

## TAX CRIMINALITY DURING THE PANDEMIC – RISKS AND PREDICTIONS

Review Paper

Primljeno/Received: 11. 11. 2021.

Prihvaćeno/Accepted: 18. 11. 2022.

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### Abstract

The year-long pending Covid-19 pandemic has primarily been imposing significant consequences to health. Apart from these, there are emerging negative effects in all society segments, particularly those related to criminal activities. Deviant persons have always exploited fear and social insecurity during war devastation and pandemics as an ideal ground for their criminal activities, therefore we can start from the assumption that current situation bears a high degree of risk of increase in various illegal behaviours. In the study the authors have elaborated on the risks imposed by the pandemic on increase of certain types of tax crimes. Diminished capacity of financial institutions to enforce control over financial transactions makes it easier for taxpayers to actualize the intended tax fraud, leading to acquisition of illegal revenue and even, in some cases, to the criminal act of money laundering. As tax evasion may result from identity theft of taxpayers, hacking attacks are expected to intensify, therefore we need to reinforce the activities of tax administration officers. It should be emphasized that transition to service concept of tax institution operation, as well as transfer of a considerable share of activities onto the individual taxpayer, have lead to a certain inertness of tax institutions. The study offers predictions and proposals of short-term de lege ferenda, based on the current epidemiological situation.

### Keywords

pandemic, tax criminality, tax evasion, tax administration

## INTRODUCTION

Taxation has always been a contentious and complex issue between the state and taxpayers. Despite the fact that it serves the financing of public goods, which is in the interest of the taxpayers themselves, they very often encounter their resistance, because by capturing the disposable income, it affects the reduction of their economic power. Hence, the taxation process is accompanied by various forms of behavior of taxpayers, undertaken with the intention of reducing taxes or completely avoiding paying taxes. Some of them fall under the category of legal, and some under the category of illegal tax evasion. Among the most severe forms of illegal tax evasion, we singled out those prescribed by the Criminal Code of the Republic of Serbia (CC RS).

Due to the multiple harmful consequences for the financial and economic stability of the state, and certain of its specifics, the mentioned criminal offenses are often the subject of numerous scientific discussions. The multidisciplinary approach to the study of the most difficult forms of tax evasion in a pandemic has become even more important.

The topic of the paper is divided into four parts. The first part, from the point of view of tax law, discusses taxation and its negative consequences. The second unit deals with tax policy during the Covid-19 pandemic with a focus on the risks that can lead to an increase in tax crime. Forecasts are also given regarding the future state and trends of tax crime. The third unit, considers the forms of manifestation of the most severe forms of tax crime in the system of criminal substantive legislation (CC RS) and possible ways of their execution during a pandemic. The fourth unit includes statistical analysis of reports, accusations and convictions in relation to criminal offences of tax crime in the periods before and during the pandemic. For the purpose of the research, data obtained from the Republic Statistical Office of the Republic of Serbia were used.

The aim of this paper is to look at the possible risks and conditions created by the pandemic for committing tax crimes from the financial and criminal material aspect, with reference to possible changes in the manner of execution. The statistical analysis aims to draw conclusions about the state and trends of tax crime based on the obtained results and to give short-term forecasts for the expected duration of the pandemic.

## METHODS

- **Research goal and design**

The research aims to look at the basic characteristics of tax crime, their specifics that come to the fore in times of crisis, such as the Covid-19 pandemic, in accordance with the views of eminent experts in the field of tax law, positive legal solutions, current circumstances and available statistical data. It is especially important to emphasize the already defined goals: first - to look at the risks and conditions created by the pandemic for committing tax crimes from the financial and criminal material aspect, with special reference to possible changes in the manner of execution, and second - to statistical analysis draws conclusions about the state and trends of tax crime and gives short-term forecasts for the expected duration of the pandemic. The data obtained by the statistical survey are presented in tabular, graphical and numerical representations (Table 1, Table 2, Table 3, Table 4, Graph 1, Graph 2, Graph 3 and Graph 4).

- **Population and sample used in the study**

The investigation of tax crime was conducted on the basis of the number of reports, accusations and convictions in relation to adult perpetrators of criminal acts. As the eighteenth year, the year in which adulthood is just coming of age, a certain maturity and experience can lead to the commission of tax crimes in a later period of life, after the age of twenty-five.

- **Description of the protocol used**

The basic features, specific characteristics, state and movement of tax crime are considered from the financial, criminal material, criminal procedural and statistical aspects. Consideration of the subject begins with the established positions represented in the field of tax law, through the interpretation of the provisions that prescribe the criminal offenses in the Criminal Code of the Republic of Serbia, the basic features of the investigation of tax offenses, to their analysis before the courts of the Republic of Serbia.

- **Description of the methods used for data analysis**

The research of the subject was conducted with the help of several methods, in order to look at it from several aspects and approach the problem in a multidisciplinary manner. Deductive, legal dogmatic and statistical analysis methods were used. The deductive method begins with financial attitudes, while the legal dogmatic includes the consideration of the topic from the criminal material and criminal procedural aspect. The statistical method covers three segments: the state of tax crime before the pandemic, the state of tax crime during the pandemic and the comparative ratio of tax crime before and during the pandemic.

## **TAX CRIME AS A RESULT OF RESISTANCE TO PAYING TAXES**

Taxation has always been a complex issue between the state and taxpayers, because it, on the one hand, provides the funds necessary for the functioning of the social order, and on the other hand, encroaches on the personal sphere of individuals and captures its disposable income. As it affects the reduction of economic power, taxation provokes resistance, despite the fact that it serves to finance public goods in the interest of the taxpayers themselves. Hence, tax evasion appears as a side effect of the taxation process, which represents various forms of behavior of taxpayers undertaken with the intention of reducing taxes or completely avoiding paying taxes. These can be activities that do not violate tax regulations, but represent the use of legally permitted opportunities, such as, for example, a change of residence or relocation of the registered office to an area with a lower tax burden. On the other hand, it is difficult to recognize the criminal behavior of such persons because they are mostly perpetrators of non-violent crimes where only after a long period of time do obvious consequences arise (Božić, 2011: 168).

