SOME ISSUES OF PROCESSING TAX FRAUD IN CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

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Abstract

Tax fraud, the most serious type of tax evasion, is the most frequently committed crime against the economy, both in the context of individual and organized crime. Given that it causes significant damage to the state budget, it occupies a significant place in the substantive and procedural legislative framework. The authors critically analyze tax fraud within the framework of the latest positive legal solutions. Lowering limit of criminal tax evasion opens certain issues of substantive and procedural nature. In addition, the link between tax fraud and corruption necessitates the inclusion of the aforementioned crime in the scope of work of special anti-corruption departments. In the case of high corruption, tax fraud is expected to be treated equally as existing and newly introduced crimes against the economy, which The Republic of Serbia has not bypassed in the National Anti-Corruption Strategy. The paper covers some of the issues of tax

fraud processing and in accordance with that, proposals are presented *de lege ferenda* in the direction of overcoming possible difficulties in practice.

Key words: *crimes against the economy, tax fraud, financial crime, corruption, new organizational network of courts*

1. Introduction

Tax fraud, as a representative form of tax and economic crime in general, deserves a separate analysis in the context of current positive legal solutions. This most severe type of tax evasion results in a reduction of the state budget for the amount of tax that the taxpayer was obliged to pay. Taxpayers cause negative consequences for the economic security of the state by avoiding to fulfill their tax obligations. It is the seriousness of this crime that gave rise to its analysis from several aspects. The authors were drawn to a drastic novelty in relation to the former incrimination of tax fraud. Certain issues of processing have been raised, which may appear as a consequence of the newly created legal regulations, and provoke conflicting views in theory and practice. One of the issues of such a nature refers to the large range between the former and the current objective condition of incrimination, or the amount of evaded tax that triggers an incrimination, given in the legal description of this criminal offense.

The application of the statistical method seeks to establish the frequency of tax fraud, i.e. the frequency of reported, accused and convicted persons in the five-year period (2014-2018). In the mentioned period, was in force the Criminal Code of the Republic of Serbia, which provided as an objective condition for incrimination, much lower amount of evaded tax. The image obtained in this way, in addition to estimating the frequency of tax fraud, can be used by the authors to make a comparison in the future with the results obtained by reviewing statistical data on the number of tax evasion perpetrators who will be prosecuted in accordance with current criminal frameworks.

Among the criminal frameworks, in addition to criminal material provisions, the provisions of the Law on Organization and Competences of State Bodies in the Suppression of Organized Crime, Terrorism and Corruption were analyzed, and in accordance with this, certain segments of the National Anti-Corruption Strategy. In an effort to modernize and strengthen the existing measures in the field of suppression and the fight against corruption in general, significant steps have been taken in The Republic of Serbia. Along with the introduction of new crimes against the economy, a new organizational network of courts has been established, which aims to prosecute perpetrators of crimes of corruption in general, as well as spcifically perpetrators of crimes of corruption in the economic sector. Considering the new organizational network of courts and their actual jurisdiction, the question of the comprehensiveness of

the mentioned strategy was opened, and in accordance with that, certain proposals *de lege ferenda* were given. The mentioned proposals are especially focused on the fight against corruption in the economic sector, and are based on internationally established global principles, which promote the policy of fighting tax crime.

2. Tax Fraud - The criminal and material aspect of tax fraud

The criminal offense of tax fraud is the most common tax criminal offense, primarily due to its *modus operandi*. The criminal offense of tax fraud is a blanket criminal offense incriminated in Article 225. RS Criminal Code (RS Criminal Code - RS CC, Official Gazette of RS, No. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19) commited by perpetrator, in a way that this person provides false information to the competent authorities on the acquired income, cases or other facts that affect the determination of such obligations, moreover made by a person who in case of mandatory reporting does not report the acquired income, i.e. objects or other facts that are of influence on the determination of such obligations as well as the person who otherwise conceals the data related to the determination of the stated obligations, all with the direct intention (*dolus directus*) that he or another person partially avoid the payment of taxes, contributions or other prescribed duties (RS CC, Official Gazette of RS, No. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19). Given that the criminal offense of tax fraud can be committed on all forms of evasion of taxes, contributions or other prescribed duties, it should be emphasized that the criminal offense of tax fraud is a blanket criminal offense. The blanket norm was introduced into the criminal legislation of the former Socialist Federal Republic of Yugoslavia (SFRY) in the 1970s (Sučević, 1997, p. 52-55).

