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ACCOUNTING BOOKS AS EVIDENCE IN TAX AND CRIMINAL PROCEEDINGS OF THE REPUBLIC OF SERBIA

Suzana DIMIĆ

Associate professor, Faculty of Law, University of Priština,
Kosovska Mitrovica
E-mail: suzana.dimic@pr.ac.rs

Mirjana DJUKIĆ

Associate professor, Faculty of Law, University of Priština,
Kosovska Mitrovica
E-mail: mirjana.djukic@pr.ac.rs

Abstract

The authors' focus is directed toward the analysis of one frequently used means of evidence, as well as a comparative analysis of this means of evidence in tax and criminal proceedings. After a brief overview of the taxpayers' obligation to keep accounting books, special attention is devoted to the role of accounting books as evidence, first in tax proceedings and then in criminal proceedings.The importance of business books from the aspect of tax and criminal proceedings is reflected in the fact that in the event of a lack of evidence of the existence of the criminal offense of tax evasion, the court will issue an acquittal. Namely, there is a possibility that during the tax proceedings, omissions may occur that relate to an inadequately determined amount of tax liability or inadequate documentation used when determining the tax liability. In such cases, an expert examination of business books is a crucial evidentiary measure for convicting the perpetrator of the criminal offense of tax evasion. Irregularities in the keeping of business books during the tax proceedings may lead to an acquittal of the tax evader due to a lack of evidence.

For certain types of taxes, as well as for particular categories of taxpayers, accounting books play a key role in determining their tax liability. This raises the question of whether the role of this means of evidence in tax and criminal proceedings has been adequately regulated by the applicable procedural laws. In response to this

question, the authors, on the basis of the results obtained from their research, will propose a *de lege ferenda* solution.

Keywords: *tax proceedings, tax audit, accounting books, criminal proceedings, evidence collection*

1. Introduction

The proper and timely fulfillment of tax liabilities largely depends on taxpayers themselves and their attitude toward paying taxes. Since taxation reduces the disposable income of natural persons, or the profits of business entities, an accompanying phenomenon of the taxation process is taxpayer behavior aimed at partially or completely avoiding tax liabilities. When taxpayers violate tax regulations through unlawful actions, tax offenses occur, among which tax crimes represent the most serious form. Under normal circumstances, assuming that the taxpayer will voluntarily pay taxes, it is necessary to determine the amount of tax liability. This is achieved in tax proceedings conducted by the competent tax administration.

Bearing in mind that the evidentiary process in tax crimes is by no means an easy path to the final conclusion of criminal proceedings, since it depends on the type and manner of the tax crime, in addition to the skills and professional knowledge of the participants, and especially knowledge of criminal proceedings, it is necessary that certain evidentiary actions and items of evidence be firmly and unequivocally established in the legal norms. The authors approached the analysis of the subject matter using normative and comparative methods, and in the conclusion provided certain *de lege ferenda* proposals aimed at overcoming the observed shortcomings.

2. The Importance of Accounting Books from the Perspective of Tax Proceedings

2.1. The Obligation to Keep Accounting Books

In tax proceedings, tax authorities hold broad powers, which is logical given the importance of realizing the public interest. The nature of the tax and legal relationship is largely influenced by the necessity of protecting the state's fiscal interests, which consist in the timely and proper fulfillment of tax obligations by taxpayers. It is therefore understandable that obligations take precedence over the rights of taxpayers. However, in order to prevent unlawful and improper conduct by tax authorities, modern states, through their domestic legislation, as well as through certain measures and activities at the international level, establish taxpayers' rights as a balance to their obligations. The recognition and guarantee of taxpayers' rights should strengthen their position within the tax system (Andjelković, 2008, p. 164). The principal obligation of taxpayers is the timely payment of taxes. All other obligations imposed on taxpayers are conditioned by this main obligation. Among the list of obligations

prescribed by the Serbian legislature is also the obligation to keep prescribed accounting books and records for taxation purposes (Law on Tax Procedure and Tax Administration, Official Gazette of the Republic of Serbia, 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, 30/18, 95/18, 86/19, 144/20, 96/21, 138/22 and 94/24 - LTPTA, Art. 25 para. 1 item 4).