Tax evasion can be undertaken by various active and passive activities that represent illegal behavior of taxpayers. The most serious forms of illegal behavior of taxpayers are tax crimes. Each state has its own approach to the categorization of tax crimes, as well as the prescribing of sanctions, but their basic goal is the same - the suppression of tax crime. Punishment for tax crimes aims to deter the perpetrator from committing such criminal acts in the future, but

also to influence other taxpayers to fulfill their tax obligations in a timely and conscientious manner. Activities have been undertaken within the OECD to combat tax crime. Respecting the differences in the normative and operational frameworks defined by the states, this organization proclaimed the basic principles as recommendations for undertaking repressive policy measures (OECD, 2017: 14, 16, 18).

Tax crime is a multiple socially harmful phenomenon. Primarily, it produces harmful consequences for the fiscal interests of the state, because the state treasury remained deprived of the amount of income that would have been collected if all taxpayers had fulfilled their tax obligations in a timely and orderly manner. In countries with low tax morale, public opinion is characterized by the fact that tax crime has a small, or even insignificant social danger. In contrast, such illegal actions of taxpayers represent socially dangerous behavior that endangers the fiscal system of the state, because timely payment of taxes and other duties is a necessary condition for continuous financing of public needs. Tax crime also has harmful consequences in terms of the principle of fairness of taxation, which implies the generality of taxes and the equal distribution of the tax burden. Unscrupulous taxpayers have made "savings" for the amount of unpaid tax and are in fact in a more favorable position compared to conscientious taxpayers, who, due to orderly and timely payment of taxes, have reduced their disposable income. Ultimately, the tax burden is borne by those taxpayers who acted conscientiously in fulfilling their tax obligations. From the economic point of view, tax crime distorts market competition. Because they managed to avoid paying taxes, there is a reduction in production costs on the part of unscrupulous taxpayers. Unfair competition is created between conscientious taxpayers who are, in fact, at a disadvantage, and unscrupulous taxpayers, who have achieved savings and provided additional income for business by not paying taxes. In addition to violating the principle of fair taxation, tax crime creates harmful consequences from the aspect of society, because it violates social cohesion. By illegally avoiding the payment of taxes, they put themselves in an unequal economic and social position, conscientious in relation to unscrupulous taxpayers. Also, unreasonably increased disposable income can be one of the factors that lead to the concentration of wealth, which, ultimately, affects the greater economic and social stratification of society.

In order to combat tax crime, it is necessary to fight on a broader scale with the involvement of all social factors, and above all, to eliminate those factors that condition and cause its existence (Kulić, Milošević & Milašinović, 2011: 302-303). At the heart of tax crime lies the taxpayer's effort to avoid a reduction in his disposable income. The extent to which resistance to fulfilling one's tax obligation will be expressed, however, depends on various factors, among which there may be numerous reasons of an objective nature. Economic developments in one country, for example, a decline in economic growth, can create an unfavorable environment for taxpayers, because the reduction of their economic strength will affect the regular settlement of tax liabilities. Also, frequent changes in tax regulations, the adoption of imprecise and unclear tax laws can create great difficulties for taxpayers in their interpretation, confusion in calculating the amount of tax liabilities and the like. The present tax morale in a country also has a great influence on the conscientious fulfillment of tax obligations. The presence of a social milieu that glorifies tax evaders as successful businessmen who make big profits, that is, wise individuals who are able to make money quickly and easily, negatively affects the orderly and timely payment of taxes. Modern states are paying more and more attention to preven-

tion policy, in an effort to encourage voluntary payment of taxes through numerous activities and measures. Through tax propaganda, they try to influence the raising of the tax awareness of their taxpayers. By pointing out the purpose of taxation, by pointing out the fact that they serve to finance public goods whose users are precisely taxpayers, taxes become acceptable to them.

## **TAX POLICY WITH REFERENCE TO THE COVID-19 PANDEMIC**

The Covid 19 pandemic has had a number of economic consequences, the scale of which cannot yet be fully understood. Despite the measures that national economic policy makers are taking in order to mitigate the decline in economic activity and maintain the existing level of employment, predictions are that severe economic consequences are yet to come. Many businesses, as well as entire sectors, such as tourism, face major challenges of survival and the struggle to retain jobs. Workers in the catering and hotel industry, various service activities and countless other workers are already left or will be left without employment and earnings in the future, which will lead to a large number of people leading to economic insecurity and poverty. In such conditions, there is an increase in public expenditures in the form of various forms of social transfers for these persons. On the other hand, due to the reduction of the economic power of taxpayers, due to the reduction of the profit of legal entities, ie the income of natural persons, there is a decrease in the inflow on the side of public revenues to the budget. How the states will solve the additional increase of the already present budget deficit will largely depend on the decisions of the creators of national tax policies. If they decide to increase the tax, that additional burden will be borne by those individuals and economic entities that have managed to preserve their economic activities and jobs. The duration of the Covid 19 pandemic, which is entering its second year, is seriously jeopardizing their economic strength, and it can be expected with certainty that this will greatly affect the conscientious and regular fulfillment of tax obligations (Yamen, 2021:995-1007; Goodell, 2020:1-5). In the case of a stronger tax burden (by increasing the rate, for example, in the case of value added tax or by abolishing existing tax reliefs), there is a likelihood that there will be an increase in resistance to tax compliance by taxpayers. In any case, the reduction in the economic power of taxpayers at the time of the pandemic adversely affects the fulfillment of tax obligations. In order to reduce the reduction of their disposable income, a certain number of taxpayers will decide to undertake illegal activities, which will increase tax crime.