The criminal offense is related to providing false data on acquired income, non-reporting of acquired income, as well as concealing data related to tax assessment. From the criminal act, we will first notice two things, one which refers to the circle of possible perpetrators of the criminal act of tax fraud and the other to the forms of criminal act, which can be active or passive. A criminal offense can be committed by any person who is obliged to submit data on his acquired income to the competent authority, either on a daily, weekly, monthly, quarterly or annual basis. On the other hand, such a person can commit a crime by active action, i.e. by doing or giving false information about the acquired income (*delicta comissiva*), then by passive action, i.e. by not doing or not reporting the acquired income (*delicta omissiva*), but also by concealing related data.

As for the prescribed criminal sanctions, the law provided cumulative penalties for the commission of the criminal offense of tax fraud, which means that it is mandatory by law to impose a fine on the perpetrator in addition to

imprisonment. Furthermore, the amount of the prescribed penalty also depends on the amount of the obligation payment which is avoided. In the first case, if the amount of the obligation for which the payment is avoided, exceeds one million dinars, it is considered a fundamental form of the criminal offense of tax fraud, for which the law, in addition to a fine, provided and prescribed a prison sentence of one to five years (CC RS, Sl. glasnik RS, No. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19). In the event that the amount of the avoided obligation exceeds the amount of five million dinars, it is the first qualified form of the criminal offense of tax fraud for which the law also provides a cumulative penalty, a fine with a more severe prison sentence ranging from two to eight years (RS CC, Official Gazette of RS, No. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19). When the amount of the obligation for which the payment is avoided exceeds fifteen million dinars, it would be considered as the second form of the criminal act of tax fraud. Considering the extremely large acquired property gain realized by the perpetrator of this criminal offense of tax crime, the law prescribed, in addition to a fine, the most severe imprisonment for a term of three to ten years (RS CC, Official Gazette of RS, No. 85/05, 88/05 – amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19).

When we compare the current and former CC RS/13, it is worth pointing out the distinction in relation to the legally prescribed punishment. The former CC RS/13 had, in addition to the basic form, two qualified forms of the criminal offense of tax fraud. However, the limits of the realized property gain for their execution were set lower. Thus, the basic form of tax fraud was considered in the case when the amount of the obligation for which the payment was avoided exceeded one hundred and fifty thousand dinars, and the qualified forms of the criminal offense of tax fraud was considered if the amount of the obligation exceeded one million and five hundred thousand dinars or seven million and five hundred thousand dinars (Criminal Code, Official Gazette of RS, No. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012 and 104/2013).

Although the legal description of the crime of tax fraud corresponds to the crime of *sui generis*, some theorists classify tax fraud as fraud because fraud causes harm to society as a whole (Stojanović, Perić, 2000, p. 244; Christmas, 2011, p. 165-182; Christmas, 2016, p. 263-279). Taxation reduces the taxpayer's disposable income, so taxpayers are challenged not to submit to different *modus operandi* variants in order to avoid the actual amount of tax payment in the case of mandatory declaration of acquired income (Božić, Dimić, 2020, p. 595-610).

3. The analysis of cases

Tables No.1-3. shows the number of reported, accused and convicted persons for the criminal offense of Tax Fraud under Article 225. during the last five years (from 2014 to 2018) of the Criminal Code of the Republic of Serbia, in relation to gender, criminal charges were rejected, investigations were suspended and indictments were filed, and convictions, rejections and acquittals were passed, as well as prison sentences.

Quite a large number of reports and charges have been filed in the observed five-year period, with a convictions rate of 50-60% for the reported period.

Table No. 1. *Reports for the criminal offense Art. 225. Tax fraud from 2014 to 2018.*

	2014	**2015**	**2016**	**2017**	**2018**
REPORTS	712	715	734	649	967
MEN	602	633	615	555	823
WOMEN	110	82	119	94	144
CRIMINAL REPORT DISMISSED	341	341	367	309	554
INVESTIGATION SUSPENDED	12	24	21	16	11
INDICTMENT ISSUED	357	350	339	318	384
UNKNOWN PERPRETRATORS	2	_	3	6	18
INVESTIGATION INTERRUPTED	_	_	4	_	_

Source: https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-uciniоci-krivicnih-dela/

