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DISCOVERY OF TAX EVASION IN THE FIELD OF CONSUMPTION TAXES*

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Abstract: The state budget is the main instrument of state management. The most important source of income for the state budget is taxes, not only in Slovakia but also within the European Union. For the reason mentioned above, the tax area is the focal point of tax collection and recovery of tax arrears. An essential task of the state is to ensure efficient financial administration (tax and customs offices that carry out administration, control and enforcement proceedings), including a stable legislative system that effectively detects tax evasion. Tax evasion occurs most often in indirect taxes, i.e., in the case of VAT and consumption taxes. The article aims to point out typical illegal tax evasion in the consumption tax field and the fight against tax evasion. Analysis and comparison methods were used in the research. The analysis was carried out based on the data of the Financial Administration of the Slovak Republic, where the results of the control activities of the customs authorities were analyzed with a focus on consumption taxes. I drew attention to the most frequently occurring tax evasions in individual excise taxes as well as to the results of the investigation of the Criminal Office of the Financial Administration of the Slovak Republic in the detection of customs tax evasions and VAT on imports.

Keywords: excise taxes; Financial Administration of the Slovak Republic; customs authorities; legal tax evasion; illegal tax evasion; collection of excise taxes; international cooperation in the field of excise taxes

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1. Introduction

Detecting tax evasion is a primary goal in the Slovak Republic and the European Union. The biggest tax evasion arises from indirect taxes, which are value-added and consumption taxes. Detecting tax evasion is a continuous and challenging process; while it is not possible to eliminate it, it is possible to reduce the incidence of tax evasion. The Financial Directorate of the Slovak Republic plays an essential role in this process, as it performs tax inspections focused on consumption taxes through the customs offices. It ensures enforcement and additional collection of excise taxes through tax inspections. Tax authorities participate in detecting VAT tax evasions of

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direct taxes defined by law; they also provide the recovery and additional collection of taxes. The employees of the Criminal Office of the Financial Administration investigate tax crimes in the area of tax evasion.

2. Literature review

The category of indirect taxes in the Slovak Republic consists of VAT and consumption taxes. The biggest tax evasions occur in the field of indirect taxes. The Financial Administration of the Slovak Republic ensures institutional collection and administration of taxes through tax and customs offices. Customs offices carry out administrative security and tax control of excise duties. Tax authorities safeguard the performance of tax control in the area of VAT as well as direct taxes determined by law. The authors present these and other findings in their publications: Babčák, 2012; Beličková, 2010; Majchrák & Zemaník, 2013; Víghová, 2022; Stieranka et al., 2016; Schultzová et al., 2018; Kačaljak, 2017; Babčák, 2019; Cachia, 2017; Pavic, 2020; Skare, Kukurin, 2020.

In the effective detection of tax evasion of indirect taxes, an important role is played by the stable legislation valid in the Slovak Republic and international cooperation by individual financial administrations within the European Union (European Commission, 2021). The EMCS electronic global information system dramatically contributes to the detection of tax evasion. This system ensures that goods are sent and received only by tax entities authorized to do so; thus, the employees of the customs offices can identify the occurrence of tax evasion faster and more efficiently. The authors provide information about these facts: Burák, 2016; Silva et al., 2021; Balko et al., 2009; Hellmann, 2021; Frintrup, 2020; Wijekoon et al., 2021; Natalizi, 2020.

Tax evasion can have the nature of legal or illegal tax evasion. Evasion of tax results in a reduction of tax liability, which impacts the violation of law and may have the character of a crime of tax reduction. In the Slovak Republic, the Criminal Office of the Financial Administration provides tasks in detecting offences related to violations of tax regulations in VAT on imports and excise duties. The authors of the following publications wrote about it: Babčák, 2018; Tawiah & Gyapong, 2021; Henrique et al., 2020; Lombardi et al., 2020; Miah et al., 2021; Roca, 2021; Stewart et al. 2021; Sacer, 2020.