Due to unfavorable business conditions, which arose as a result of the pandemic, one can expect an increase in the evasion of payroll taxes and contributions for compulsory social insurance in the form of hiring workers "on the black market". In the new circumstances, a number of employers, especially those with less capital, will decide to achieve "savings" on the side of labor costs by hiring workers in the informal sector. Thus, formally and legally speaking, there will be no increase in tax crime, because hiring workers without a contract entails misdemeanor liability, but the consequences of such tax evasion are multiple. It harms the fiscal interests of the state, because it causes losses in the budget. The state remains deprived of the amount of funds that it would have had if employers and employees had duly fulfilled their tax obligations. In addition, informal employment produces harmful consequences from the aspect of employment rights. Workers engaged in the informal sector are illegally employed, and without a legal basis they will not be able to exercise their employment rights, such as rights in

terms of working hours, rest and leave, safety at work, guaranteed wages. As they are not registered for contributions for obligatory social insurance, they do not have a work experience, they do not have social insurance in case of unemployment, nor health insurance based on work (Božić V., Dimić S., 2020: 261-262). Among the fiscal measures taken by states to provide support to businesses and individuals in times of economic downturn due to the pandemic were various forms of tax benefits (such as tax deferrals), as well as tax relief in the form of full or partial tax exemption. salaries and contributions for compulsory social insurance, which was limited in time. However, these measures have been taken ad - hoc and in the short term from the beginning, and it is certain that action with broader and stronger longer - term measures is needed (Žunić-Kovačević, 2021: 498).

Among the risks of an increase in certain forms of tax crime, such as tax evasion as the most severe form of tax evasion, it is worth noting certain extraordinary circumstances caused by the spread of the Covid-19 virus. Disorganization, which is somewhat expected, is found in formal social control bodies, and rigorous closure measures that should have been strictly controlled on the one hand, and which on the other hand caused side effects in the field of interpersonal relations (Mawby, 2020) are not negligible. Namely, the mentioned relations were significantly disturbed to such an extent that the everyday communication that would normally take place through direct contacts, is now either reduced, and for the most part even interrupted.

The primary activity of the police authorities aimed at detecting and clarifying criminal acts and perpetrators, in the conditions of a pandemic, is neglected, and redirected to control the observance of measures of closure and gathering in public places. The reduction of police and judicial, prosecutorial capacities due to virus infection or self-isolation should not be neglected. On the other hand, the structure and state of certain forms of crime have changed. The decline in property crime (Payne, Morgan, 2020) is quite expected because due to the closure of service facilities, there was no possibility for the realization of certain crimes, such as theft, robbery, and the like. However, as working from home and spending more and more time indoors has become commonplace, an increase in cyber, violent (Mawby, 2020), but also tax crime is not excluded.

Digitization of the tax administration is an effective method in the light of easier fulfillment of tax obligations and communication of taxpayers with the Tax Administration. However, it carries certain risks that require the need to protect the security of taxpayers' data (Dimić, Božić, 2020: 397). The risks are related to identity theft, and in crisis circumstances they are even more pronounced. By switching to the service concept, a kind of inertia of the tax authorities is noticeable. Add to this the inadequate protection of tax data security, or the inability to implement protection mechanisms due to infection with the Covid-19 virus, strictly confidential taxpayer data becomes an ideal target for hacker attacks. The perpetrator is not a taxpayer, but a person who, through some form of cybercrime (Dimić, Božić, 2020: 401-404), obtained data from a taxpayer located in the appropriate database of the Tax Administration (personal data, social security number, tax data such as PIB - tax identification number, etc.). By misappropriating identity, he performs various illegal actions (OECD, 2006), including some of the alternatives envisaged for tax evasion (giving false information about acquired income or most often non-reporting of acquired income, can also use his tax reliefs on behalf of the taxpayer). On the subjective level, the intention to make high profits is present, rather than the intention to avoid paying taxes (Božić, Dimić, Đukić, 2021: 64). Such circumstances, cumulatively with all

the listed risk factors, make certain forms of tax crime to increase in real terms, and to report less often, which ultimately creates a gap between the number of deeds actually done and the number of those reported.

Given that the pandemic has spawned a new lifestyle, the question arises as to whether the scope and structure of tax crime will return to the pre-pandemic period, or whether it will adapt to the new circumstances. This means that a change in the modus operandi is also possible, but the emergence of new perpetrators of crimes is also possible. Because they are increasingly concerned about the new consequences of the pandemic in the form of increased unemployment, inflation, a new regime of work and tasks, social isolation, reduced interpersonal contacts, and other new lifestyles that will certainly affect the state and trends of tax crime in the future period. Namely, today we are most concerned about the new consequences of the pandemic in the form of increased unemployment, inflation, new jobs and jobs, social isolation, reduced interpersonal contacts and other new lifestyles that will certainly affect the state and trends of tax crime in the future.

## POLICY OF COMBATING TAX CRIME

At the forefront of the fight against tax crime are the tax and inspection authorities, which have a very difficult task in detecting these crimes characterized by a high rate of dark numbers (Dimić, Đukić and Božić, 2021: 423-443). In tax crime, the leading place is occupied by tax evasion, which is considered *de jure* and *de facto* the simplest and most common form of tax crime (Božić, 2020: 356), but also the most serious form of illegal behavior of taxpayers (Dimić and Božić, 2020: 61). Tax evasion ostensibly reduces income and tax liability, while falsifying business documents is the main modus operandi. The criminal offense of tax evasion (Article 225 of the Criminal Code) is illegal evasion of tax liability and includes illegal actions or omissions by which the tax liability is concealed or avoided in order to pay less tax than the law prescribes (Matković, 2007: 115). Considering that the criminal offense of tax evasion can be committed on all forms of evasion of taxes, contributions or other prescribed duties, it should be emphasized that the criminal offense of tax evasion is a blanket criminal offense. The blanket norm was introduced into the criminal legislation back in 1977 (Criminal Code of the Socialist Federal Republic of Yugoslavia, 1977). The incrimination of the criminal offense of tax evasion in criminal legislation protects the fiscal system of the state, while the object of the crime is considered to be taxes, social security contributions and other prescribed duties. Namely, evasion of taxes, contributions and other prescribed duties directly damages the fiscal system of the state (Božić, Dimić and Đukić, 2020: 164).