The last year of the observed period, had the largest number of reports for the criminal offense of tax fraud (918), of which 17.50% (144) were women and 82.50% (823) were men. In 2017, 649 filed criminal charges was recorded, of which 13.94% (94) were women and 83.50% (555) were men. The highest number of reports filed against women as perpetrators of the crime of tax evasion was in 2016 and amounted to 19.35% (119) compared to 80.65% (615) of reported men in the same year. We can conclude that the crime of tax fraud, according to the number of filed criminal charges, is primarily committed by men. The situation is similar with regard to the gender of the persons against whom charged were brought. So in 2014, the total number of women accused of tax fraud was 13.20% (104), and men 86.80% (684). In 2015, the number of defendants with 15.18% (118) women and 84.82% (660) men was very similar to the previously observed year. The highest number of accused women was recorded in 2017, when 16.52% (91) of indictments were filed against women as perpetrators of tax fraud, while 83.48% (460) were men, so that this trend in 2018 would be equalized again. We have a very similar situation with regard to convictions, as far as the gender of the perpetrators of tax fraud is concerned. In 2014, 12.75% (51) women and 87.25% (349) men were convicted, which represents the year with the least recorded number of women as perpetrators of this type of economic crime in the observed period, while 2017 with 17.86 % (70) of women, is the year with the greatest number of women as convicted perpetrators of tax fraud in the mentioned analyzed period.

Table No. 2. *Accusations for the criminal offense Art. 225. Tax fraud from 2014 to 2018.*

	2014	**2015**	**2016**	**2017**	**2018**
ACCUSATIONS	788	778	643	551	417
MEN	684	660	565	460	361
WOMEN	104	118	78	91	56
EXAMINATION OF THE ACCUSATION ACT / REJECTION	–	25	6	7	5

REJECTION OF THEACCUSATIONS DURING OR AFTER THE MAIN HEARING	–	–	1	1	–
SUSPENSION OF PROCEDURE	140	85	74	40	50
CONVICTION	400	449	419	392	266
DISMISSAL / REJECTION	152	130	97	58	42
ACQUITTAL	96	88	46	52	54
SECURITY MEASURE IMPOSED	–	1	–	1	–

Source: https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-uciniocikrivicnih-dela/

In relation to the outcome of the filed criminal charges, the proceedings generally end with either an indictment or a dismissal of the criminal charges, while there are very few cases in which the investigation is suspended. Thus, in 2018, as far as known perpetrators are concerned, 57.32% (544) of criminal charges were rejected, while in 1.16% (11) of filed criminal charges the investigation was suspended, and in 40.46% (384) indictments were filed. A slightly higher number of filed indictments was recorded in the previous year of the analyzed period, so in 2014. 50.14% (357) indictments were filed, in 2015. 48.95% (350), in 2016. 43.19% (339) and in 2017, 49.00% (318) of the charges. If we look at the relationship between convictions, denials and acquittals, the greatest number cases certainly end in a conviction. In 2014, that ratio was 61.73% (400) convictions, 23.46% (152) dismissals and 14.81% (96) acquittals. Slightly more convictions were recorded in 2015, 67.32% (449), with a correspondingly slightly lower number of dismissals 19.50% (130) and 13.20% (88) acquittals. An exceptional increase in the number of convictions was recorded in 2016, when the number of convictions almost exceeded three quarters of all cases, 74.56% (419), while the number of acquittals was very low and amounted to only 8.19% (46). A similar trend continued in 2017, with 78.09% (392) of convictions and 10.36% (52) of acquittals, while 11.55% (58) were dismissals, as in 2018, with 73.48% (266) of convictions and 14.92% (54) of acquittals, and 11.60% (42) of dismissals.

Table No. 3. *Convictions for the criminal offense Art. 225. Tax fraud from 2014 to 2018*

	2014	2015	2016	2017	2018
CONVICTIONS	400	449	419	392	266
MEN	349	378	368	322	228
WOMEN	51	71	51	70	38
SENTENCED TO PRISON	119	69	73	72	50

Source: https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/

In relation to convictions, in the observed five-year period, the courts in the initial years imposed a noticeable number of prison sentences, so in 2014. 29.75% (119) of the cases resulted in the imposition of prison sentences, while in 2015 this number decreased by half and amounted to only 15.37% (69) of the imposition of prison sentences in relation to other sentences. In the last year of the analyzed period, there was 18.80% (50) of the cases resulted in the imposition of prison sentences, if we considered all convictions for the criminal offense of tax fraud in 2018.

4. Critical review of the latest positive legal solutions and some proposals *de lege ferenda*

a. The amount of unpaid tax and timeline failure to comply with tax liability-effects on tax discipline