Accounting books represent a type of record that taxpayers keep in accordance with the activity they perform, in the manner prescribed by law. Proper keeping of accounting books ensures reliable data on the business results of the taxpayer. According to our tax legislation, this obligation is imposed on companies and other legal entities, as well as on taxpayers who generate income from independent activity (entrepreneurs). Companies and other legal entities keep accounting books according to the double-entry bookkeeping system, in compliance with applicable accounting regulations. Entrepreneurs may keep accounting books either under the double-entry bookkeeping system or under the single-entry bookkeeping system. In the double-entry bookkeeping system, the following are kept: the income ledger, the expense ledger, and the ledger of fixed assets and small inventory. Entrepreneurs who pay tax on income from independent activity in a lump-sum determined amount (lump-sum taxed entrepreneurs) keep only the sales and purchase ledger. The double-entry bookkeeping system enables the accounting monitoring of the entire assets and business processes of the business entity. Accounting regulations prescribe in detail the keeping of the following accounting books: the journal, the general ledger, and auxiliary ledgers. The journal is an accounting book in which business changes are recorded chronologically. It may consist of a single book or several accounting books intended for business changes of certain items. The general ledger consists of accounts that systematically cover the balances and changes in assets, liabilities, equity, income, and expenses. It represents the basis for the preparation of financial statements. Auxiliary ledgers include analytical records that legal entities and entrepreneurs keep separately for different types of assets and liabilities, such as intangible assets, real estate, plants and equipment, long-term financial placements, etc. There are also other auxiliary ledgers, such as the cash journal, into which business changes arising from cash and other values kept in the cash register are recorded (Law on Accounting, Official Gazette of the Republic of Serbia, 73/2019, 44/2021 – LA, Art. 12 paras. 4, 5, 6, 8, 9). On the basis of accounting books, legal entities and entrepreneurs (except for those taxed on a lump-sum basis) prepare financial statements, the balance sheet and the income statement. While the income statement shows business success, for taxation the relevant document is the tax balance. Taxable profit, which constitutes the tax base, is determined by adjusting the profit from the income statement. This is achieved by aligning the revenues and expenses from the income statement pursuant to the provisions of the law governing corporate income taxation (Law on Corporate Income Tax, Official Gazette of the Republic of Serbia, No. 25/01, 80/02, 43/03, 84704,

18/10, 101/11, 119/12, 47/13, 108/13, 68/14, 142/14, 91/15, 112/15, 113/17, 95/18, 86/19, 153/20, 118/21, 94/24 – LCIT, Art. 6–33).

2.2. Accounting Books as Evidence in Tax Proceedings

The determination of the tax liability, tax collection, as well as the control of tax assessment and collection, is carried out through a tax procedure. This is a legal procedure representing a special administrative procedure, for which specific rules are prescribed, differing from those of the general administrative procedure. The rules of the tax procedure, as prescribed by the applicable law (LTPTA), are *lex specialis* in relation to the rules of the general administrative procedure, (Law on General Administrative Procedure, Official Gazette of the Republic of Serbia 18/2016, 95/2018, 2/2023 - LGAP). The main part of the procedure that precedes the issuance of a decision in an administrative matter is the process of evidence collection (Tomic, 2015, p. 413). In a tax procedure, the tax authorities resolve the administrative tax matter by issuing a tax administrative act. In this context, the procedural act of evidence collection plays a key role. As in other legal proceedings, facts in a tax procedure are established based on evidence. The provisions of the applicable law stipulate that the following may be used as evidence: "tax return, tax balance sheet, accounting books and records, accounting statements held by the tax administration and collected from the taxpayer or a third party, witness statement, expert report, inspection, and any other means by which facts can be determined" (LTPTA, Art. 43, para. 2).

In addition to the types of evidence that may be used in the procedure, a key aspect of the evidence collection is determining which party, the state authority or the taxpayer, bears the burden of proof. In a tax procedure, this issue is resolved so that, as a rule, the burden of proof lies with the tax authority. The tax authority bears the burden of proving the facts on which the existence of the tax obligation is based. In contrast, the taxpayer bears the burden of proof only for establishing facts that affect the reduction or elimination of the tax (LTPTA, Art. 51, para. 1). Therefore, the taxpayer is required to prove only those facts that are in his favor when attempting to reduce or fully eliminate the tax liability. The tax authority, on the other hand, is responsible for establishing all facts relevant to the existence and amount of the tax liability. During the process of establishing the facts, the tax authority may request that the taxpayer or a third party provide documents and records for inspection and verification, which can be used as evidence in the tax procedure. The applicable law specifies that these include: accounting books and records, accounting statements, business documentation, and other documents and evidence. Regarding the place of inspection and verification of the aforementioned evidence, the legislature has allowed the tax authority to decide whether the taxpayer or a third party must submit the documents to the offices of the tax authority, providinge them electronically, or whether the inspection and verification will be conducted at the premises of the person required to provide them (LTPTA,

Art. 44, paras. 1 and 2). As in other legal proceedings, certain individuals are granted the right to withhold information, provide expert opinions, or refuse to present documents and items. The applicable law specifies which individuals may refuse to present accounting books and other records und under what conditions this refusal made be made. These individuals are divided into two groups. The first group consists of the taxpayer's family members, as defined by the law governing income tax.[1] The second group includes: clergy, lawyers, tax advisors, auditors, and doctors, but only regarding information that the taxpayer entrusted to them or that they obtained in their professional capacity related to the taxpayer's tax obligation. This also applies to their assistants and to persons participating in professional activities in preparation for a professional qualification. An exception to these rules applies to a person who, on behalf of the taxpayer, keeps documents, accounting books, and other records. This person may not refuse their presentation if the taxpayer would be obliged to present them had he kept them himself (LTPTA, Art. 46 para. 1 and 2, Art. 47 para. 1 and 2).