Although it is *de facto* a fraud, it is a criminal offense *sui generis* placed in the group of criminal offenses against the economy. The perpetrator acts with the direct intention (*dolus directus*) that he or another person completely or partially avoids the payment of taxes, contributions or other prescribed duties. Tax evasion can be committed by committing through the act of giving false data on income (*delicta commissiva*), but also by passivity or non-declaration of income in the case of mandatory tax return (*delicta omissiva*). It should be pointed out that by concealing data, tax evasion can also be committed (therefore, both by doing and not doing). The act of committing a criminal offense is alternatively prescribed and refers to providing false information about acquired income, items or other facts that affect the determination of tax

liabilities or failure to report the acquired income, items or other facts in the case of mandatory reporting, which affect determination of tax liabilities or concealment of data related to the determination of exhaustively stated liabilities. It is important to emphasize that the action must be taken in relation to the acquired income, items or other facts that are of influence on the determination of tax liabilities.

The Legislator has prescribed three forms of the criminal offense of tax evasion, depending on the amount of tax evasion. It is a basic form of tax evasion and two qualified forms (Art. 225 of the Criminal Code of the Republic of Serbia (CC RS), Official Herald RS, NO. 85/05, 88/05 - ispr., 107/05 - ispr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 i 35/19. If the amount of the obligation whose payment is avoided exceeds one million dinars, it is a basic form of criminal offense for which the legislator has provided a cumulative sentence, imprisonment from one (1) to five (5) years and a fine. If the amount of the obligation to be avoided exceeds five million dinars, it will be the first qualified form of the criminal offense of tax evasion, for which the law provides for a cumulative penalty, imprisonment from two (2) to eight (8) years and a fine (Art. 225, Paragraph 2, CC RS). Another, more serious, qualified form of criminal offense is if the amount of the obligation that is avoided is exceeded fifteen million dinars, for which a prison sentence of three (3) to ten (10) years and a fine is threatened (Art. 225, Par. 3, CC RS). The forms of the criminal offense are shown in Table 1.

Table no. 1. *Forms of the criminal offense of tax evasion*

	A form of guilt	Action	Amount of tax evaded	The punishment prescribed by law
The basic form of tax evasion	Direct intent ( <i>dolus directus</i> )	1. giving false information 2. non-reporting 3. concealment  (acquired income, items or facts)	> (1) million dinars	Imprisonment 1-5 years + fine
I qualified form of tax evasion			> (5) five million dinars	Imprisonment 2-8 years + fine
II qualified form of tax evasion			> (15) fifteen million dinars	Imprisonment 3-10 years + fine

The criminal offense of *non-payment of withholding tax* is another criminal offense prescribed by the Criminal Code of the Republic of Serbia (Article 226) (Božić and Dimić, 2020: 257-273). It was introduced into the criminal legislation by the amendment of the RS Criminal Code from September 11, 2009. and placed in criminal offenses against the economy (Law on Amendments to the Criminal Code, Official Gazette of RS, no. 72/2009). Prior to 2009, the said criminal offense was prescribed by Article 173 of the Law on Tax Procedure and Tax Administration (Law on Tax Procedure and Tax Administration, Official Gazette of RS, no. 61/2007). Non-payment of withholding tax as a criminal offense under Art. 226 of the Criminal Code represents legal continuity with the criminal offense of the same name from Article 173 of the Law on Tax



Procedure and Tax Administration, considering that the mentioned criminal offenses have the same characteristics. In the incrimination of the criminal offense in the period from September 11, 2009. to 31.12.2012. the term "public revenues" was used in according to which it is interpreted that non-payment of contributions for compulsory social insurance is not considered a criminal offense of non-payment of withholding tax. We believe that this interpretation is not in the spirit of tax legislation, given that the very purpose of incrimination tax crimes is to protect the fiscal interests of the state, budgets and funds of organizations for compulsory social insurance.

Non-payment of withholding tax is made by the responsible person in the legal entity - the taxpayer, who, in order to avoid paying withholding tax, compulsory social security contributions after deduction or other prescribed duties, does not pay the amount calculated in the name of withholding tax, ie contributions for compulsory social insurance after deduction, to the prescribed payment account of public revenues or does not pay other prescribed duties. The criminal offense of non-payment of withholding tax is aimed at avoiding and failing to pay withholding tax, contributions for compulsory social insurance after deduction or other prescribed duties. It should be noted that the crime was committed even if it is a case of partial non-payment of withholding tax, contributions for compulsory social insurance after deduction or other prescribed duties. For the criminal offense of non-payment of withholding tax, the penalty may be imposed to the entrepreneur and to the director of the business entity. It cannot be a case of a crime if the person, as the director of a business entity or entrepreneur, calculated the withholding tax and registered it in the business books, but did not pay it, but received approval from the Tax Administration to pay it through annuities.

The criminal offense of non-payment of withholding tax is a *delictum proprium* since it can be committed by a person with a certain capacity, a director as a responsible person in a business entity and an entrepreneur. When committing a criminal offense, the perpetrator acts with direct intent (*dolus directus*).

There are three forms of the criminal offense of non-payment of withholding tax, basic and two qualified, depending on the amount of unpaid withholding tax, contributions or other prescribed duties. If the amount of unpaid withholding tax is below one million and five hundred thousand dinars, it will be a basic form of the criminal offense of non-payment of withholding tax, for which prescribed cumulative penalty, imprisonment for up to three years and a fine (Art 226, Par. 2 and 3, CC RS). The first qualified form of this criminal offense will be if the amount of unpaid withholding tax is higher than one million and five hundred thousand dinars, which the legislator foresaw a cumulative sentence, imprisonment from six months to five years and a fine. The second, more serious qualified form of the stated criminal offense will be in question if the amount of unpaid withholding tax is higher than seven million and five hundred thousand dinars. The law provides for a cumulative sentence, a prison sentence of one to ten years, and a fine.

The forms of the criminal offense are shown in Table 2.