3. Basic characteristics of excise taxes in the Slovak Republic

Consumption taxes belong to indirect taxes; they are selective taxes because they apply to selected types of products (wine, beer, alcohol, tobacco products, mineral oils, electricity, coal, and natural gas). They are chosen once, i.e. at one stage. The final users of the products pay these taxes, i.e. residents through purchase. Consumption taxes represent a stable and significant income for the state budget of the Slovak Republic; they belong to the oldest category of taxes in the Slovak Republic. In the Slovak Republic, they are regulated by the following laws:

- Act No. 530/2011 Coll. on excise duty on alcoholic beverages, as amended,
- Act No. 106/2004 Coll. on excise duty on tobacco products, as amended,
- Act No. 105/2004 Coll. on alcohol excise duty and amendments to Act no. 467/2002 Coll. on the production and placing of alcohol on the market as amended by Act 211/2003 Coll.
- Act No. 98/2004 Coll. on excise duty on mineral oil, as amended,
- Act No. 609/2007 Coll. on excise duty on electricity, coal and natural gas and on amendments to Act no. 98/2004 Coll. on excise duty on mineral oil as amended (Stieranka et al., 2016).

The aforementioned laws define basic terms for individual types of consumption taxes, such as definition of taxpayer, subject of tax, tax base, tax calculation (Burák, 2016).

With the accession of the Slovak Republic to the European Union, the process of harmonizing tax legislation began. It is possible to state that in the field of consumption taxes, the legislation of the Slovak Republic is most harmonized with the legislation of the European Union (Schultzová, 2018). The problem areas were excise duty rates, which were not set according to EU Directives. For the mentioned reason, the Slovak Republic applied for an exception or postponement of the introduction of rates that the EU regulates. The European Union granted the request to the Slovak Republic. Therefore, in the Slovak Republic, the minimum excise tax rates are determined by individual laws and may differ from the rates determined by the EU directive (Kačaljak, 2017).

Table 1 contains the minimum rates of consumption taxes according to the EU directive.

Table 1. Minimum excise tax rates set by EU directives

Minimum rates of consumption taxes set by EU directives		
Ethanol/pure alcohol	550 € / 1 000	
Wine	Nonsparkling	0 € /hl
	Sparkling	0 € /hl
Intermediate product	45 € /hl	
Beer	0,748 € /hl/ °Plató	
	1,87 € /hl/ alcohol level	
Cigarettes	60 % weighted average retail price, but must not be lower than €90/1,000 pcs (from 1.1.2014)	
Cigars and cigarettes	5% of the retail price including all taxes or €12 per 1,000 pcs or 1 kg	
Tobacco	Fine-cut tobacco	46% of the weighted retail price or 54% of 1 kg (from 1.1.2015)
	Other tobacco	25% of the retail price including all taxes or €22 / 1 kg
Gasoline	Leaded	421€ / 1000 l
	Lead-free	359 € / 1000 l
Diesel/ gas oil	As fuel	330 € / 1000 l
	Other use	21 € / 1000 l
Petroleum/ kerosene	As fuel	330 € / 1000 l
	Commercial use	21 € / 1000 l
	For heating	0 € / 1000 l
LPG	As fuel	125 € / 1 000 l
	Commercial use	41 € / 1 000 l
	For heating	0 € / 1 000 l
Natural gas	As fuel	2,60 € on gigajoul
	Other use	non-business purposes 0,30 € on gigajoul business purposes 0,15 € on gigajoul
Coal and coke	For heating-business purposes	0,15 € on gigajoul
	For heating – non-business purposes	0,30 € on gigajoul
Electricity	For heating-business purposes	0,50 € on gigajoul
	For heating – non-business purposes	1,00 € on gigajoul

Source: Schultzová et al. (2018, p. 282)

4. Legislative provision of tax control of excise taxes in the Slovak Republic

4.1 Institutional security of the Financial Administration

In the Slovak Republic, tax control of individual taxes is ensured by the Financial Administration. Financial report according to Act no. 35/2019 Coll. on financial management, as amended, consists of:

- a) Financial Directorate of the Slovak Republic,
- b) Customs offices (there are currently 9 customs offices, 57 customs office branches and 17 customs office stations on the territory of the Slovak Republic),
- c) Tax authorities (there are currently 8 tax authorities, 1 Office for selected economic subjects, 39 branches of tax authorities and 29 contact points of tax authorities in the territory of the Slovak Republic),
- d) Criminal Financial Administration Office (Balko et al., 2009).

a) **The Financial Directorate of the Slovak Republic** is a budgetary organization that exercises its powers throughout the territory of the Slovak Republic. The seat of the Financial Directorate of the Slovak Republic is Banská Bystrica. Customs offices, tax offices and the Criminal Office of Financial Administration are pre-tax organizations involved in the budget of the Financial Directorate of the Slovak Republic (Majchrák & Zemaník, 2013).

b) The customs authorities carry out the administration and control of excise taxes in the Slovak Republic. **Customs offices** perform tasks set by law, for example:

- make decisions and perform actions in matters of customs supervision, excise tax control and excise tax administration,
- decides on seizure of goods or things and on confiscation of goods,
- decides on duty refunds or duty remissions and tax refunds for which he is the tax administrator,
- allows deferment of duty payment, allows deferment of tax payment or payment of tax in installments,
- clarifies and negotiates customs violations and misdemeanors,
- recovers arrears of customs duties, arrears of fines and other payments assessed and imposed according to customs regulations and recovers tax arrears, monetary payments imposed by decision, enforcement costs and cash expenses in enforcement proceedings,
- inspects the release of the goods,
- informs tax subjects about their rights and obligations in matters of taxes,
- performs tasks resulting from international agreements within the scope of the President's mandate,
- performs other tasks established by law (Babčák, 2018)

c) Administration and control of VAT and selected direct taxes in the Slovak Republic is carried out exclusively by **tax authorities**. Their scope is defined in § 6 par. 1 of Act 35/2019 Coll. on financial administration as amended (Beličková, 2010).

d) **The Criminal Office of Financial Administration** exercises jurisdiction over the entire territory of the Slovak Republic. The seat of the Criminal Office of the Financial Administration is Bratislava, it fulfills, for example, the following tasks:

- carries out customs supervision in agreement with the authorities of other countries by secret escort of the delivery or another secret method of monitoring, if there is a reasonable assumption that the shipment contains narcotic substances, psychotropic substances,
- carries out cross-border surveillance and cross-border persecution to the extent and under the conditions established by an international treaty,

- fulfills and ensures tasks in the area of detection of crimes committed in connection with violations of tax regulations in the area of value added tax and consumption taxes or customs regulations and detection of their perpetrators,
- fulfills the tasks of the central coordination unit and other tasks resulting from international agreements in the defined area.

4.2 Analysis of the detection of tax evasion in excise duties through the control activities of the customs authorities of the Slovak Republic

The main mission of the Financial Administration is to ensure the uniform collection of taxes and customs duties and the protection of the state's fiscal interests. When collecting taxes and duties, financial administration entities proceed according to the provisions of Act 563/2009 Coll. tax code as amended. The aforementioned legal standard contains the basic rights and obligations of tax subjects, tax auditors, the course of tax control, appeals, and enforcement proceedings.

In connection with ensuring the mission of the Financial Administration, individual customs offices in the Slovak Republic carried out the number of excise tax inspections listed in Table 2.

Table 2. Number of completed tax audits in the area of excise duties

Customs office	The number of completed tax audits in the area of excise duties			
	YEAR 2019	YEAR 2020	YEAR 2021	YEAR 2022
Banská Bystrica	238	304	309	404
Bratislava	354	343	381	515
Košice	201	162	189	159
Michalovce	100	101	75	85
Nitra	176	161	147	197
Prešov	352	379	375	495
Trenčín	307	206	262	276
Trnava	191	189	198	170
Žilina	178	202	175	226
Spolu	2 097	2 047	2 111	2 527

Source: Finančné Riaditeľstvo Slovenskej Republiky (2022)

By comparing the years 2021 and 2022, it can be concluded that there was an overall increase in the number of completed tax audits, primarily related to the intensification of tax audits in interlales in accordance with the internal management act of the Financial Administration of the Slovak Republic. At those customs offices where a decrease in the number of completed tax audits was recorded, the reasons were mainly a more significant number of audited tax periods in one tax audit and the tactful introduction of the tax reliability index in 2019, resulting in a lower periodicity of tax audits.

When comparing the periods of 2019 and 2020, it can be concluded that a decrease in tax audits was recorded. The reasons for the reduction in the number of tax inspections in the area of consumption taxes were the following facts:

- within individual tax audits, audits of several tax periods were carried out (several calendar years, year, half-year),
- in connection with the return of consumption taxes, in some cases, tax inspections were replaced by local investigations,
- extraordinary measures connected with the spread of the contagious contagious human disease COVID-19.

Another task of the Financial Administration is closely related to the performed tax audits, which consist of detecting tax evasion, through which the revenue part of the state budget is secured.

Table 3 contains an overview of the collection of customs revenues from individual types of excise taxes for the period 2019 to 2022 (while the term individual types of excise taxes refers to the following types of taxes: excise tax on mineral oils, excise tax on alcohol, excise tax on beer, excise tax on wine, excise tax on tobacco products, excise tax on electricity, excise tax on coal, excise tax on natural gas).