Analyzing the relevant provisions governing the use of accounting books in the evidence collection leads to the conclusion that the burden of proof lies with the tax authority, but the authority has the possibility to transfer the burden of obtaining evidence to the taxpayer, as the other party in the tax procedure, or even to a third party if the documentation is in their possession. In an administrative procedure, in the process of seeking material truth, the administrative body establishes the factual situation *ex officio*, applying the investigative principle. The purpose of the investigative principle remains the same, regardless of whether the procedure is initiated *ex officio* or at the request of a party (Milkov, Radošević, 2024, p. 522). The provisions of the law regulating tax procedures contain special rules compared to the general administrative procedure due to the specificity of the taxation process. Specifically, the determination of taxes represents a joint or individual activity of the tax authorities and taxpayers, aimed at assessing tax capacity and specifying the tax obligation (Andjelković, 2018, p. 134). Thus, the tax obligation is determined by the tax authority through the issuance of a tax decision, but for certain types of taxes and categories of taxpayers, self-assessment applies, whereby taxpayers themselves determine the amount of their tax obligation. In a tax procedure, two interests come into conflict. The first, the public interest, which consists of protection of the fiscal system, as the very purpose of the tax procedure is the determination and collection of taxes. The second, the need to protect the rights of the parties, since the taxpayer appears as the other party in the tax procedure. The taxpayer has a legal interest in ensuring that the existence of his tax obligation is determined and the amount of tax liability is assessed in a proper and lawful manner. From the perspective

[1] A family member, within the meaning of the Personal Income Tax Law, shall be considered to include: the spouse, parents, children, adoptee, and adoptive parent of the taxpayer (Personal Income Tax Law, 2025, Art. 10 para. 2).

of administrative procedure, the authority establishes the factual situation *ex officio*, in accordance with the investigative principle. In a tax procedure, the tax authority determines the tax liability by issuing a tax decision. Even in situations where self-assessment applies, during the subsequent tax control procedure, which follows the taxpayer's determination of his own tax liability, the tax authority is obliged to establish the material truth in the specific administrative tax matter. Therefore, the tax authority's role in the procedure of establishing facts based on the obtained evidence, including accounting books, is indisputable. However, the formulation upon which that the tax authority "may request" certain documents and records from the taxpayer or third parties remains imprecise. In this respect, it appears that the legislature, by using such vague language, has placed the taxpayer in a more uncertain position, as he is automatically the less protected party in the tax procedure. A party should be required to submit evidence, provide information, give statements, or appear in person before the authorities only when the law exceptionally requires it and when there are no other ways to establish the facts (Tomić, 2015, p. 430).

2.3. Evidence Collection in the Tax Control Procedure

The control of determining a tax liability is carried out by verifying the accuracy of the data provided by the taxpayer in the tax return. Tax control also includes checking the timeliness of tax payments to the appropriate payment accounts. Control can be conducted at the premises of the tax administration (so-called office control), where the tax return and the entire tax documentation are examined. For taxpayers who are required to maintain accounting books, the procedure includes a review of their financial statements, which are prepared based on the maintained business books. In this context, accurate and up-to-date bookkeeping is a prerequisite for correctly determining the tax liability. Improper bookkeeping may indicate the taxpayer's intention to evade tax payment. Therefore, if the tax administration identifies irregularities during the review of the tax return and accompanying documentation, it may order an on-site inspection at the taxpayer's business premises, at which point another type of audit takes place the field audit.

The legislature does not explicitly specify the evidence that may be used in the tax control procedure, as is done in the provisions on evidence collection in the tax procedure. However, according to the Opinion of the Ministry of Finance of the Republic of Serbia, all evidentiary means prescribed by the applicable law regulating the tax legal procedure may be used in the tax control procedure (Opinion Ministry of Finance, 2022. p. 83). In this context, during tax control, in order to verify the correctness, accuracy, and timeliness of tax calculation and payment, the accounting books and other records are inspected. If necessary, the tax inspector may seize accounting books, records, or other documentation until the completion of the tax control procedure. The inspector is obliged to issue a certificate to the taxpayer or the third party from whom the documentation was taken. If the taxpayer maintains accounting books and other

records on data processing devices, the tax inspector may, with a certificate, seize the device until the completion of the tax control (LTPTA, Art. 130, paras. 4 and 5).). However, the analysis of tax regulations raises the question of whether the legal gap in the provisions on the use of business books in the tax audit procedure can be filled with the opinion of the competent ministry. Legally, the opinion of the competent ministry does not have the force of law, because it represents an internal act that interprets legal regulations, and as such does not have binding legal force for individuals and legal entities. While in the provisions on evidence in tax proceedings the legislator acted completely correctly by explicitly mentioning business books, he did not do so in the provisions on tax audit. For taxpayers who are obliged to keep business books, tax audit is a key stage in the taxation procedure. This is when their financial statements are audited, on the basis of which they determined the amount of their tax obligations.