Table no. 2. *Forms of the criminal offense of non-payment of withholding tax*

	A form of guilt	Action	Amount of tax evaded	The punishment prescribed by law
The basic form of non-payment of withholding tax	Direct intent ( <i>dolus directus</i> )	A- payment avoidance: 1. withholding tax 2. contributions for compulsory social insurance after deduction 3. other prescribed duties	Up to one million and five hundred thousand dinars	Imprisonment for up to 3 years + fine
I qualified form non-payment of withholding tax		B- non-payment: 1. the amount calculated in the name of withholding tax 2. the amount calculated in the name of the contribution for obligatory social insurance after deduction 3. other prescribed duties	More than one million and five hundred thousand dinars	Imprisonment 6 months to 5 years + fine
II qualified form non-payment of withholding tax			More than seven million and five hundred thousand dinars	Imprisonment 1-10 years + fine

In the context of all tax crime, it should be noted that criminal offenses in the field of tax law are prescribed by the Law on Tax Procedure and Tax Administration (*lex specialis*) as a blanket regulation: *Tax fraud in connection with value added tax* (Article 173a), *Endangering the collection of taxes and tax control* (Article 175), *Illegal trade in excise products* (Art. 176) and *Illegal storage of goods* (Art. 176a).

Tax crimes carry a certain degree of difficulty in detecting and proving, whether viewed as predicate money laundering or individually. Therefore, the very concept of investigation can be characterized as a complex whole that should be modeled in accordance with the needs of a particular case. In the modeling concept, investigative functions can be assigned to differently structured investigative teams. Thus, in France, tax investigative functions are assigned to the National Financial Prosecutor's Office, to which the Special Brigade joins in more complex cases, when it is suspected that the proceeds of these crimes have been "laundered" (Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes, 2017: 271). The situation is similar in other countries, such as Austria, where tax investigations are entrusted to the Fiscal Enforcement Bodies and the Tax Investigation Unit, which acts on behalf of the public prosecutor (Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes, 2017: 185). In the Republic of Serbia, the structure of the investigation team consists of a public prosecutor, financial forensics, officials of internal affairs bodies, tax police, a representative of the Tax Administration, or the Administration for Prevention of Money Laundering, or the Customs Administration, depending on the circumstances of the case.

As proving tax crimes is not an easy task, it requires the collection of various pieces of evidence in order to create a complete mosaic. The greatest importance is attached to direct material evidence, such as tax returns, financial documentation used by the taxpayer in his business. In their absence, indirect methods of proof can be used, based on the costs of the suspect, or a method based on net value. The issue of proving intent, which in fact cannot be documented, arose as disputable, so that in practice no unified position was taken. It should be noted that

in most cases, evidentiary methods prove to be unsuccessful, especially when tax evasion occurs as a consequence of identity theft. In such situations, most tax crimes are not only not detected, but are not reported, because in fact they are not even known to the prosecuting authorities. The consequence of the above is manifested through the phenomenon of the dark figure of tax crime.

## RESULTS AND DISCUSSION

The method of statistical analysis was used to examine the state of tax crime in two periods. The first refers to the period from 2010 to 2019, while the second refers to the period marked by the beginning of the pandemic, 2020. The aim of the research is to analyze the reports, accusations and convictions for tax crimes prescribed by the Criminal Code of the Republic of Serbia, to look at the comparative relationship in the mentioned periods and to draw conclusions about the state and trends of tax crime.

### 1. The state of tax crime until the pandemic (2010-2019)

The data from the table above indicate an uneven increase in the number of reports, accusations and convictions in the ten-year research period. The highest number of reports for the criminal offense of tax evasion was recorded in 2012 and 2013 (1132 and 1051), the highest number of accusations in 2014 (788) and the largest number of convictions in 2015 (449). Although 2012 and 2013 recorded the largest number of reports, a very low number of convictions was observed in the same years (246 and 290).

Table no. 3. *Reports, accusations and convictions against adult offenders of Tax evasion in the period 2010-2019*

YEAR	REPORTS	ACCUSATIONS	CONVICTIONS
2010	658	208	119
2011	938	449	262
2012	1132	499	246
2013	1051	705	290
2014	712	788	400
2015	715	778	449
2016	734	643	419
2017	649	551	392
2018	967	417	266
2019	777	392	274
IN TOTAL	8333	5430	3117

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

Table no. 4. Reports, charges and convictions against adult offenders of Non-payment of withholding tax in the period 2010-2019

YEAR	REPORTS	ACCUSATIONS	CONVICTIONS
2010	48	4	3
2011	105	15	9
2012	103	44	24
2013	106	66	22
2014	62	108	44
2015	63	74	30
2016	52	44	20
2017	30	42	23
2018	39	24	6
2019	22	25	12
IN TOTAL	630	446	193

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

Compared to the criminal offense of tax evasion, in the case of non-payment of withholding tax, we have a significantly lower number of reports, accusations and convictions. Here, the number of reports decreases from year to year, with the exception of 2011, 2012, and 2013, in which we have the largest number of reports for the observed period (105, 103 and 106). The number of accusations is on the rise until 2014, while from the mentioned year to the final year of the investigation it is in a slight decline. It is similar with convictions, the number of which is on the rise until 2014, and further until the final year of research in a slight decline.

## 2. The state of tax crime during a pandemic (2020)

Table no. 5. Reports and convictions against adult offenders of Tax evasion in 2020

YEAR	REPORTS	CONVICTIONS
2020	574	194

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

In the year of the pandemic, only 574 criminal charges for tax evasion and only 194 convictions were recorded. Of the total number of applicants, 33.8% were prosecuted.

