

## MOLDOVAN ANTI-EVASION AND ANTI-AVOIDANCE MEASURES: 25 YEARS OF CHANGES

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### Abstract

*The economic system of socialist command economy admitted no possibility for tax evasion. Moreover, socialist types of enterprises, institutions and organizations not only had the opportunity but, more importantly, neither were interested in tax evasion. Nevertheless, in the mid of 80s, as a result of political and economic change, the individual and cooperative work, has been widespread all over. Since that time, the individuals and subsequently businesses were given the opportunity to generate an extra income, the attitude towards private property has changed, and as a result has led to tax evasion. Data shows a steady trend of increase in cases of tax evasion, thus in 1994 tax evasion correlation to GDP was 4.5%, in 1997 this number increased more than 3 times, in 1999 five times and in 2008 more than nine times. As result, the Moldovan anti-evasion and anti-avoidance legal and institutional framework suffered a lot of changes during its transformation for the last 25 years. However, the tax system, after 20 years of implementation, was still characterized by oversize, the austerity and the state's inability to manage efficiently its resources. Nevertheless, many steps were taken to change things in the last 5 years. With this paper we aim to examine the anti-avoidance and anti-evasion changes in order to reveal the weaknesses of Moldovan tax system and to understand its areas of strength.*

**Key words:** avoidance, evasion, Moldova, transfer pricing, withholding taxes

### INTRODUCTION

The economic system of socialist command economy admitted no possibility for tax evasion. The personal income was formed mainly from wages. Personal income tax (PIT) was collected in a centralized way through the enterprise, institution or organization. Thus, the possibility of avoiding non-payments of taxes was reduced to the minimum. Moreover, socialist types of enterprises, institutions and organizations not only had the opportunity but, more importantly, neither were interested in tax evasion. This can be explained by the same peculiarities of the economic system - the funds received by the state under tax form were returning back, if necessary, under subsidies form. Nevertheless, in the mid of 80s, as a result of political and economic change, the individual and cooperative work, has been widespread all over. Since that time, the individuals and subsequently businesses

were given the opportunity to generate an extra income, the attitude towards private property has changed, and as a result has led to tax evasion. These reasons explain the need for State financial control and corresponding tools.

However, hoping for the best, the legal and institutional framework for the prevention and fight against tax evasion and avoidance suffered a lot of changes during its transformation for the last 25 years. Nevertheless, statistics show a steady trend of increase in cases of tax evasion. Thus, the data shows that in 1994 tax evasion correlation to GDP was 4.5%, in 1997 this number increased more than 3 times, in 1999 five times and in 2008 more than nine times [13][5][6].

Nevertheless, the improvements are made, many steps were taken to change things in the last 5 years, and the results are not expected to be late. We consider that the proposed changes represent a good start undertaken by

Moldovan Government in creating a clear legislative environment and encourage the authorities to continue this initiative and to seek support from the foreign partners in its further administration.

The present paper continued the research published in previous volume of this Journal [7] and based on authors' report for International Tax Conference: Transformation of Tax Systems in the Central and Eastern European Countries (CEE) and BRICS Countries – 25 years of experience and challenges for the future [9].

## MATERIALS AND METHODS

This research is relevant for two groups of addresses: governments and policy makers, and academic stuff and researchers. Firstly, we research conceptual aspects of defining the extent of tax evasion and tax avoidance in the Republic of Moldova. Second we analyse the Moldovan statutory anti-avoidance legislation, including withholding taxes. Third we distinguish available legal instruments against tax evasion of the Moldovan tax system transformation, including administrative and criminal legal instruments. Fourth we characterize institutional framework changes, highlighting its effectiveness. Fifth we provide an analysis of the proposed changes to the Moldovan transfer price legislation, identifying some amendments to be considered. The article focuses primarily on the situation faced by Moldova in the last 25 years. A large amount of data provided by IMF, OECD, Mains State Tax Inspectorate, Ministry of Finance information and other sources of technical expertise was collected, synthesized, and analysed.