The amount of tax evaded is an objective condition of incrimination. For the existence of the criminal offense of tax fraud, it is necessary that the amount of unpaid tax exceeds the amount prescribed by law. If the amount of unpaid tax does not exceed that amount, the active or passive activities, which are part of this criminal offense, are not an element of the criminal offense. In that case, they can only represent a tax offense, for which misdemeanor penalties apply. The object of criminal protection in this crime is a tax liability. Considering that the content of the tax obligation is regulated by non-criminal regulations (tax laws), this criminal offense has a blanket character (Popović, 2003, p. 246). The tax liability, according to the tax legislation, is the duty of the taxpayer to pay the determined tax under the conditions prescribed by the

tax laws. The taxpayer is responsible for the fulfillment of the tax obligation from the moment when the prescibed facts, for which the tax law creates a tax liability, come into force (Law on Tax Procedure and Tax Administration, Official Gazette of RS, No. 80/02, 84/02, 79/03, 55/04, 61/05, 85/05, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108 / 13, 68/14, 105/14, 91/14, 112/15, 15/16, 108/16 and 30/18). The tax liability arises when an event occurs in real life that can be subsumed under the legal description of the tax factual situation (Popović, 2003, p. 33). The moment of occurrence of the tax liability, as well as the deadline within which the taxpayer will be obliged to pay the tax, is prescribed by law for each form of tax. For example, in the case of payroll taxes, the payer of the salary will be obliged to calculate and pay the tax on the payment accounts of the tax administration during each individual pay period.

In order to correctly determine the amount of unpaid tax, it is important to correctly define the framework of the time period in which the action is taken, which has the characteristics of the criminal offense of tax fraud. According to previous court practice, it was a period of one calendar or tax year. In order for this act to be considered as an offense, it was necessary that the prescribed amount of evaded tax represents the amount in one calendar (business, i.e. tax) year, where it is irrelevant as to the amount of evaded tax per payment document (Jovašević, 2016, 103). This attitude dates back to the time of the existence of such a system of public revenues, which did not even have the outlines of this existing tax system, the introduction of which began in the 1990s, as part of the general economic reform. The new case law, however, defines a difference, depending on the type of tax.

According to the legal position taken by the Supreme Court of Cassation, the act of committing the criminal offense of tax fraud under Art. 228 paragraph 1 of the Criminal Code of Serbia, as a tax liability for which the payment is avoided, which is a legal feature of the crime, is observed within a period of one calendar or fiscal year, and cannot collect individual amounts of tax liabilities for which the payment is avoided during the period of two years (*Judgment of the Supreme Court of Cassation Kzz196 / 2016 of 14 April 2016*).

The method of determining the time period relevant from the aspect of tax avoidance, in the case of value added tax (VAT) is different. According to the existing legal provisions, VAT calculation and payment is performed in the accounting period of one to three months, depending on the amount of total turnover that the taxpayer realized during the previous 12 months (Law on Value Added Tax, Official Gazette of RS, no. 84/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014, 68/2014, 142/2014, 5/2015, 83/2015, 5/2016, 108/2016, 7/2017, 113/2017, 13/2017, 13/2018, 30/2018, 4/2019, 72/2019, 8/2020). The Supreme Court of Cassation has taken the position that tax liabilities for which the payment is avoided are not observed in the time period of one fiscal, but within the period of one quarter (*Judgment of the Supreme Court of Cassation Kzz 942/2018 of 19.09.2018*).

Within the amendment of the Criminal Code of Serbia of 2019, the amount of unpaid tax which appears as a condition of incrimination was increased. The reasons for that were mentioned in the professional public included the need to relieve the work of the services responsible for detecting tax crimes and courts, as well as to reduce administrative and court costs.

There is no doubt that raising the amount of unpaid tax which is a criminal offense of tax fraud, will contribute to relieving the work of the competent authorities, and even reduce costs. However, raising this limit to a much higher level (bearing in mind that by 2018 that amount was 150,000 dinars, and in 2018 it was increased to 500,000 dinars, and to 1,000,000 dinars in 2019) raises the question of tax discipline in Serbia, which has already been quite weak.

Such a large increase in the limit for tax fraud will have the consequence that those taxpayers, who had unpaid taxes less than the limit of one million dinars, even though their actions had elements of the criminal act of tax fraud, would not be criminally responsible nor prosecuted. Repressive measures will be applied to them, but in the form of misdemeanor punishments and protective measures, which are by their nature milder than criminal sanctions. On the other hand, considering the time frame for unpaid taxes in the context of moving the lower limit of the amount of unpaid taxes also does not lead to a tightening of penal policy. Since individual amounts of tax liabilities from different tax periods cannot be collected, there are many taxpayers who would reach the limit for tax fraud if the amount of their unpaid taxes were observed in the period of the calendar, i.e. tax year. Breaking the amount of unpaid taxes into shorter tax periods (for example, with VAT per monthly or quarterly), leads to the situation that these tax evaders will remain outside criminal responsibility.