Table no. 6. Reports and convictions against adult offenders of Non-payment of withholding tax in 2020

YEAR	REPORTS	CONVICTIONS
2020	20	13

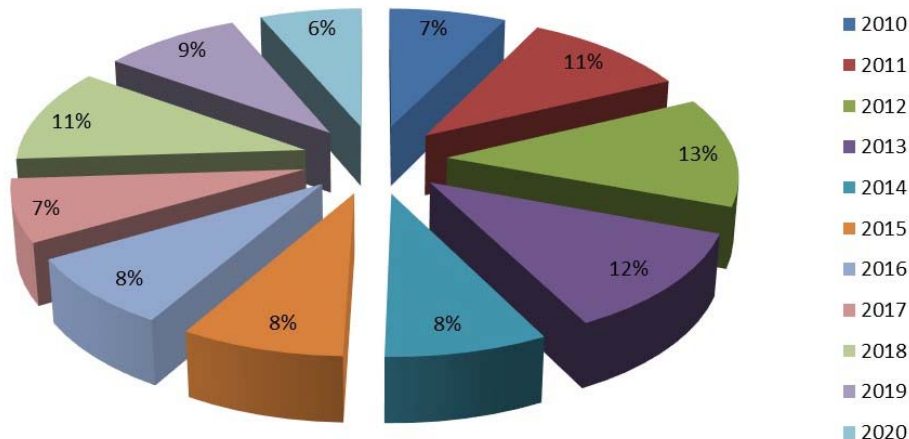
Source: <https://www.stat.gov.rs/oblasti/pravosudje/punoletni-ucinioci-krivicnih-dela/>

Non-payment of withholding tax was reported in 20 cases, while the perpetrators were convicted in 13 cases. There is a significantly smaller difference between reported and convicted perpetrators, compared to tax evasion. Of the total number of applicants, 65% were prosecuted.

### 3. The ratio of tax crime before and during a pandemic

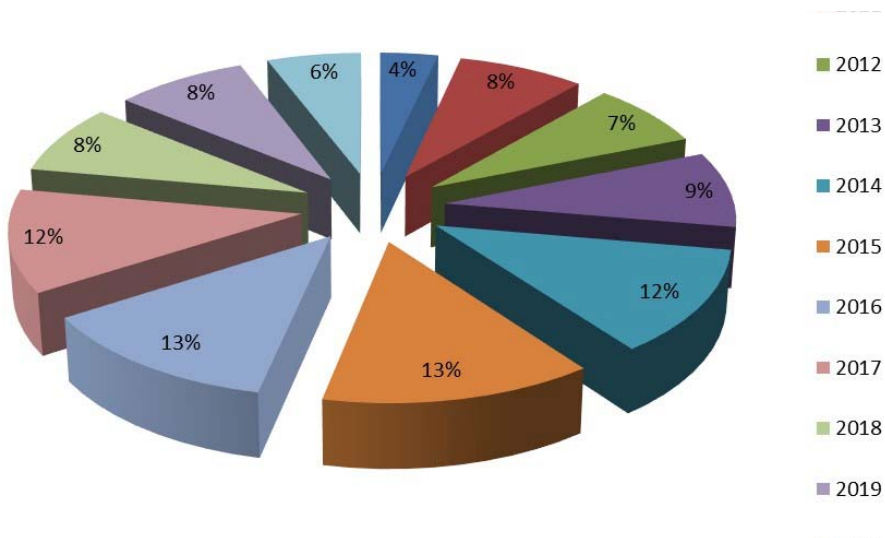
An interesting data is obtained from the graph above, that the lowest number of criminal charges for tax evasion was recorded in the year of the pandemic, 6% (574), compared to the number of criminal charges for each year separately from the period preceding the pandemic (2010 - 7%). ; 2011 - 11%; 2012 - 13%; 2013 - 12%; 2014 - 8%; 2015 - 8%; 2016 - 8%; 2017 - 7%; 2018 - 11% and 2019 - 9%).

Graph 1. Relation of Tax evasion reports before and during the pandemic



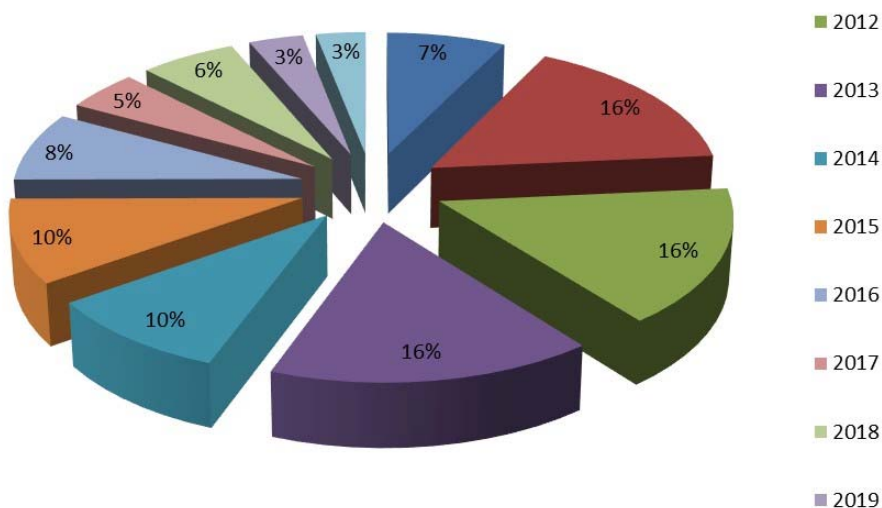
We get a similar result from this graphic presentation. Namely, the number of convictions for tax evasion in 2020 (194 - 6%) is 2% higher than the lowest number of convictions recorded in 2010 (119 - 4%), and lower than the number of convictions for each year individual research (2011 - 8%; 2012 - 7%; 2013 - 9%; 2014 - 12%; 2015 - 13%; 2016 - 13%; 2017 - 12%; 2018 - 8% and 2019 - 8%).

