

RE-QUALIFICATION OR TAX EVASION?

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Abstract:

This dilemma is much discussed in the legal literature, especially in the form of the answer to the question: "Is it an "abuse of tax law" or a "tax optimization?" or "tax evasion?". Since, concerning the fiscal and criminal legislation in Romania, the respective frameworks are extremely difficult and confusing, the final answers to the above questions should, at least in the application of the relevant legislation, take into account the answers to other questions formulated both from the fiscal and criminal perspective. They should also be formulated distinctly and, finally, synthetically interpreted, taking into account the fact that there is a close connection between the two and that first, we must determine the answers to the fiscal legal report and only then to the criminal one, if it is considered that the fiscal norm is violated and that the rebalancing of the fiscal legal relationship cannot be achieved only through fiscal measures considered insufficient in relation to the degree of social danger sanctioned by the criminal law. We believe, along with others, that in this practical approach, the application of the principle of proportionality should be the key element.

Keywords: *fiscal optimization, re-qualification, fiscal evasion, economic substance, economic purpose*

JEL codes: *M40, M41*