation in their own name;
- establishing of passive accounts with fictitious lists;
- failure to justify with legal documents of the entries;
- errors in personal accounts of certain parts from the benefits;
- reduction of turnover;
- accountings of expenses and fictitious invoices;
- creation of fictitious accounts to which different reserves are allotted;
- clearings in accounts;
- avoidance of the payment afferent to imports of goods, by presenting in customs of fictitious acts of donation, from external partners, instead of purchasing documents.

In Art.9-12 from the Law no.87/1994 the types of offences typical for illicit tax evasion are regulated.

All these types of offences violate social relations regarding public finances.

Common special legal object of all the offences of tax evasion is given by the social relations concerning the proper development of economic-financial activities whose accomplishment implies the fulfillment with honesty by the taxpayer of fiscal liabilities.

The state shall always be the **passive subject-matter** of this offence, or, as the case may be, the territorial-administrative units, holders of the protected social values.

a) Art.9 provides for the offence of tax evasion consisting in the refusal to present to control bodies stipulated by law the certifying documents and acts

of book-keeping, as well as the material goods subject to taxes and contributions to public funds, for the establishment of budgetary obligations. The offence is punished with imprisonment from 6 months to 3 years or with a fine from lei 350,000 to lei 30,000,000.

b) The offence of tax evasion provided in the Art.10 consists of failure to draw up, the incomplete or inadequate drawing up of the primary documents or acceptance of such documents with the purpose of preventing financial-accounting verifications, if the fact had as consequence the decrease of incomes or taxable sources.

There shall also be an offence the putting in circulation, in any way, without any right or holding for putting in circulation, without any right of financial or fiscal documents.

The offence is punishable with imprisonment from 6 months to 5 years and prohibition of certain rights or with a fine.

c) Art.11 from the Law no. 87/1994 provides for the following offences of tax evasion:

- avoiding the payment of fiscal obligations by failing to register certain activities for which the law provides for the obligation of registration or by exercising unauthorized activities, for the purpose of gaining incomes;

- avoiding totally or partially the payment of the fiscal obligations, for the purpose of gaining incomes, by failing to declare the taxable incomes, hiding the taxable object or source or by minimizing the incomes as a result of a fictitious operation;

- omission, totally or partially, of the registering in accounting documents or in other legal documents of commercial operations performed or of the incomes made or registering of unreal operations or expenses, for the purpose of not paying or minimizing the tax, duty or contribution;

- organizing and managing double-entry bookkeeping, altering or destroying accounting documents, memories of the taxing machines or fiscal electronic marking machines or other means of storing data, for the purpose of minimizing the incomes or taxable sources;

- issue, distribution, purchasing, filing or accepting deliberately false fiscal documents.

The offence is punished with imprisonment from 2 to 8 years and prohibition of certain rights.

d) Art. 12 stipulates: “The following acts are offences to be punished with imprisonment from 3 to 10 years and prohibition of certain rights:

- a) avoiding the payment of fiscal obligations by assigning shares held in a limited liability company, made for this purpose;
- b) avoiding the performing of financial-fiscal control by declaring fictitiously regarding the headquarters of a trade company, the headquarters of the subunits as well as of their changing without the fulfillment of the conditions stipulated by law for this purpose”.

2.3 Offences provided by the Law no. 58/1934 on bill of exchange and promissory note

According to this law anybody who assigns a debt deriving from selling of goods towards the drawee, knowing that the debt assigned does not exist, totally or partially, in the moment of assignment commits an offence.

For this purpose, the frame – Norms no. 6/1994 on commerce made by the banking companies and other credit companies, with bills of exchange and promissory notes, on the basis of the Law no. 58/1934 on bill of exchange and promissory note, amended by the Government Decision no. 11/1993, approved and amended by the Law no.83/1994, stipulate that the deed of the drawer to falsely stating, by an assignment clause, that he is the drawee’s creditor for the price of the goods specified in the invoice, statement on the basis of which he obtains a credit of discount is a serious criminal deed and that is why the National Bank of Romania and the banking companies shall act with maximum caution and shall take all necessary measures for the minimization of the risk of committing these deeds by their clients.

The law allows to the drawer for the drawn bill of exchange that does not have to be presented for acceptance as well as in any other drawn bill of exchange, to assign by a clause inserted inside the bill of exchange his debt deriving from the sale of goods that he has towards the drawee.

Under the sanction of nullity, the clause has to comprise the date and the number of the invoice concerning the sale of goods.

The assignment can be made by the drawer only in the favor of a banking company or of another credit institution, but shall make use of all the successive endorsees.

In the case of a bill of exchange, issued at the drawer’s order, the assignment clause may be inserted in the first endorsement.

Towards third parties, the assignment shall only produce effects by the notification to the drawee.

This offence is to be punished with a fine and imprisonment up to 6 months, except the case in which the deed is a felony to be punished with a higher punishment, in which case this punishment shall apply.