The prosecution and punishment of the crime of tax fraud, including imprisonment and the imposition of fines, should aim, not only at punishing persons for tax fraud, but also at achieving special prevention, deterring persons from such criminal acts in the future. Increasing the lower limit for tax fraud, which will leave many tax evaders out of criminal responsibility, does not contribute to special prevention. The imposition of misdemeanor penalties should not be neglected from the aspect of special prevention, but criminal sanctions will certainly have a greater effect, because the threat of imprisonment and a fine will be more effective in deterring tax evaders from committing that act in the future. On the other hand, the application of adequate repressive measures is also important from the aspect of general prevention. Prosecuting and adequately punishing tax evaders produces a psychological effect on other taxpayers, as it is a warning to them to perform their tax obligations properly and in a timely manner. If we keep in mind that the continuous provision of funds necessary for financing the vital functions of the state depends on the orderly and timely payment of taxes and other fiscal public revenues, it is clear that this is a criminal act with a high degree of social danger.

Therefore, in addition to preventive measures, which seek to influence the voluntary compliance with the tax obligation, an appropriate penal policy is necessary.

b. Actual competence of special departments for suppression of corruption

The fight against the most serious forms of crime, such as corruption, economic crime (with an emphasis on tax), in conjunction with the activities of organized criminal formations, is by no means an easy task set before the competent state authorities. The complexity and severity of these categories of crimes, necessitates the need to devise such a strategy that is layered and complex. A necessary precondition for the adoption of normative acts is to form an awareness at the state level about the social danger of the mentioned criminal offenses. After this initial step is made, the possibility of acting in the normative and practical field opens up. Unfortunately, only recently, from 2000 to 2003, after a ten-year period of the blooming and flourishing of organized crime (Grubač, 2009, p. 704-705), did The Republic of Serbia begin to react in the normative and practical field. Simultaneous with the adoption of the first legal acts that marked the beginning of the fight against organized crime, there is an awareness of the social danger and the need to combat corruption. From that moment on, it took a decade and a half to start modernizing measures in the direction of fighting corruption, the main feature of which is the formation and specialization of special bodies exclusively for the purpose of prosecuting perpetrators of corrupt crimes. The newly established organizational network of courts is characterized by the distribution of real and local jurisdiction between the Prosecutor's Office for Organized Crime and the Special Court, and, on the other side, special anti-corruption departments that extend to four regional centers: Belgrade, Novi Sad, Nis and Kraljevo. The competence of these bodies is regulated by the Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime, Terrorism and Corruption from 2016. Its implementation began on March 1, 2018 (Erceg, Cenerić, Bošković, Đorđević, Nenadić, Mujović, 2018, p. 80).

The actual competence of special departments is specific, because in addition to classic corruption crimes, it includes existing and newly introduced crimes against the economy. The amendments to the Criminal Code of the Republic of Serbia of 2016 introduced eight new criminal offenses against the economy, which include illegal behavior that relates exclusively to economic corruption. In this way, the range of criminal offenses against the economy has been expanded, and the primary goal of these novelties is to strengthen the fight against corruption in the economic sector such as fraud in economic activity, embezzlement in economic activity, abuse of representation in economic activity performing economic activity, abuse in the privatization process, receiving bribes in performing economic activities, giving bribes in performing

economic activities (Law on Amendments to the Criminal Code, Official Gazette of RS, 94/2016). As one of the most frequently committed crime among acts against the economy, and as one of the forms of organized crime, it carries a high degree of social danger, tax fraud is ignored.

In accordance with Art. 3. Law on Organization and Competences of State Bodies in Suppression of Organized Crime, Terrorism and Corruption, (Law on Organization and Competences of State Bodies in Suppression of Organized Crime, Terrorism and Corruption - LOCSB OCTC, Official Gazette of RS, 94/2016 and 87/2018 - other law), the Special Prosecutor's Office for Organized Crime, Special Department of the High Court in Belgrade, Special Department of the Court of Appeals in Belgrade, as of March 1, 2018, is competent to act in cases of 1) criminal acts of organized crime; 2) the criminal offense of murdering the representative of the highest state bodies (Article 310 of Criminal Code of the RS) and the criminal offense of armed rebellion (Article 311 of the RS Criminal Code); 3) criminal offense of terrorism (Article 391 of the RS Criminal Code), criminal offense of public incitement to commit terrorist acts (Article 391a of the RS Criminal Code); 4) criminal offense of recruitment and training for terrorist acts (Article 391b of the RS Criminal Code); 5) criminal offense of use of a deadly device 391c of the CCRS); 7) the criminal offense of destruction and damage to a nuclear facility (Article 391g of the CCRS); 8) the criminal offense of terrorist financing (Article 393 of the CCRS) and the criminal offense of terrorist association (Article 393a of the CCRS); 9) criminal offense of terrorism (Article 391 of the Criminal Code); 10) criminal offense of public incitement to commit terrorist acts (Article 391a of the Criminal Code), criminal offense of recruitment and training for terrorist acts (Article 391b of the Criminal Code); 11) criminal offense of use of a deadly device 391c of the CCRS);12) the criminal offense of destruction and damage to a nuclear facility (Article 391g of the CCRS); 13) the criminal offense of terrorist financing (Article 393 of the CC); and 14) the criminal offense of terrorist association (Article 393a of the CC); only if the value of the property benefit exceeds 200,000,000 dinars, or if the value of the public procurement exceeds 800,000,000 dinars; 15) Criminal offenses against state bodies, criminal offenses against the judiciary, if committed in connection with any of the aforementioned criminal offenses; 16) The criminal offense of money laundering (Article 245 of the RS Criminal Code), if the property that is the subject of money laundering originates from the aforementioned criminal offenses. One of the things to notice from the aforementioned is that the scope of work of special bodies which are at the very top of the newly established organizational network of courts, in addition to organized crime, includes other serious forms of crime, including corruption in the economy, i.e. crimes of high corruption. On the other hand, the newly formed special departments in Belgrade, Novi Sad, Nis and Kraljevo act in cases of criminal offenses against official duty and criminal offenses against the economy, when the perpetrator has acquired property worth up to 200,000,000 dinars, or if the value of public procurement does not exceed the amount of 800,000,000 dinars (LOCSB