## RESULTS AND DISCUSSIONS

### **The extent of tax evasion and tax avoidance in the Republic of Moldova**

Ascertaining the extent and characteristics of evasion and avoidance immediately runs into the conceptual problem. In this regard, many scholars [12][2][23] debate the definition of terms related to anti-abuse provisions: jurists' (Francesco Tesauro, Reuven Avy-Yonah,

Nicola Sartori and Omri Marian) tri-partition of strategic tax behaviours: tax evasion (illegal behaviours), tax avoidance (illegitimate, but not necessarily illegal), and licit tax savings (legitimate tax planning) vs. economists' (Joel Slemrod and Jon Bakija) two categories: tax avoidance (legal tax behaviours) and tax evasion (legal tax behaviours). The concept of strategic tax behaviours or aggressive tax planning strategies has been recognized as a starting point. Moldovan tax law splits strategic behaviours into two categories: tax evasion and tax avoidance. This partition is based on the meaning of meaning of violation of or compliance with the law.

The concept of "tax avoidance" is not expressly defined in the Moldova tax law. It contains only some general references on treaty shopping related restrictions. In other words, special conditions need to be satisfied for the tax purposes of applying Double Taxation Treaty (DTT) provisions. By contrast the administrative and criminal law, stipulated in a wide manner, defines "tax evasion" in existing secondary tax legislation, which is used for tax purposes. Under Moldovan legislation the concept of "tax evasion" is set up in Arts.244 (Tax evasion by enterprises, institutions and organizations) and 244<sup>1</sup> (Tax evasion by individuals) of the Criminal Code and Art.301 (Tax evasion by individuals) of the Contravention Code. According to Moldovan statutory law, tax evasion represents actions aimed at hiding the object of taxation by failure to submit an income declaration or including distorted data or illegal use of tax benefits provided under the legislation.

On efficiency of tax system, we can make conclusions by analyzing data on fiscal control (Table 1). Fiscal control is a logical consequence of the tax administration tasks, because tax audits allow verification of whether all taxpayers meet their correct, complete and timely tax obligations. The share of annual audited taxpayers out of total number registered shows a decrease from 32 to 10% within 1994-2014 periods. In absolute terms it is almost three times more from 22.8 to 61 thousands.

Table 1. Evolution of tax audits in the Republic of Moldova, 1994–2014

Year	Nr. of businesses registered at the end of the period	Including (thousands)			Results of controls (mill. MDL)		
		Nr of audited taxpayers	No. of violations	Detection, %	additional payments (mil MDL)	calculated	Incl. penalties
1994	70,536	22,766	7,637	33,55	89,9592		53,8813
1995	96,984	25,211	10,012	39,7	222,872		98,776
2001	-	31,765	20,715	65,23	213,819		112,842
2002	593,1	22,889	11,138	48,66	268,6987		131,061
2003	618,2	24,544	13,362	54,44	367,0833		144,805
2004	641,7	29,830	17,674	59,25	304,4021		85,3547
2005	645,4	43,3	32,5	75,1	321,4		135
2006	659,4	62,0	45,1	82,7	349,1		139,1
2007	674,7	42,1	25,3	60,1	237,7		60,0
2008	679,6	38,4	21,1	54,9	201,1		94,7
2009	683,8	53,5	36,3	67,9	449,5		185,4
2010	686,2	66,8	41,9	62,7	498,0		253,1
2011	702,3	71,9	45,7	63,7	517,0		256,4
2012	688,117	63,527	43,670	68,7	595,96		344,7
2013	289,284	74,029	40,118	54,2	653,0		362,1
2014	<b>689,580</b>	<b>60,523</b>	-	<b>53,0</b>	<b>743,4</b>		<b>457,9</b>

Source: [8].

Additionally calculated amounts of taxes, fees and other payments as result of controls increase also, with more than 9 times from MDL 89.96 million in 1994 to 743.4 million in 2014, mainly because of penalties that are applied on one to one ratio, which means that for each additional calculated EURO is added another EURO as penalty.