In addition to traditional tax control, there has recently been a modernization of the tax administration's approach based on a tax risk management strategy. Traditional tax control remains the primary source of obtaining information on taxpayers' business activities but has a limited scope. First, this is due to the increasing complexity of tax collection in modern business conditions, which take place not only within national borders but also through cross-border transactions and the establishment of financial and commercial relationships in the global market. Moreover, tax inspections are not conducted continuously, which benefits non-compliant taxpayers and contributes to the creation of the tax gap (Andjelković, 2016, p. 162). To properly determine a taxpayer's economic capacity and assess the amount of his tax liability, tax administrations apply certain techniques for monitoring taxpayer behavior. Traditional tax control focuses on detecting irregularities in already submitted tax returns as well as in the accounting books maintained by taxpayers. Compliance with tax regulations requires not only the application of tax provisions, but also "enhanced" relations with taxpayers. Tax authorities have developed more sophisticated risk management tools, grouping taxpayers into high-risk categories and applying a "lighter touch" audit for those classified as low-risk taxpayers (Owens, 2012, p. 516). Modern tax administrations adapt their operational models under the influence of factors such as technological advancement and digitalization across all domains. In an effort to increase efficiency and effectiveness, tax administrations continuously explore possibilities for adopting approaches that would encourage taxpayers' voluntary compliance with their tax liabilities. In this regard, tax administrations have enabled online submission of tax returns, online tax payments, as well as pre-filled or partially pre-filled tax returns. Technological innovations are thus applied to assess the accuracy and completeness of the data that taxpayers report when submitting tax returns and the required documentation. Although this often occurs through tax control, there is increasing use of automated electronic checks and cross-referencing of taxpayer data (OECD, 2024, p. 22).

If, during a tax control, the tax inspector determines that there is a basis for suspicion that a tax criminal offense has been committed, he prepares a report and submits it, along with the collected evidence, to the competent head of the tax administration. He is then obliged to forward it to the director of the tax police within 24 hours. However, if the control procedure reveals grounds to suspect a misdemeanor, the tax administration will submit a request to initiate misdemeanor proceedings to the competent misdemeanor court. In cases involving tax criminal offenses, there is an intersection of tax and criminal procedures. The tax police are responsible for detecting tax criminal offenses, and in pre-criminal proceedings, they act as a law enforcement body with powers granted under the criminal procedural legislation. At this stage, the procedure shifts from the domain of administrative tax proceedings to the criminal procedure (Popović, 2012, p. 183). If, based on the collected information, the tax police inspector determines that there are elements of a tax criminal offense, he prepares a criminal complaint, listing the evidence obtained during this procedure, and submits it to the competent public prosecutor.

3. On Evidence Collection and Evidence in Criminal Proceedings

A conviction of the perpetrator of a criminal offense is legal and legally grounded only when the act constituting the offense, as defined by the Criminal Code, only when it has been proven that a causal link exists between the act and the perpetrator's fault. Until the final assessment of evidence, the presumption of innocence applies, as one of the fundamental guarantees of the accused, proclaimed in both international and national legal frameworks. Evidence collection that culminates in a particular piece of evidence, as it represents a strong link between the criminal offense and the perpetrator, on one side, and the meritorious judicial decision on the other. To prove that a person committed a criminal offense, or to establish a legally relevant disputed fact, essentially means to determine the truth of its existence, i.e., that a specific criminal event actually occurred. The judicial assessment of the validity of evidence follows a complex path, sometimes with advances and sometimes with setbacks, depending on factors such as the severity and type of the offense, the manner of its commission, the personal characteristics of the perpetrator, and other factors that help characterize a criminal event.

When defining the concept of evidence, a distinction is made between evidence in the formal and material sense. In the formal sense, evidence is equated with the process of proving, which involves procedural actions aimed at establishing the truth of facts that are important for the judicial decision (Marković, 1908, p. 4-6). The material concept of evidence reflects its true essence: a set of grounds or reasons that confirm the truth or certainty of a fact of importance in criminal proceedings. Although it is clear that the evidence collection and evidences are closely connected and inseparable categories, they need to be defined separately, which has been done, i.e., they are separately named in the conceptual definition. Thus, although the evidence process

represents a specific form of criminal procedural actions through which evidence is obtained, it cannot be equated with the concept of evidence and defined under the term evidence in the formal sense. Instead, it should be referred to as the evidence collection, or more precisely, the evidentiary actions that actually constitute its content. This distinction in naming emphasizes the precision in defining form and essence, which is essential in criminal proceedings.