OCTC, Official Gazette of RS, 94/2016 and 87/2018 - other law). So, these are so-called minor or ordinary forms of abuse. It is indisputable that the redistribution of actual jurisdiction was carried out according to the type and gravity of the criminal offenses, as required by the rules of criminal procedure legislation. The question is, however, whether the fight against corruption is comprehensive, i.e. whether, in order to achieve strategic goals, it includes all criminal offenses the nature of which requires adequate prosecution, especially if they are in any way related to corruption. The mentioned topic will be, from a critical angle, the subject of analysis in the forthcoming text.

c. Tax fraud and suppression of corruption

Since corruption is treated as the most serious type of economic crime (Bošković, 1998, p. 63), we can say that tax fraud is closely related to corrupt crimes. Based on the analysis of the provisions of the Law on Organization and Competences of State Bodies in Combating Organized Crime, Terrorism and Corruption, it is noticeable that tax fraud is not included in the scope of work of special departments for combating corruption, both in regional centers and before the Special Court. In addition to classical crimes of corruption, such as accepting bribes, giving bribes, and others, special departments are actually responsible for crimes against the economy, existing and newly introduced. The newly introduced crimes against the economy are in fact corruption crimes in the economy. However, the scope of work of special departments also includes criminal offenses that have been known in the criminal legislation for many years, such as smuggling, money laundering. The most severe form of tax evasion, that is tax fraud, has been omitted, which could lead to a situation in which tax evaders will not be treated in the procedural sense in the same way as perpetrators of the mentioned crimes under the jurisdiction of special anti-corruption jurisdictions. This applies to both ordinary and more serious forms of abuse, because tax fraud, when we have in mind both basic and more serious forms, can meet the conditions that are otherwise required for prosecuting perpetrators of crimes against the economy before special departments for combating corruption, as well as for their prosecution before the Special Prosecutor's Office and the Special Court.

The newly established organizational network of courts functions with the help of well-structured special departments, which consist of organizational units for the fight against corruption, financial forensics, liaison officers and strike groups (Krstić, 2017, p. 79). The purpose of such functioning is to make greater efforts and pay more attention to the detection of and finding evidence for the mentioned criminal offenses. These are professionally trained persons who have undergone training at the Judicial Academy aimed at detecting and proving intertwined financial transactions. Specialized teams significantly contribute to a more efficient investigation, which, together with the collected evidence, can affect the qualitative and quantitative component of criminal