Improvement and tax audit system development resulted in an increase of outcomes derived from tax audits from 33.55% in 1994 to 53% in 2014 (the highest rate of 83% was registered in 2006). The tax audit activity was strongly influenced by: reorganization of controlling bodies in 2002 and 2014; implementation of preselection methods based on risk assessment since 2003 and contraposition of tax audits since 2004; implementation of a new method of estimating the taxable income of the wealthiest individuals in 2012. The indirect estimation method provides the Moldovan tax authority with possibilities for gathering information about taxable income of individuals from any sources. However this does not demonstrate a positive impact on the share of tax violators and taxpayer compliance. The increase in tax violations is more a result of growing tax evasion and tax avoidance phenomenon, legislative changes, and political and economical instability' [8]. Improvement of the tax law procedure is one

of the main tasks of MTA. Thus, with the 2007 fiscal amnesty were observed measures regarding to discipline the taxpayer, increasing the fines and penalties for tax evasion, insistent tracing of tax debts, including the requirements for financial institutions allowing access to the confidential information about their clients. According to the Law on amending and completing some legislative acts No.177-XVI of 20.07.2007, a tougher sanctions system was approved, including pooling a number of fines, while at the same time increasing them and introducing some new.

Although tax fraud are widespread cases, the criminal liability for these illegal acts are extremely rare. Statistics demonstrate (Table 2) that the current system of selecting, transferring, and investigating potential tax fraud does not seem to produce prosecutions and convictions.

From total of 263 cases referred in 2014, 67 were accepted for investigation, and only 4 was placed for prosecution. The situation is similar in previous years. Moreover, we were not able to document any tax fraud convictions during the last six years. Mostly, this state of affairs is conditioned by imperfection of criminal law, the contradictions in the extra-criminal law and criminal liability for the tax fraud. Another factor is a lack of administrative liability of

the public authorities, which was adopted only in 2000 [1].

Table 2. Moldova: Tax Fraud Cases, 1998-2014

	1998	1999	2000	2001	2002	2009	2010	2011	2013	2014
<b>Case referred</b>	262	139	275	335	125	365	290	437	252	263
<b>Investigations</b>	...	...	...	...	...	...	66	134	13	67
<b>Prosecutions</b>	...	...	...	...	...	2	4	1	4	4
<b>Convictions</b>	10	12	9	12	9	...	...	...	...	...

Source: [25] for 1998-2002 period, [19] for 2009-2010 period and STI data for 2013-2014 period.

Moreover, only in 2008 [17] did the administrative and disciplinary liability of public servants begin to be regulated. Also in 2008, particular attention begins to be paid to the role of prosecutors [16] and judges ensuring this way, the recovery of damages caused to the state (i.e. the procedure of their appointment, introduction of the concepts of financial liability and disciplinary violation, judicial error, gross negligence, resignation, etc.).

Nevertheless, many national scholars [4][11][6] have identified the negative impacts on Moldovan tax revenue that are due to corruption and tax fraud. It is obvious that corruption, as a condition for tax evasion, creates the optimal circumstances [3] (Table 3).

No region or country in the world is immune to the damages of public-sector corruption; the vast majority of the 183 countries and territories assessed score below five on a scale of 0 (highly corrupt) to 10 (very clean). Moldova's averaged a score below 3 during the available data period, indicating a serious corruption problem (EU-28 – score average 6, in 2014)<sup>2</sup>. Table 3 shows an increasing trend in the Corruption Perception Index is observed between 2007 and 2013: while this is promising, but not enough to reduce the damages of public-sector corruption.

„Many academic papers study relationships between corruption and shadow economies, viewing them as complements and highlighting different mechanisms of how they can interact.

The corruption often appears to be compared with an extra tax added to the regulatory burden of the official economy.

<sup>2</sup> For more info see: <http://cpi.transparency.org>

Table 3. Moldova: Revenue structure by Percent of GDP, 1991-2014

Year	CPI*	Shadow Economy	Total tax revenue as % of GDP
1989			41.0
1990	-	-	-
1991	-	-	-
1992	-	44.25	22.8
1993	-	43.36	31.3
1994	-	42.87	28.8
1995	-	43.11	27.4
1996	-	43.57	29.9
1997	-	43.80	28.3
1998	-	44.24	21.8
1999	2.6	44.87	24.8
2000	2.6	45.35	25.0
2001	3.1	45.65	24.4
2002	2.1	45.76	25.8
2003	2.4	45.76	27.5
2004	2.3	45.61	29.8
2005	2.9	45.20	31.6
2006	3.2	44.98	33.3
2007	2.8	44.50	34.0
2008	2.9	43.94	33.4
2009	3.3	-	32.0
2010	2.9	44.3	31.0
2011	2.9	-	30.5
2012	3.6	-	31.8
2013	3.5	-	31.4
2014	3.5	-	32.7