Although the reform of criminal procedural legislation has called into question the principle of truth as one of the fundamental principles of criminal proceedings (Bejatović, 2014, p. 51), we cannot overlook certain issues and perspectives regarding the truthfulness of knowledge of disputed legally relevant facts. Regardless of whether this principle has been altered by innovations in various criminal procedural institutions, it is certain that a court judgment can only be based on valid evidence, which establishes exclusively the truthfulness of knowledge about the existence of the disputed facts. Depending on whether the evidence process aims to establish absolute or relative truth, theory presents opposing views on how the court acquires knowledge of the existence or non-existence of a disputed legally relevant fact. Absolute truth arises from reason, i.e., it is based on pure rational considerations, whereas relative truth is based on experience (Marković, 1908, p. 6-15). In this sense, a judge attains absolute truth through his own sensory perception. While it is undeniable that truth, as an absolute category, can only be established or realized in this way, the reliability of the judge's own sensory perception remains questionable. This would ultimately mean that a criminal offense must be established in criminal proceedings, that is, directly before the court, and such cases are possible but very rare, so this concept of truth and the method of its ascertainment should neither be exclusive and generalized nor disregarded, but rather reserved for exceptional circumstances. On the other hand, there is a viewpoint that completely excludes the possibility of establishing facts through the court's direct sensory perception, based on the understanding that the subject of evidence collection can only be established through the evidence process (Vodinelić, 1994, p. 283). Thus, a distinction is made between, on one side, direct sensory perception by the court or judicial panel and, on the other side, the evidence process. In relation to absolute truth, preference is given to relative truth, which is attained through the sensory perception of another person, i.e., through the collection, verification, construction, and evaluation of evidence regarding a criminal event that occurred in the past. Therefore, the evidence that confirms the highest degree of certainty, the truthfulness of knowledge about the existence or non-existence of a disputed fact, on which a court decision is based, is obtained through evidentiary actions, which include the discovery, collection, and verification of evidence. The link between the evidence collection, or evidentiary actions, and evidence is formed by evidentiary means. Evidentiary means are persons or objects through which the court acquires knowledge about the facts under investigation. Examples of evidentiary means include inspections, witnesses,

experts, and documents. More precisely, or in contrast to the aforementioned, when it comes to persons, they represent the source of evidence, while the facts or information they provide during testimony, i.e., the statements containing this information, represent the evidentiary means, that is, the form or mode through which evidence is presented. The situation is somewhat different with documents. Documents, such as financial records, constitute a source of evidence, with the information they contain serving as evidence, whereas an expert's testimony, based on his knowledge in the relevant field under examination, can serve as an evidentiary means for proving the fact in question. Distinguishing these concepts is important in criminal procedural literature, although it does not affect the quality or substance of evidence and the evidence collection.

4. Evidence Collection in Criminal Proceedings for Tax Offenses

Unlawful actions of taxpayers can take various forms. Some are prescribed by the Law on Tax Procedure and Tax Administration and fall under the categories of tax offenses and tax crimes. Other illegal methods of avoiding tax obligations are regulated by the Criminal Code (Criminal Code, Official Gazette of the RS, no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024 - CC). A representative example of the latter category is tax evasion, which is the most dangerous and widespread form of tax crime (Pamisetty, 2025, p. 24). Since tax evasion manifests in multiple variants, often accompanied by different modes of execution by perpetrators aiming to conceal their actions and prevent prosecuting authorities from obtaining adequate and valid evidence, the need for specific evidentiary actions has proven necessary, especially given modern technical advancements. One such evidentiary action, which is gaining increasing significance, is expert evaluation.

Expert evaluation as a general evidentiary action is conducted when specialized knowledge and skills are required to clarify disputed facts in criminal proceedings. The nature of the criminal offense determines the type of expert evaluation required, for example, in a homicide case, a medical specialist in forensic medicine is engaged as an expert; in cases where there is suspicion that the perpetrator was insane or significantly impaired in mental capacity at the time of the act, a specialist in neuropsychiatry is engaged. Unlike these types of expert evaluations, which are primarily focused on the object of the attack or the personality of the perpetrator, in tax crimes, the subject of the expert evaluation is material items, in which the product of the criminal act may, but in most cases does not, become apparent. Due to the complex *modus operandi*, the expert evaluation itself can also be more complex.