proceedings. Therefore, the inclusion of tax fraud in the scope of work of special departments, along with newly formed expert teams, financial forensics and strike groups, would affect its more efficient detection and prosecution. The denial of evasion is difficult to prove, especially when it is one of the segments of organized criminal activity. In this regard, the establishment of phantom companies is important. The goal of their establishment can be twofold, tax fraud, or concealment of income gained from tax fraud. In the second case, tax fraud is an offense that happens first, and money laundering is the offense that comes as a consequence of the tax fraud offense. The transition of cash flows from the illegal to the legal sphere, and especially integration as the third stage of money laundering, is very difficult to prove. Among the criminal offenses for which special departments act, there is also the criminal offense of money laundering, if the illegal origin of money originates from one of the criminal offenses for which special departments are otherwise competent, including those against the economy. On the international level, in order to fight tax crime more effectively, more attention should be paid to tax evasion as a predicate offense of money laundering (International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, (2012-2019), p. 115-116). The reason lies in the expansion of tax fraud and tax crime in general, and the greater probability that illegally obtained income by tax fraud can really be the subject of a consequential crime i.e. money laundering. If we insist that tax fraud is an offense that precedes the offense of money laundering, and on the other hand money laundering falls within the scope of work of special anti-corruption departments, it is unacceptable to ignore tax fraud in the context of fighting against corruption. In addition, corrupt connections of members of criminal organizations with representatives of state bodies, including tax authorities, is one of the main features of organized criminal activity, thanks to which it ultimately survives and is tenacious. Through such chain of activities, tax fraud can very well be linked to corruption. Taking into consideration the issue of tax fraud in the systematic fight against corruption is not only a question of its more successful prosecution, but also a question of equal treatment of criminal acts that have an economic system as an object of attack, with special emphasis on tax crimes Avoiding taxes is manifested in the most severe form through tax evasion, so it is necessary to give it equal, if not greater importance in relation to related crimes, in the creation and implementation of a strategy for the fight against corruption.

5. Conclusion

The data obtained on the basis of a detailed statistical analysis for the five-year period (2014-2018), support the conclusion that the criminal offense of tax fraud is frequent, both in terms of filed criminal charges and in terms of convictions. The frequency, as well as the fact that this is the most difficult form of tax fraud, are the reasons why this criminal act is given great importance, and occupies an important place in the substantive and procedural legislative

framework. The amended Criminal Code of the RS envisages the amount of one million dinars as the lower limit of the amount of evaded tax, instead of the former limit of five hundred thousand dinars, and if we look at the criminal material provisions backwards, that amount as an objective condition of incrimination was even lower. The newly established border should show in the coming period whether the number of prosecuted tax evaders will be higher or lower compared to the previous period in which the objective condition of incrimination was lower. It is expected that this number will be significantly lower, even when we talk about the number of filed criminal charges, bearing in mind that a larger number of taxpayers may evade taxes in a smaller amount (less than one million dinars), and if we keep in mind the position taken in the case law on the time frame for non-compliance with the tax liability, it is not expected that even a fundamental form of tax fraud can be realized in a short period of time (one month or a quarter). In other words, the amended legal solutions are expected to negatively affect future judicial practice, that is, judicial practice regarding the prosecution of tax evaders will be significantly scarce.

Considering the issue of including tax fraud in the systemic fight against corruption, is not only a question of its more successful prosecution, but also a question of equal treatment of crimes that have an economic system as an object of attack, with special emphasis on tax crimes (smuggling, for example, is a tax crime included in the Criminal Code RS, as well as tax evasion). The introduction of new crimes against the economy is undoubtedly of great importance for the disclosure of financial transactions of a corrupt nature in the economic sector. The great importance of the formation of specialized departments for the suppression of corruption is indisputable. These are the departments where staff had to undergo special training, in order for the fight against corruption to make sense at all. It remains unclear, however, why a large gap has been left in the context of the actual competence of the special anti-corruption departments. This dilemma leads us in the direction of concluding that the creators of the anti-corruption strategy cannot find a justification for such an omission. Tax fraud is manifested in the most severe form through tax evasion, so it is necessary not only to include it in the scope of work of special departments, but to give it equal if not greater importance in relation to related crimes, in creating and implementing anti-corruption strategy.

References[1]

Bošković, M. (1998). Organizovani kriminalitet-kriminološki i kriminalistički aspekti [Organized crime-criminological and criminalistic aspects]. Beograd, Policijska akademija.

Božić, V. (2011). Prijevara kao kazneno djelo protiv sigurnosti platnog prometa i poslovanja [Fraud as a criminal act against security of payment operations and business activities]. Zbornik radova Pravnog fakulteta u Splitu, 48 (01), 165-182.

Božić, V. (2016). Gospodarska kaznena djela u hrvatskom kaznenom zakonodavstvu s posebnim osvrtom na prijevaru u gospodarskom poslovanju kao najučestalijim gospodarskim kaznenim djelom u sudskoj praksi [Economic criminal offenses in Croatian criminal legislation with special reference to fraud in business operations as the most common economic criminal offense in court practice]. Srpsko udruženje za krivičnopravnu teoriju i praksu, Pravosudna akademija i Institut za uporedno pravo, Zbornik radova - Evropske integracije i kazneno zakonodavstvo (poglavlje 23 - norma, praksa i mere harmonizacije), Zlatibor, 263-279.