Source: developed by the authors based on [7][9] data.  
 CPI\* - Corruption Perception Index

Consequently, the increase in demand of bribes lead to more activities in the shadow economy. Corruption is among the greatest causes of the shadow economy's size and impact. This means that anticorruption measures may be ineffective if the reciprocal relationship between corruption and the shadow economy is not addressed"[6]. Moreover, numerous studies have identified the negative impacts on tax revenue that are

due to corruption in revenue administration. According to our previous research [6] Moldova is losing up to 20% of its tax revenue. It was estimated that improving its tax efforts, Moldova could reach up to 40% of tax revenue as % of GDP. Thus, recognizing the impact and breadth of “corruption’s damaging effects” is critical. “The OECD has highlighted the role of tax auditors in combating corrupt practices of the private and public officials. In this context, the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors emphasizes that the role of tax auditors appears to be essential in order to assure the effective and vigorous application of laws. The recommendation made by OECD provides guidance to tax examiners and auditors to detect, deter, and prosecute all forms of corruption” [6].

In this regard, we can conclude that by fighting corruption phenomenon we will decrease the shadow economy and taxpayers evasion behaviours and increase tax revenue collection.

#### **Statutory anti-avoidance framework**

The implementation of an anti-abuse measure does not automatically increase tax revenue. However, the anti-avoidance legislation appears to be one of the best practices. Applying withholding and exit taxes or thin capitalisation and Controlled Foreign Corporation (CFC) rules, tax authorities try to combat tax evasion and challenge fictitious or artificial transactions. From an anti-avoidance legislation perspective, all mechanisms mentioned above prevent and prohibit transactions that are solely carried out to obtain a tax benefit. In case a certain transaction falls under the scope of anti-avoidance legislation, “the tax liability is determined without taking benefits resulting from the abuse into consideration. In other words, the tax burden is as high as it would have been if the abuse had not occurred”[14]. Unfortunately, Moldova does not have specific anti-avoidance provisions such as exit taxes, CFC or thin capitalisation rules. Nevertheless, deduction rules of interest between legal entities (other than those paid between a company and financial institution)

is allowed only up to the refinancing rate established by the National Bank of Moldova, which is established in November of each year, and is in force for the following one [20]. A few other provisions should also be considered, namely:

-The case of interest related to an investment activity. The interest expenses are deductible for Corporate Income Tax (CIT) purposes within the limit of the income derived from the investment [20];

-The case of interest related to acquiring/building of the fixed assets based on the loan. The interest expenses should be capitalized to the initial fiscal value of assets. The deductibility of this expense is capped at the above limit. The excess difference is treated as non-deductible expense for that fiscal year [20];

-The case of interest related to operational or day-by-day activities. The interest expenses are deductible for CIT purposes and should be justified by adequate backup documentation [20].

The Moldovan Tax Code provides for the tax authorities’ rights to initiate annulment of some transactions in the courts [20]. Still, no specific measures are provided in this sense under the tax law, and general provisions of the civil legislation concerning the nullity of contracts are applicable. According to the Civil Code, Art.221, contracts concluded without intention to produce legal effects (fictive transactions) and those concluded with the purpose to hide another legal act (simulated transactions) are null and void. Even the case law of the Moldovan court does not provide clear criteria to be taken into account upon qualification of a transaction as fictive or simulated [22]. Nevertheless the Moldovan Supreme Court of Justice explains (even though merely) in the case of a fictive transaction the lack of both parties’ intention should be established based on the evidence brought. However, although tax administration has the legal right to claim annulment of fictive and simulated transactions, they seem to ignore such right in practice<sup>3</sup>.

<sup>3</sup> For more info see: <http://cauta.csj.md/legy/ac-admin/#/app>

The analysis of the publicly available case law of the Moldovan Supreme Court of Justice demonstrated that out of more than 25,000 litigation cases examined in 2008 – 2015 in which the Art.221 of the Civil Code was invoked, tax authorities participated in less than 1% cases, having the position of defendants. Furthermore the application of this article by the tax authorities seems to be increasingly less (e.g. during the last 3 years the tax authorities participated in 2 cases only). In this regard, the authors do strongly encourage the MTA to use at the maximum their law enforcement possibilities available at the moment and recommend rethinking current tax law structure, by reconsidering future legislative development of Specific Anti-Avoidance Rules, characteristic for civil law countries.