Graph 2. Relation of Tax evasion convictions before and during the pandemic



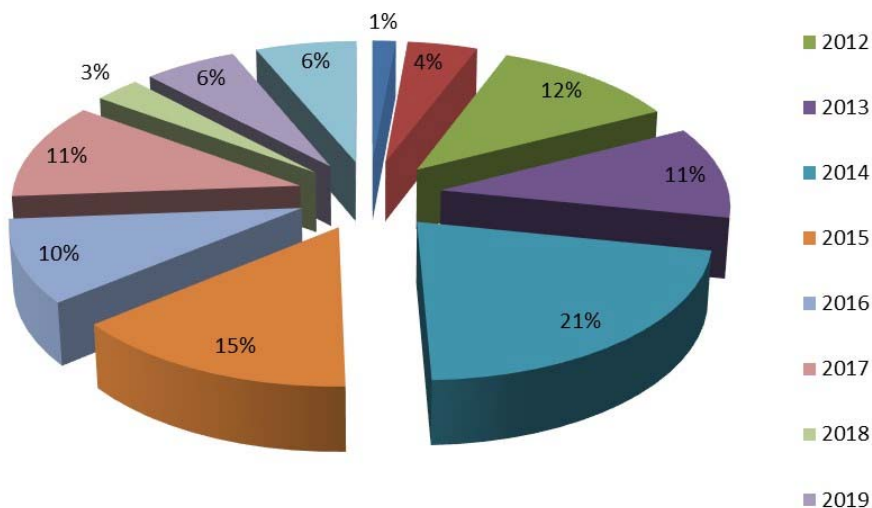
Although the number of reports for this crime is generally low (2010-48; 2011-105; 2012-103; 2013-106; 2014-62; 2015-63; 2016-52; 2017-30; 2018-39; 2019-22), is even lower during the pandemic (2020-20). In the year of the pandemic, criminal charges were filed by two cases less (20) compared to the number of reports in the final year of the research from the previous period (2019), when only 22 were filed. According to the given graphic presentation, that number is equal in percentage, and for both years it is 3%.

Graph 3. Relation of Non-payment of withholding tax reports before and during the pandemic



The comparative ratio of the observed periods shows that in 2020 the number of convictions for the criminal offense of non-payment of withholding tax (13) is 1 case higher than the number of convictions in 2019 (12), then 4 cases higher than the number of convictions from 2011. 9), for 7 cases according to the number of convictions in 2018 (6) and for 10 cases according to the number of convictions in the initial year of research (3). That number in 2020 and 2019 is equal in percentage and amounts to 6%.

Graph 4. Relation of Non-payment of withholding tax convictions before and during the pandemic



## CONCLUSION

The pandemic caused by the Covid-19 virus is undoubtedly an ideal basis for committing and increasing various forms of crime. In addition to violence, cybercrime, there is a risk of growth in economic, and already seen, tax crime. However, the results of the conducted statistical research indicate that the number of reports and convictions during the pandemic for both tax crimes prescribed by the Criminal Code of the Republic of Serbia is lower than the number in the period preceding the crisis year. The number of filed criminal charges in 2020 (574) for tax evasion is particularly pronounced, which is 200 less than the number of the same in the previous year (777).

Due to the specific manner of execution, in the case of tax evasion, the number of committed crimes and, on the other hand, the number of reported cases is in the ratio of 3: 1, which means that every third case is reported. This phenomenon has always been present, and is especially pronounced during a pandemic. Deviant individuals use fear, social insecurity, the increasing use of the Internet and teleworking, and other circumstances under which gullible taxpayers become victims of fraud. Adapting to the new circumstances, they change their modus operandi, so that tax fraud now occurs as a consequence of the theft of taxpayers' identities. Work on clarifying and detecting criminal acts is neglected, because in the new circumstances, priority is given to the control of compliance with rigorous measures of closure and gathering in public

places. Covid-19 virus infection has inevitably led and still leads to a reduction in judicial, prosecutorial and police capacity. Therefore, it is not surprising that the significantly smaller number of reported and prosecuted perpetrators of tax evasion is precisely in the period when their increase is realistically expected. The difference between statistically recorded perpetrators and the real situation is now even more pronounced as a dark crime figure. In the next period, it is expected that the pandemic will create even more favorable conditions for the increase of tax crime, and the possibility of devising different modus operandis should not be left out.

The presented problems require that the competent authorities pay more attention to the prevention of tax crime. One of the effective preventive measures would be enhanced control of tax inspectors, bearing in mind that by switching to the service concept of tax administration, all actions such as tax returns and payments are now on the taxpayer. Also an effective preventive measure would be frequent monitoring of the manner of execution, in order to recognize a new modus operandi.

## References

- Božić, V. (2020). "Uporedno-pravni prikaz krivičnopravne zaštite poreza u Hrvatskoj i Srbiji". (Comparative Legal Overview of Criminal Tax Protection in Croatia and Serbia). *Zbornik radova „ULOGA DRŽAVE I PRAVA U XXI VEKU“*, Pravni fakultet Univerziteta Privredna akademija u Novom Sadu: 355-367.
- Božić, V. and Dimić S. (2020). "Najteži oblik poreske evazije u domenu rada – krivično delo neuplaćivanja poreza po odbitku". *Časopis „Pravna riječ“*, Udruženje pravnika RS, Pravni fakultet Banja Luka, br. 63: 257-273.
- Božić, V., Dimić, S. and Đukić, M, "Poreska utaja kao jedno od krivičnih dela u lancu organizovane kriminalne delatnosti". Univerzitet u Prištini, Pravni fakultet, *Zbornik radova „Pravna tradicija i integrativni procesi“*: 157-174.
- Božić, V., Dimić, S. and Đukić, M. (2021). "Sprečavanje pranja novca tokom pandemije – rizici i prognoze bankarskog poslovanja". *Poslovanje u periodu pandemije – izazovi i šanse*, Beograd: Institut ekonomskih nauka, 55-71.
- Božić, V., "Prijevara kao kazneno djelo protiv sigurnosti platnog prometa i poslovanja", *Zbornik radova Pravnog fakulteta u Splitu*, br.48, 01/2011, str.165-182.
- Criminal Code of the Republic of Serbia, Official Gazette RS, no. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.
- Criminal Code of the Socialist Federal Republic of Yugoslavia, 3rd edition, Zagreb, Official Gazette, 1978, Collection of Criminal Laws: Criminal Code of the SFRY with Notes, Criminal Laws of the Republics and Autonomous Provinces, Register for All Criminal Laws, Belgrade, Official Gazette of the SFRY, 1977.
- Dimić, S., Božić, V. "Poreska krivična dela kao vodeći oblik privrednog kriminaliteta" (Tax crimes as the leading form of Economic crime). *Pravo i privreda*, Udruženje pravnika u privredi Srbije, br. 4: 55-73.