Proving tax evasion, as a representative form of illegal tax avoidance, is determined by the method of execution. There are several modalities by which the perpetrator can evade taxes: providing false information about earned income, assets, or other facts affecting the determination of tax liability; failure

to report earned income, assets, or other relevant facts; and concealment of data by other means (CC, Art. 225). The act of execution can be based on commission (*delicta commissa*) or omission (*delicta omissiva*) (Bozić, Dimić, Djukić, 2020, p. 91). On the subjective level, the perpetrator's intent to avoid paying tax by any of the alternatively provided methods is required. For the objective condition of the offense, the amount of tax avoided must exceed one million dinars. The existence of more severe forms of the offense is not determined by the method of execution (which is the same as for the basic form) but by the amount of tax avoided. For the first more severe form, the amount must exceed five million dinars, and for the second more severe form, the amount must exceed fifteen million dinars. The perpetrator can be a natural person or a legal entity, i.e., a responsible person within a legal entity. With the establishment of corporate liability for criminal offenses (Gobert, Pascal, 2011, p. 21), the circle of taxpayers as potential perpetrators of tax evasion has been expanded. As an inevitable consequence, detection and evidence collection of the offense become more difficult (Oni, Godwin, 2023, p. 54), given the expanded possibilities for various prescribed modes of execution. One form of tax evasion can occur when a company, as a taxpayer and legal entity, intentionally attempts to avoid paying taxes by "splitting" total revenues among multiple business entities, thereby creating the impression that less income was earned. In such cases, expert evaluation becomes more challenging due to the volume of financial documentation across multiple entities (Dimitropoulos, Reading, 2025, p. 1-2). Nevertheless, an easing factor can be the availability of documents, provided that the recorded entries are accurate.

The expert evaluation procedure, regulated by the Criminal Procedure Code, is preceded by the activity of the tax police in the pre-investigation stage, where, based on collected information and facts from the tax inspector's report, they proceed to prepare a criminal complaint and submit it to the competent public prosecutor. After determining that a tax criminal offense (Process map on the criminal prosecution of tax evasion in the Philippines, 2009, p. 23-24), rather than a tax misdemeanor, has occurred, the prosecutor issues an order to conduct an investigation to further develop the evidentiary material. In addition to the tax police, who participate in the investigation and have all powers regarding the accused except for deprivation of liberty, it may be necessary to engage an expert to analyze the available financial documentation for the purpose of proving tax evasion (Rezaee, Riley, 2010, p. 73). The expert evaluation is determined and the expert appointed by the public prosecutor through an order for expert evaluation. As an evidentiary action, the expert evaluation involves reviewing the available disputed documentation, based on which the expert prepares a report and opinion. The need for an expert evaluation in criminal proceedings is conditioned by the results of evidence obtained in the tax procedure. The tax inspector's report, prepared based on a review of the taxpayer's books, may differ from the expert's findings and opinion in the criminal proceedings (Lalović, 2018, p. 31), or, during evidence collection in the tax procedure, incorrect documentation may have been used,

making it impossible to accurately determine the amount of tax evaded. During the calculation and determination of the amount of tax evaded, i.e., in the course of a tax audit, the documentation that reflects the business activities of taxpayers is decisive for identifying certain irregularities. Primarily, this refers to the documentation in which all business transactions have been recorded, forming the content of the accounting books. Since the accounting books include the journal, general ledger, and auxiliary ledgers, a distinction must be made among them to determine which is most important for calculating the amount of tax owed. In this context, the tax inspector should focus on the journal (which provides a chronological record of all business transactions) and the general ledger (which, in addition to the balance and changes in the company's assets, includes its liabilities, equity, income, and expenses), as these constitute the basis for the preparation of financial statements, rather than on internal records that pertain to general business facts, such as business partners' contact phone numbers, etc. (Raonić 2018, p. 12).

5. Accounting Books as Evidence in Criminal Proceedings – Regulatory Framework and Certain Dilemmas

The primary legislation that stipulates which evidentiary actions should be used to detect and prove criminal offenses in criminal proceedings is the Criminal Procedure Code. Through a comparative analysis of the current Criminal Procedure Code (Criminal Procedure Code, Official Gazette of the RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021-decision US and 62/2021-decision US – CPC 2021) and the Criminal Procedure Code of 2010, i.e., the Criminal Procedure Code enacted in 2009 with its latest amendments and supplements from 2010 (Criminal Procedure Code, Official Gazette of the FRY, no. 70/2001 and 68/2002 and Official Gazette of RS, no. 58/2004, 85/2005, 115/2005, 85/2005-dr. law, 49/2007, 20/2009-dr. law, 72/2009 and 76/2010 – CPC 2010), we will attempt to determine the completeness of the current evidentiary provisions and provide certain suggestions and proposals *de lege ferenda*.