#### **(i) Institutional framework**

In order to counter tax evasion, the Council of Ministers of former MSSR adopted the Decision nr.68 on the creating of state tax inspectorates for each administrative and territorial unit at the district and city level on March 7th, 1990. In addition, a special department – the Financial Guard, was created in 1991, being empowered with control of tax violations and sanction functions as well. With over 20 years of transformation, this department suffered several changes. First, after 11 years of activity, its functions were taken over by the Centre for Combating Economic Crimes and Corruption, in 27.06.2002. Second, later in 2012, after another 10 years, the institution was transformed into National Anti-Corruption Centre and the responsibilities for the examination of cases on tax violations and application of the penalties on behalf of the tax authorities had been transmitted to the Ministry of Internal Affairs [20]. However, the changes continued, and powers granted to the Ministry of Internal Affairs were cancelled. As a result, the responsibilities for the examination of cases on tax violations and application of the penalties are remaining duties of tax authorities by amending the Tax Code, with entry going into effect from 01.01.2014 [15].

Hoping for the best, the institutional

framework for the prevention and fight against tax evasion suffered a lot of changes during its transformation for the last 25 years. Nevertheless, statistics show a steady trend of increase in cases of tax evasion. Thus, the data shows that in 1994 tax evasion correlation to GDP was 4.5%, in 1997 this number increased more than 3 times, in 1999 five times and in 2008 more than nine times [13] [5][6].

However the improvements are made and the results are not expected to be late. The main reasons for good returns are based on assumption that the current structure will eliminate duplication of the functions of control. Duplication of the functions of control has made the actual system much more expensive from a tax authorities point of view and more burdensome from taxpayers' perspectives.

The trial of offenders who committed tax evasion crimes is put in the competence of the common court, which examines the case in accordance to Moldovan law.

Obviously, some controversial aspects, in particularly the time of consumption related crime, the object of the violation and its subjective side, leaves the field open to debate. In this respect, and from future accession perspective of Moldova to the European Union, we can mention that some community standards will be effectively implemented only if the national legislation in this area will contain, or at least, will work only with an absolute minimum of normative inconsistencies. In this context, we believe that the tax culture will have to bear changes dictated by the necessities of life and ensure sustainable economic development in Moldova.

#### **(ii) Transfer pricing**

The Moldovan Transfer Pricing (TP) legislation is still in its stage of development. The “arm’s length” principle has been set forth in Moldovan tax law since 1998 requiring that transactions between related parties are carried out at market price [20]. According to Art.5 of the Tax Code, a related party is the taxpayer’s family member or a legal person that controls the taxpayer, is controlled by the taxpayer or is under joint

control along with the taxpayer. The term “taxpayer’s family member” includes spouses, direct relatives (children, parents and grandparents of the individual or his spouse) and spouses of direct relatives. The term “control” means the holding (directly or through one or more related parties) of at least 50% of the capital or the voting rights in a legal person. For an individual, the total holding is determined as the total sum of the corporate rights that belong to the individual and directly or indirectly to his family members. Also, the law provides that losses incurred in dealings between related parties carried out directly or through intermediaries are treated as non-deductible for corporate income purposes [20]. The Tax Code entitles the Moldovan Tax Authorities (MTA) to determine if a related party’s dealings were carried out with the aim to decrease the taxable base. However, as it currently stands, the law does not provide for a mechanism allowing both the MTA and the Moldovan taxpayers to assess and prove that the

transactions were carried out at “arm’s length”. Moreover, taking into account that Moldova is not currently an OECD member, there is no possibility of enforcing the OECD Transfer Pricing Guidelines.

Nevertheless, in 2016, the Moldovan Government is set to approve new transfer pricing legislation covering related party transactions undertaken by Moldovan taxpayers. The new transfer pricing legislation was supposed to be approved in 2014. However the deadline for new proposals implementation (draft law of 29.04.09) was postponed due to stakeholders’ rejection of the proposed changes. In this respect, we will analyse only the second draft of transfer pricing legislation of 20.03.2014. The aim of new amendments is the harmonization of national tax legislation with relevant international provisions. Current text of the draft law does provide for specific provisions in respect to the applicability of transfer pricing rules (Table 4).