Božić, V., Dimić, S. (2020). Poreski obveznik u ulozi korisnika poreskih usluga kao prevencija poreskog kriminaliteta [Taxpayer in the role of users of tax services as a prevention of tax crime]. Zbornik Pravnog fakulteta u Kragujevcu, Usluge i prava korisnika, 595-610.

Erceg, V., Cenerić, I., Bošković, M., Đorđević, S., Nenadić, S., Mujović, H. (2018). Alternativni izveštaj o sprovođenju akcionog plana za poglavlje 23: Borba protiv korupcije, pravosuđe i osnovna prava [Alternative Report on the Implementation of the Action Plan for Chapter 23: Fight against Corruption, Judiciary and Fundamental Rights]. Beograd, Beogradski centar za bezbedonosnu politiku.

Grubač, M. (2009). Organizovani kriminal u Srbiji [Organized crime in Serbia]. Zbornik radova Pravnog fakulteta u Splitu, 4, 701-709.

International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. (2012-2019). Paris, FATF.

Jovašević, D. (2016). Poreska krivična dela [Tax offenses]. Beograd, Institut za kriminološka i sociološka istraživanja.

[1] The references cited in this paper, were translated by the authors.

Judgment of the Supreme Court of Cassation Kzz 942/2018 of 19.09.2018. Retrieved 24 August 2020 from https://www.vk.sud.rs/sr-lat/kzz-9422018-kd-poreska-utaja-fiskalna-godina-241-22-12.

Judgment of the Supreme Court of Cassation Kzz196 / 2016 of 14 April 2016. Retrieved 25 August 2020 from https://www.vk.sud.rs/sr-lat/kzz-1962016.

Krstić, G. (2017). Specijalizacija državnih organa u suzbijanju organizovanog kriminala, terorizma i korupcije [Specialization of state bodies in the suppression of organized crime, terrorism and corruption]. NBP - Žurnal za kriminalistiku i pravo, 3, 67-88.

Criminal Code, Official Gazette of RS, Art. 229., No. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012 and 104/2013.http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2769-16%20-Lat..pdf. Retrieved 1 September 2020.

Law on Amendments to the Criminal Code, Official Gazette of RS, 94/2016.

Criminal Code, Official Gazette of RS, Art. 225, Para..1, Para. 2. Para. 3., No. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13,108/14, 94/16 and 35/19.

Law on Organization and Competences of State Bodies in Suppression of Organized Crime, Terrorism and Corruption - LOCSB OCTC, Official Gazette of RS, Art. 3., 94/2016 and 87/2018 - other law.

Law on Tax Procedure and Tax Administration, Official Gazette of RS, 80/02, 84/02, 79/03, 55/04, 61/05, 85/05, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108 / 13, 68/14, 105/14, 91/14, 112/15, 15/16, 108/16 and 30/18.

Law on Value Added Tax, Official Gazette of RS, Art, 18., Para. 1 and Para. 2., no. 84/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014, 68/2014, 142/2014, 5/2015, 83/2015, 5/2016, 108/2016, 7/2017, 113/2017, 13/2017, 13/2018, 30/2018, 4/2019, 72/2019, 8/2020.

Popović, D. (2003). Komentar Zakona o poreskom postupku i poreskoj administraciji [Commentary on the Law on Tax Procedure and Tax Administration]. Cekos in.

Republic Statistical Office of RS. (2015). Adult perpetrators of crimes in the Republic of Serbia in 2014, reports, charges and convictions, Press release, Belgrade, Bulletin No. 603. Retrieved 12 August 2020 from https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/.

Republic Statistical Office of RS. (2016). Adult perpetrators of crimes in the Republic of Serbia in 2015, reports, charges and convictions, Press

release, Belgrade, Bulletin No. 617. Retrieved 16 August 2020 from https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/.

Republic Statistical Office of RS. (2017). Adult perpetrators of criminal offenses in the Republic of Serbia in 2016, reports, charges and convictions, Press release, Belgrade, Bulletin No. 629. Retrived 14 September 2020 from https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/.

Republic Statistical Office of RS. (2018). Adult perpetrators of crimes in the Republic of Serbia in 2017, reports, charges and convictions, Press release, Belgrade, Bulletin No. 643. Retrieved 18 September 2020 from https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/.

Republic Statistical Office of RS. (2019). Adult perpetrators of criminal offenses in the Republic of Serbia in 2018, reports, charges and convictions, Press release, Belgrade, Bulletin No. 653. Retrieved 20 September 2020 from https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/.

Stojanović, Z., Perić, O. (2000). Krivično pravo, Posebni deo [Criminal Law, Special Part]. Beograd, Pravna knjiga.

Sučević, R. (1997). Utaja poreza i drugih davanja [Evasion of taxes and other benefits]. Pravo i porezi, 3, 52-55.