The CPC 2010 also prescribes and explains in detail: search of a residence and person (Art. 77–81); temporary seizure of items (Art. 82–86); handling of suspicious items (Art. 87–88); interrogation of the accused (Art. 89–95); examination of witnesses (Art. 96–109); inspection (Art. 110–112); and expert evaluation (Art. 113–132). It is regulated when and how each type of expert evaluation is conducted, covering all criminal offenses that can be proven in this manner. These include: examination and autopsy of a corpse, expert evaluation of bodily injuries, assessment of the mental state of the accused (psychiatric expert evaluation), and expert evaluation of accounting books. In the case of expert evaluation of accounting books, the authority conducting the procedure is obliged to instruct the experts on the direction and scope of the expert evaluation and specify which facts and circumstances should be determined (Škulić, 2007, p. 470). When it is necessary to organize a company's

accounting records prior to the expert evaluation of accounting books, the decision on organizing the records is issued by the authority conducting the proceedings based on a written report from the expert tasked with examining the accounting books (Škulić 2007, p. 470-471). The costs of organizing the accounting records are borne by the holder of the accounting books.

The current CPC 2021 provides for all the evidentiary actions previously regulated by the CPC 2010. However, it is contentious that it omits, as a type of expert evaluation, the examination of accounting books. Although the expert evaluation of accounting books in the CPC 2010 may not have been fully regulated, by prescribing the direction and scope of the expert evaluation, and by obliging the court to determine the direction and scope of the expert evaluation and the need to organize accounting records in certain situations, the law assigns significant importance to proving a specific group of criminal offenses. These are cases where, without reviewing the accounting books, it is nearly impossible to conduct and conclude the procedure. Such offenses include tax evasion and a number of other economic crimes, where essential characteristics of the criminal act (apart from the intention to evade tax in tax evasion cases) are established precisely through the analysis of accounting books.

In an attempt to overcome this type of problem, the examination of accounts and suspicious transactions has been analyzed. This evidentiary action is carried out when the public prosecutor obtains data from a bank or another financial organization regarding the financial transactions of a person suspected of committing certain criminal offenses (possession, obtaining, and distribution of pornographic material and exploitation of a minor for pornography (Art. 185, para. 4 CC); accepting a bribe in the conduct of business activity – Art. 230, para. 2 CC; giving a bribe in the conduct of business activity – Art. 231 CC; money laundering – Art. 245, para. 5 CC; trading in influence – Art. 366, para. 2 CC; accepting a bribe – Art. 367, para. 4 CC; giving a bribe – Art. 368, para. 2 CC) (CPC 2021, Art. 143). However, an important omission is seen from the public prosecutor's scope when conducting evidentiary action, tax evasion, a substantive criminal law issue, which is partially significant for proving cases, considering that tax evasion, in addition to belonging to the group of economic crimes, in most cases constitutes a predicate offense for money laundering (OECD, 2017, p. 58–61).

The possible negative impact of the aforementioned legal omissions has been indicated by an analysis of available data from the Republic Office of Statistics of the Republic of Serbia (RZSRS). The subject of statistics analysis in the following tables with comparative presentation of the reasons for acquittals in the criminal offense of tax evasion for the past five years period (2019-2023), in order to examine the impact of legal omissions on the final outcome of the criminal proceedings. CPC 2021 provides that the court may issue an acquittal when the act that is the subject of the accusation is not a criminal act, or due to lack of evidence (Art . 423, para . 1 and 2) The court

may find that there are no elements of the criminal offense of tax evasion, if the criminal proceedings could not establish the taxpayer's intention to evade tax, which is actually a subjective element of the essence of this criminal offense. On the other hand, it is possible that omissions may occur in the tax proceedings that may relate to an inadequately determined amount of evaded tax, or inadequate documentation used when determining the amount of tax debt. In such cases, the examination of business books is a crucial evidentiary measure for the conviction of the perpetrator of tax evasion. The following tables show that the absence of an expert examination of business books as the main means of evidence plays a major role in the acquittal of tax evaders, i.e. the acquittal due to lack of evidence.

Table No. 1. The absence of elements of the criminal offense of tax evasion as a reason for issuing an acquittal for the period 2019-2023

Year	**The act is not a crime**
2019	2
2020	2
2021	2
2022	/
2023	2
Total	8

Source:https://www.stat.gov.rs/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/, author's processing

The absence of elements of the criminal offense of tax evasion appears in each year of the research as a reason for passing a acquittal verdict in an equal number of cases (2 for each year).