Table 4. New provisions related to transfer pricing rules

No.	Area	Peculiarities
1.	<i>Related party definition</i>	Under the proposed amendments, related parties will be considered legal entities with a direct holding or an indirect holding (through one or more related parties) that exceeds 25% (down from 50 according to the current legislation) of the capital or the voting rights in a legal person. Additionally, the law provides that family members are considered to be related parties for purposes of application of the TP legislation.
2.	<i>Dealings entered into by “permanent establishments”</i>	According to new proposals the art.5, para.12, letter d) determines whether a permanent establishment is considered a related-party, which ultimately can be treated for purposes of applying Moldovan TP rules.
3.	<i>Materiality threshold for documentation purposes</i>	Under the proposed legislation, new Art.226 of the Tax Code, taxpayers will be required to document all related party transaction.
4.	<i>Penalties for the infringements</i>	According to new para.6 of the Art.260 the failure to submit TP file within the deadline set by the tax authorities or its incomplete presentation by the taxpayer, is considered as related-party transactions without justifying the amount of TP practiced and is sanctioned by a fine of MDL 20,000.
5.	<i>Methods</i>	Under the proposed amendments of new Art. 21 <sup>1</sup> all five transfer pricing methods set up by OECD TP Guidelines are provided
6.	<i>OECD Transfer Pricing Guidelines</i>	OECD Transfer Pricing Guidelines for multinational enterprises and tax administrations will be taken into account under provisions of Art. 21 <sup>1</sup> of Tax Code

Source: elaborated by the authors.

However, according to the authors’ opinion, there are still some amendments to be considered:

-Provisions, which will allow both MTA and

taxpayers to enter into Advance Pricing Agreement (APA). APA can be a valuable alternative in solving TP disputes, because: First, APAs provide taxpayers with a certain

degree of certainty in respect to the expectations of the tax authorities in terms of the arrangements to be agreed in related party transactions, which in turn will decrease the risk of future TP adjustments; Second, while an APA does require certain administrative procedures, it will ensure that in a medium to long term, the company's administrative burden in terms of the preparation of TP documentation is required.

-Review of the enforcement rules and penalties for the infringements. MDL 20,000 (currently, less than EUR 1,000) does not reflect the principle of equity (e.g. the TP documentation will have to be equally prepared for transaction for which the amount does not exceed for example EUR 1,000, as well as for a transaction which materially affects the company's operations). Moreover, Moldova could use the experience of other countries (Table 5).

Table 5. List of CEE countries with implemented TP legislation

No.	Countries	Year
1.	Republic of Poland	2001
2.	Republic of Hungary	2003
3.	Republic of Lithuania	2004
4.	Republic of Slovenia	2005
5.	Czech Republic	2006
6.	Romania	2006
7.	Republic of Croatia	2006
8.	Republic of Estonia	2007
9.	Russian Federation	2012

Source: elaborated by the authors.

A guidance regarding methodology in choosing comparable data for certain related-party transactions are expected to occur in Moldova (e.g. logistic activities, low-value adding services, manufacturing activities and financing transactions).

-The extension for some concepts (e.g. concept of "control" related to the cases with same administrators in two or more entities, which is a very usual situation for Moldova).

**(iii) Anti-avoidance measures – International aspects.**

The approach to tax avoidance is currently high on the tax policy agenda throughout the world. There are many ways countries reduce

tax avoidance: (a) Enacting general anti-avoidance rules (i.e. substance over form and step transaction) and specific legislation targeting areas that are more vulnerable or exposed to tax evasion (i.e. CFC, beneficial ownership, and thin capitalization rules), in their domestic legislation; and (b) by adding an anti-abuse rule in a treaty (i.e. beneficial ownership, exchange of information, limitation on benefits and transfer pricing). According to Oz Halabi 'all those provisions are structured to reduce double taxation, distribute revenues between the treaty partners, and help combat tax avoidance' [21]. However, it has been recognized [24] that, it is preferable to deal with international tax abuse by specific anti-abuse rules that will be added in the treaty.