Table 3. Overview of excise duty collection by individual customs offices in the period 2019 to 2022

Customs office	Overview of excise duty collection				Difference 2022-2021
	YEAR 2019	YEAR 2020	YEAR 2021	YEAR 2022	
Banská Bystrica	68,031	62,627	72,817	83,926	11,109
Bratislava	2 541,783	2 341,973	2 665,075	2 941,886	276,811
Michalovce	131,453	124,074	147,183	161,170	13,987
Košice	212,892	158,996	300,190	393,840	93,65
Nitra	526,021	489,939	659,726	758,741	99,015
Prešov	152,246	131,528	134,834	142,132	7,298
Trenčín	247,426	219,807	269,963	324,661	54,698
Trnava	606,122	601,686	786,694	949,987	163,293
Žilina	588,905	510,347	607,127	739,260	132,133
Unidentified payments	0,007	6,863	0,105	0,126	0,021
Together	5 074,886	4 647,840	5 643,712	6 495,729	852,017

data are in millions Eur

Source: Finančné Riaditeľstvo Slovenskej Republiky (2022)

Table 3 contains the collection of excise taxes, which in practice means the payment of the tax due according to the tax return filed by the taxpayer and the collection of excise taxes after the tax audit. The search for tax evasion is ongoing as part of the tax audit. We divide tax evasion into legal and illegal tax evasion. Legal tax evasion is tax evasion in the line of valid legislation; it is characterized by avoiding tax liability by using the options the law offers. Illegal tax evasion will result in reduced tax liability, which has the effect of breaking the law.

Illegal tax evasion of excise duty on tobacco and tobacco products:

- illegal production (fakes of well-known brands are produced in illegal facilities),
- illegal importation – smuggling through border crossings,
- fictitious exports and subsequent claims for tax refund,
- unauthorized termination of the transit regime and subsequent sale on the internal market,
- declaring a lower weight of tobacco products upon import.

Illegal tax evasion on excise duty on alcoholic beverages:

- illegal production of alcohol by registered persons and their subsequent placement on the market without being marked with stamps,
- abuse of the possibility of applying standardized losses in legal production plants for exemption from alcohol excise duty without actual losses, subsequent placement of such unofficial stocks on the market,
- illegal production of alcohol by unregistered persons and their subsequent placement on the market without being marked with stamps,

- incorrectly declaring alcohol as tax-exempt in an attempt to circumvent legal obligations and its subsequent sale,
- violations during the transport of alcohol under tax suspension in the territory of the European Union,
- fictitious exports and subsequent sale of alcohol on the domestic market,
- unauthorized claims for the refund of alcohol excise duty in connection with fictitious exports. (Stieranka, 2016).

Illegal tax evasion on consumption tax on mineral oils:

- illegal way of acquiring mineral oil (for example, from Poland, and Lithuania) and selling it on the black market,
- illegal importation and its subsequent placement on the market without payment of excise duty, sometimes even by changing the purpose,
- application of a preferential rate of consumption tax on mineral oil, even though it is subject to a higher rate due to the actual volume,
- fictitious export with subsequent application of the right to refund excise duty.

During inspections, in addition to detecting tax evasion, the inspectors also detect other deficiencies in calculating tax liability in tax returns in the case of excise taxes. The most serious deficiencies detected during the performance of tax controls recorded by the customs authorities:

- illegal indication of the excise duty tax base
- claiming the right to refund excise taxes in the wrong amount,
- incorrect use of the tax rate,
- providing false information in the application for the production of distillates,
- registration of a tax subject after the statutory deadline.

Since consumption taxes are also related to foreign transactions to a considerable extent, the aspect of international cooperation with the financial administration of the European Union states is, therefore, important. International cooperation is implemented based on Article 3 of Council Regulation (EU) No. 389/2012 on administrative cooperation in the field of excise duties, is implemented by ensuring:

- exchange of information based on request,
- sending notifications about administrative decisions and measures required by member states according to Article 14 of Regulation no. 389/2012,
- compulsory exchange of information without prior request,
- voluntary spontaneous exchange of information,
- provision of statistical and other information.

As part of international cooperation, the EMCS information system has been introduced, which enables the monitoring of the transport of goods related to excise duties. The partial practical application of information EMCS ensures that goods are sent and received only by tax entities that are authorized to do so, which greatly reduces the risk of tax evasion. According to the data of the Financial Administration of the Slovak Republic, in 2022, 73,918 electronic accompanying documents were sent in the EMCS system, of which 26,137 were for transports within the tax territory and 47,781 for transports outside the tax territory. 70,801 electronic accompanying documents were received from EU member states.