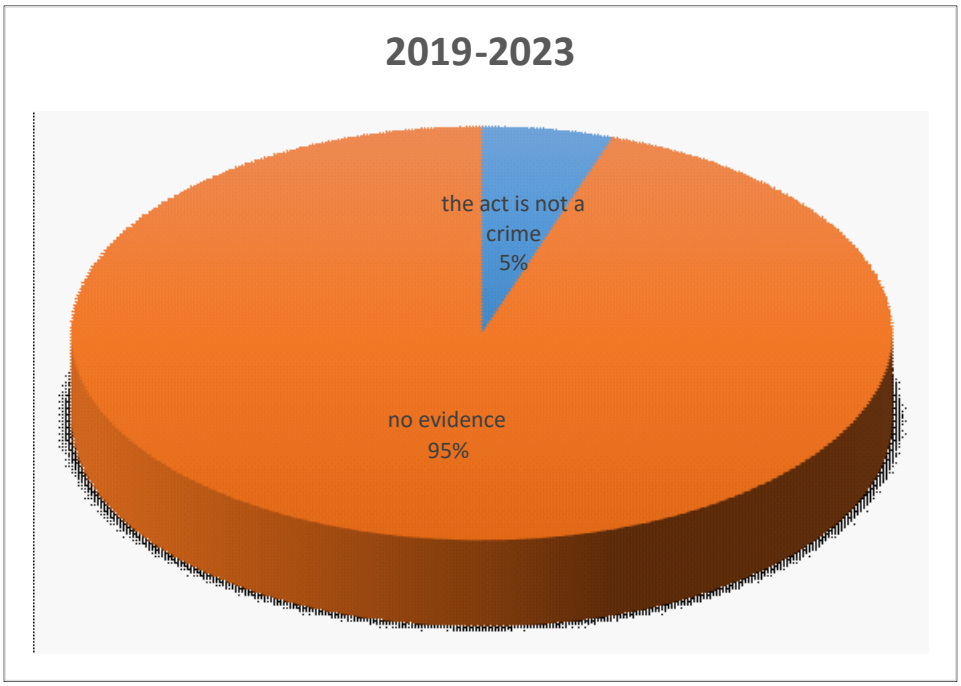
Table No. 2. Lack of evidence as a reason for acquittal in the criminal offense of tax evasion for the period 2019-2023

Year	There is no evidence
2019	31
2020	32
2021	31
2022	34
2023	19
Total	147

Source:https://www.stat.gov.rs/oblasti/pravosudje/punoletni-uciniоci-krivicnih-dela/, author's processing

The highest number of acquittals due to lack of evidence was made in 2022 (34), followed by 2020 (32), in equal numbers in 2019 and 2021 (31), while the lowest number was observed in 2023 (19).

Chart 1. Percentage of reasons for acquittals in the criminal offense of tax evasion



Of the total number of acquittals for the past five years, 155, the share of those issued due to the absence of elements of the criminal offense of tax evasion is only 5%. In the remaining 95%, lack of evidence was the reason for the acquittal.

6. Conclusion

Research of the legal framework shows that the legislature acted correctly by explicitly listing accounting books as evidence in the tax procedure. Their significance in determining the amount of tax liability for certain types of taxes is indisputable. Precisely for this reason, certain categories of taxpayers are obligated to maintain accounting books. However, the analysis of tax regulations raises the question of whether the legal gap in the provisions on the use of business books in the tax audit procedure can be filled with the opinion of the competent ministry. Legally, the opinion of the competent ministry does not have the force of law, because it represents an internal act that interprets legal regulations, and as such does not have binding legal force for individuals and legal entities. While in the provisions on evidence in tax proceedings the legislator acted completely correctly by explicitly mentioning business books, he did not do so in the provisions on tax audit. For taxpayers who are obliged to keep business books, tax audit is a key stage in the taxation procedure. This is when their financial statements are audited, on the basis of which they determined the amount of their tax obligations.

The role of accounting books in the evidence collection is conditioned by the type of criminal offense committed. They are of particular importance in proving tax-related criminal offenses, specifically tax evasion, which represents the most severe form of illegal tax avoidance. Considering that the perpetrator, as a taxpayer, seeks to avoid paying various types of taxes (value-added tax, personal income tax, corporate profit tax, and mandatory social security contributions), accounting books generally constitute a key segment, i.e., an evidentiary means in the process of proving such unlawful conduct. If accounting books are not available for analysis, or if business transactions are deliberately recorded inaccurately, the evidence collection becomes difficult or, in some cases, impossible. Certainly, expert evaluation in this area represents a highly important evidentiary action, as it is performed by a professional possessing specialized knowledge, an expert in finance and economics. Regardless of the complexity of the evidence collection, expert evaluation of accounting books as a distinct type of expert evaluation should have a normative foundation. Comparative normative analysis has shown that this type of expert evaluation was once explicitly provided for, but has been neglected in the current legal framework. This narrows the range of criminal offenses that can be proven exclusively through this method. Further analysis, aiming to identify a sufficiently adequate solution, has determined that even the evidentiary action of reviewing bank accounts and suspicious transactions cannot be applied to the most severe form of illegal tax avoidance. The negative effects of the

aforementioned legal omissions, observed from a practical aspect, are reflected in the fact that acquittals are rendered in as many as 95% of cases due to lack of evidence. To address this issue, *de lege ferenda* proposals are directed toward supplementing the current legal framework, so that, in addition to the previous statutory provisions, it would comprehensively regulate the matter of expert evaluation of accounting books, in the same way as it has been done for other types of expert evaluations.

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