In this order, we are agreeing with Oz Halabi that 'consideration must be given to international law and good faith compliance by the contracting states' [21].

Moreover, due to its stability and clear rules, a tax treaty is very often one of the pre-conditions of an increase of foreign investment.

As Table 6 shows the ten biggest countries participating in the investment process of Moldova (in 25 years of transformation of the tax system), the capital invested in domestic companies that represent 78%, only two countries (USA and British Virgin Islands) have not concluded DTT yet and the capital invested by them represents only 8% of total capital.

Comparing with the situation after 15 years, the capital invested by the ten biggest participating countries first ten biggest countries participants to the investment process in Moldova, represented 79% and only four countries (Netherlands, Romania, Russia and Germany) have concluded DTT with our state and the capital invested by them represented around one third of total capital.

Statistics demonstrate eloquently that the growing number of DTT have a positive impact on foreign investment growth in the Republic of Moldova (Lei Mil.3,663 capital investment in 15 years vs. Lei Mil. 11,635 capital investment in 25 years).



Table 6. The main countries (with / without DTT concluded) investing in economy of the Moldova and capital invested in 25 years vs. 15 years

01.01.1990 - 01.01.2015						01.01.1992 - 31.12.2006					
Nr.	Country	Nr. of Comp.	Cap. invested (Lei Mil.)	(%)	DTT	Nr.	Country	Nr. of Comp	Cap. invested (mil. lei)	(%)	DT T
1	The Netherlands	156	2,033	17	Yes	1	Spain	45	895	24	No
2	Italy	1,162	1,630	14	Yes	2	The Netherlands	73	583	16	Yes
3	Cyprus	302	1,367	12	Yes	3	Great Britain	126	299	8	No
4	Russia	911	1,108	9	Yes	4	USA	306	289	8	No
5	Germany	401	665	6	Yes	5	Romania	690	195	5	Yes
6	USA	382	546	5	No	6	Russia	544	167	5	Yes
7	Romania	1,547	478	4	Yes	7	Cyprus	122	157	4	No
8	Great Britain	221	473	4	Yes	8	France	113	121	3	No
9	Austria	92	438	4	Yes	9	British Virgin Islands	44	108	3	No
10	British Virgin Islands	76	323	3	No	10	Germany	263	105	3	Yes
11	Spain	64	313	3	Yes	11	Italy	459	95	3	Yes
	Others	4,451	2,561	19	-		Others	2,330	554	18	-
	<b>TOTAL</b>	<b>9,765</b>	<b>11,635</b>	<b>100</b>	<b>-</b>		<b>TOTAL</b>	<b>5,142</b>	<b>3,663</b>	<b>100</b>	<b>-</b>

Source: Based on Moldovan State Registration Chamber, Ministry of Finance data and D. Criclivaia PhD thesis.

Furthermore, for multinational enterprises, tax regimes that do not apply thin capitalization rules, CFC-legislation, or exit charges are most attractive as the allocation of debts is not restricted and the deductibility of interest is not limited. From an anti-avoidance legislation point of view, Moldova seems to be more attractive for multinational enterprises, because the withholding of taxes is the only one anti-abuse measure used. Application of this mechanism is made through the Tax Code and bilateral DTT. Moreover some researchers [18] analysing the phenomenon of treaty shopping empirically find that withholding taxes significantly increases the possibility of establishing an intermediate holding company in a third country.

## CONCLUSIONS

Even is no way to completely eliminate it, countries will always attempt to limit tax evasion by enacting different provisions, structured to help combat tax avoidance. However, as the result of the performed research, we can conclude that currently the Moldovan tax law is very poor in dealing with tax-avoidance.

Nevertheless, we consider that the proposed changes of last 5 years represent a good start

undertaken by Moldovan Government in creating a clear legislative environment and encourage the authorities to continue this initiative and to seek support from the foreign partners in its further administration.