The Criminal Office of the Financial Administration plays a special role in the detection of tax crimes; it has procedural subjectivity in proceedings according to the Administrative Code, it acts independently before the court within the scope of its competence according to the law. The director of the Criminal Office of Financial Administration or a member of the financial administration authorized by the director of the Criminal Office of

Financial Administration or the president acts on behalf of the Criminal Office of Financial Administration before the court. It specializes in detecting crimes related to violations of tax regulations in VAT, excise duties, and import VAT. In addition, it provides tasks in combating the illegal import, export and transit of narcotic and psychotropic substances. In the years 2021 and 2022, he participated in the detection of tax evasion, pointing out the occurrence of damage to the state budget of the Slovak Republic.

Table 4. Overview of damage to the Slovak state budget from the position of investigating the criminal offense of reducing excise duties and VAT on imports in the period 2021 to 2022

Type of excise duty / VAT	The amount of damage to the state budget of the Slovak Republic	
	year 2021	year 2022
Tobacco and tobacco products	78.378.931,22 €	91.824.377,21€
Alcohol	206.850,06 €	3.641,88 €
Mineral oil	1.148.022,44 €	1.341.913,13 €
Customs regulations	99.582.608,27 €	400.811.252,49 €
VAT on import	233.412.421,71 €	232.777.431,76 €
Other (JIT)	429.991.991,40 €	68.918,00 €
Products of the defense industry and dual-use goods	26.930,26 €	565.430,26 €
Together	842.747.755,36 €	727.392.964,73 €

Source: Finančné Riaditeľstvo Slovenskej Republiky (2022)

Table 4 shows, when comparing the years 2021 and 2022, a decrease of 115,354,790.60 Euros for the overall school compared to the state budget. When analyzing individual excise taxes, it is possible to note an increase in the occurrence of damage in the area of tobacco and tobacco products, in the area of customs regulations and in the area of defense industry products and dual-use goods.

Final evaluation and recommendations

As part of the analysis, we discovered the following facts:

- not every initiated tax audit focused on the correct determination of the tax liability of excise duties ends with a finding, which in practice means that the effectiveness of tax audits is not 100%,
- a low number of inspectors and a high turnover of employees ensuring the inspection of excise taxes,
- frequent changes in tax laws in the field of consumption taxes,
- insufficient electronic communication between customs authorities and taxpayers,
- the functions of the EMCS information system are not used to 100%,
- there was an increase in damage to the state budget of the Slovak Republic compared to 2021 and 2022 in the area of tobacco and tobacco products, customs regulations and products of the defense industry and dual-use goods.

The following recommendations resulted from the above facts:

- increase the number of inspections carried out, with a focus on inspections that will be concluded with a finding (presumption of detection of violations of legislation in the field of excise taxes, which have an impact on the collection of additional tax liability),

- To ensure the effective selection of tax subjects for the performance of tax audits, in practice it means to select for audit only such taxpayers who are expected to be found to have violated legal regulations and to collect additional tax,
- ensure effective recovery of tax arrears with an impact on the revenue part of the state budget. In practice, it means, during the tax audit, to issue a decision on a preliminary measure, according to the provisions of § 50 of Act no. 563/2009 Coll. on the administration of taxes (tax code), utilizing which the controller's decision prohibits dealing with the property of a potential tax debtor, until the tax arrears are paid,
- use the institute of local investigation (§ 37 of Act 563/2009 Coll. on Tax Administration (Tax Code)) for such tax subjects for which there is no assumption of additional excise duties. Since in that case, the tax audit is not initiated, but at the same time the auditors are sure of the correctness of the excise duty calculation),
- to make the job position of controller with a focus on consumption taxes more attractive,
- to ensure the stability of the legislation in the field of consumption taxes,
- improve the quality of the electronic services of the Financial Administration of the Slovak Republic,
- to ensure more effective international cooperation in the exchange of information on the transport of goods subject to excise duties,
- to provide the practical application of the EMCS system in full, in the interest of more effective detection of international tax evasion,
- to strengthen the competencies of the Criminal Office of Financial Administration in detecting tax crimes.

In conclusion, the stability of laws governing individual excise taxes is vital for auditors in detecting tax evasion. The legislative process regulating consumption taxes should be a functioning system within the Slovak Republic and the European Union, as consumption taxes are international in nature.

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