- Dimić, S., Đukić, M. and Božić V. (2021). "Opšti osvrt na istragu poreskih krivičnih dela". (General overview of the tax crime investigation). *Zbornik radova IX Međunarodnog naučnog skupa „Izazovi pravnom sistemu“, TOM I, Pravni fakultet Univerziteta u Istočnom Sarajevu*: 423-443.
- Dimić, S., Božić, V. (2020). "Krađa podataka poreskih obveznika kao oblik cyber kriminaliteta". (Taxpayer data theft as a form of cyber crime). *Zbornik radova sa Međunarodnog naučnog skupa "Transformativne tehnologije: pravni i etički izazovi XXI vijeka", 07-08 februar 2020. Banja Luka: Pravni fakultet Univerziteta u Banjoj Luci*: 395-408.
- *Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes*. (2017). Paris: OECD.
- *Fighting Tax Crime: The Ten Global Principles*. (2017). Paris: OECD.
- Goodell, J. W. COVID-19 and finance: Agendas for future research, *Finance Research Letters*, Volume 35, 2020, 101512, <https://www.sciencedirect.com/science/article/pii/S1544612320303974>)
- Kulić, M., Milošević, G., Milašinović, S. (2011). "Fiskalni kriminalitet u Srbiji". *Industrija*, 2: 293-306.
- Law on Amendments to the Criminal Code, Official Gazette of RS, no. 72/2009.
- Law on Tax Procedure and Tax Administration, Official Gazette of RS, no. 61/2007.
- Law on Tax Procedure and Tax Administration, Official Gazette of RS, no. 80/2002, 84/2002 - corr., 23/2003 - corr., 70/2003, 55/2004, 61/2005, 85/2005 - dr. law, 62/2006 - dr. Law, 63/2006 - corr. dr. Laws, 61/2007, 20/2009, 72/2009 - dr. Law, 53/2010, 101/2011, 2/2012 - corrigendum, 93/2012, 47/2013, 108/2013, 68/2014, 105/2014, 91/2015 - authentic interpretation, 112/2015, 15 / 2016, 108/2016, 30/2018, 95/2018, 95/2018, 86/2019 and 144/2020.
- Mawby, R. (2020). "Coronavirus, Crime and Policing: Thoughts on the implications of the lockdown rollercoaster". *European Law Enforcement Research Bulletin*, 20: 13-30. <https://bulletin.cepol.europa.eu/index.php/bulletin/article/view/446/327>.
- Matković, B. (2007). *Utaja poreza*, Računovodstvo, revizija i financije - 11.
- *Report on Identity Fraud: Tax Evasion and Money Laundering Vulnerabilities*. (2006). OECD.
- Republic Statistical Office of RS. (2011). *Statistical Yearbook of the Republic of Serbia 2011*, taken from: <https://publikacije.stat.gov.rs/G2011/Pdf/G20112004.pdf>, visited: 06.02.2021.
- Republic Statistical Office of RS. (2012). *Adult perpetrators of criminal offenses, Reports, accusations and convictions in 2011*, Bulletin no. 558, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2012/Pdf/G20125558.pdf>, visited: 10.05.2021.
- Republic Statistical Office of RS. (2013). *Adult perpetrators of criminal offenses, Reports, charges and convictions in 2012*, Bulletin no. 576, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2013/Pdf/G20135576.pdf>, visited: 15.06.2021.
- Republic Statistical Office of RS. (2014). *Adult perpetrators of criminal offenses, Reports, accusations and convictions in 2013*, Bulletin no. 588, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2014/Pdf/G20145588.pdf>, visited: 02.08.2021.

- Republic Statistical Office of RS. (2015). Adult perpetrators of criminal offenses, Reports, accusations and convictions in 2014, Bulletin no. 603, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2015/Pdf/G20155603.pdf>, visited: 11.09.2021.
- Republic Statistical Office of RS. (2016). Adult perpetrators of criminal offenses, Reports, accusations and convictions in 2015, Bulletin no. 617, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2016/Pdf/G20165617.pdf>, visited: 06.10.2021.
- Republic Statistical Office of RS. (2017). Adult perpetrators of criminal offenses, reports, accusations and convictions in 2016, Bulletin no. 629, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2017/Pdf/G20175629.pdf>, visited: 06.10.2021.
- Republic Statistical Office of RS. (2018). Adult perpetrators of criminal offenses, reports, accusations and convictions in 2017, Bulletin no. 643, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2018/Pdf/G20185643.pdf>, visited: 01.11.2021.
- Republic Statistical Office of RS. (2019). Adult perpetrators of criminal offenses, reports, accusations and convictions in 2018, Bulletin no. 653, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf>, visited: 03.11.2021.
- Republic Statistical Office of RS. (2020). Adult perpetrators of criminal offenses, reports, accusations and convictions in 2019, Bulletin no. 665, Belgrade, taken from: <https://publikacije.stat.gov.rs/G2020/Pdf/G20205665.pdf>, visited: 05.11.2021.
- Payne, J., Morgan, A. (2020). Property Crime during the COVID-19 Pandemic: A comparison of recorded offence rates and dynamic forecasts (ARIMA) for March 2020 in Queensland, Australia. *SocArXiv de9nc, Center for Open Science*. <https://ideas.repec.org/p/osf/socarx/de9nc.html>. (Pregledano 20.02.2022.)
- Yamen, A.E. (2021), "Tax evasion, corruption and COVID-19 health risk exposure: a cross country analysis", *Journal of Financial Crime*, Vol. 28 No. 4, pp. 995-1007. <https://doi.org/10.1108/JFC-10-2020-0220>.

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