## REFERENCES

- [1]Administrative Litigation Law, No.793-XIV of 10.02.2000, Official Gazette RM, No.57-58, 18.05.2000, Art.375; Entry into force 18.08.2000
- [2]Avy-Yonah, R., Sartori, N., Omri Marian, 2011, Global perspectives on income taxation law, OXFORD University Press, UK: 101
- [3]Berliba, V., 2010, Locul delictelor/ delictualității fiscale în cadrul infracțiunilor/ infracționalității din sfera economică, Materialele Conferinței științifico-practice internaționale "Reformele cadrului legal și instituțional din Republica Moldova prin prisma practicilor europene", USEM, Chișinău: 114-129
- [4]Carașciuc, L., Ciubotaru, M., Pațiu, N., Bejan, L., 2003, Corupția și evaziunea fiscală: dimensiuni economice, Transparency International Moldova, Chișinău:56
- [5]Carașciuc, L., 1999, Economia subterană în Republica Moldova: studiu economic, Criminalitatea organizată și economia tenebră în Republica Moldova. Conferința științifico-practică republicană (26 februarie 1999), ARC, Chișinău:45
- [6]Criclivaia, D., 2015, "Magic formula" of the joint audits in raising revenue through weeding out corrupt practices (based on Romania and Moldova cases), Scientific Papers Series "Management, Economic Engineering in Agriculture and rural development", Vol.15(1):135-146

[7]Criclivaia, D., 2015, Moldavian Tax Reform: 25 years of changes. Scientific Papers Series "Management, Economic Engineering in Agriculture and Rural Development", Vol.15(3): 119-128

[8]Criclivaia, D., Certan, I. 2015, Moldovan tax administration: 25 years of experience and future challenges, Economy and Sociology, No.3: 122-129

[9]Criclivaia, D., Turcanu, C., 25 Years of Changes in Moldova Taxing Culture. International conference: The Transformation of Tax Systems in the CEE and BRICS Countries – 25 years of experience and future challenges (October 9 - 10, 2015), University of Lodz, Poland (incoming publication)

[10]Criminal Code of the Republic of Moldova, Law No.985-XV of 18 April 2002

[11]Cușnir, V., 1999, Corupția: reglementări de drept, activități de prevenire și combatere, Partea I., Academia Ștefan cel Mare, Chișinău:91

[12]Francesco Tesauro, 2009, Istituzioni di Diritto Tributario, Vol.1: Parte generale, Decima edizione, UTET Giuridica, Torino: 239

[13]Guțu, I.T., 1998, Republica Moldova: economia în tranziție, Litera, Chișinău:174

[14]Keller S., Schanz D., 2013, Measuring tax attractiveness across countries. Arqus-Diskussionsbeiträge zur quantitativen Steuerlehre, No.143

[15]Law No.324 of 23.12.2013, Official Gazette RM, No.320-321, Art.871; Entry into force 01.01.2014

[16]Law on the Prosecution, nr.294-XVI of 25.12.2008, Official Gazette RM, No.55-56, 17.03.2009, Art.155; Entry into force 17.03.2009

[17]Law on the Public Function and Statute of Civil Servant, No.158-XVI of 04.07.2008, Official Gazette RM, No.230-232, 23.12.2008, Art.840

[18]Mintz, J., Weichenrieder, A., 2010, The indirect side of direct investment. Multinational company finance and taxation. The MIT Press, Cambridge, MA: 192

[19]Moldova: Taking Compliance Management Further, International Monetary Fund, April 2012:38

[20]Moldovan Tax Code, Law No.1163-XIII of 24 April 1997, Official Gazette RM No.62 of 18.09.1997 and Republished in No.102-102 of 23.08.2001; special edition of 25.03.2005 and 08.02.2007: Arts. 5, 24-25, 27, 36, 134, 241

[21]Oz Halabi, 2011, Domestic Anti-avoidance Rules and Their Interplay With Tax Treaties, Tax Notes International, September 26<sup>th</sup>, 2011, USA: 955-964

[22]Plenary Decision of the Moldovan Supreme Court of Justice on the application by the courts of the legislation concerning the nullity of transactions, No.1 of 07.07.2008

[23]Slemrod, J., Bakija, J., 2008, Taxing Ourselves. A citizen's Guide to the Debate over Taxes, MIT Press, USA: 144

[24]U.N. Committee of Experts on International Cooperation in Tax Matters, Report on the first session, December 5-9, 2005, para.22

[25]Vrenea, I., 2002, Reglementarea juridico-penală a

evaziunii fiscale a întreprinderilor, instituțiilor și organizațiilor, Doctoral Thesis, Chișinău, Unpublished:26-34