

## The Significance of the Criterion of Illegality in the Taxation of Income

Dr. Paulius Čerka, Dr. Jurgita Grigienė

### Summary

*This article focuses on the analysis of the issue whether income from illegal activity should be taxed and if so, by what means. The aim of the article is to analyze issues related to the legality of commercial activity when a legal entity in not established and criteria of its definition. The article also offers an overview of the established practice relating to the matter in question in states of the Western law.*

*Taxation of illegal income is quite common in many foreign countries but this practice is not yet applicable in Lithuania, though recent movements of the finance minister of Lithuania when she admitted that all income should be taxed despite it's source, shows her positive attitude towards the taxation of illegal income. **The article promotes the idea that all personal income despite their source should be taxed.***

*The article is divided into two parts: the first part presents the problem of defining personal commercial activity itself and its legitimacy and the second part focuses on the problem of the taxation of illegal income with rules of deduction and declaration.*

*The analysis is based on general definitions of terms and income in Lithuanian law which defines income quite generally as well as all benefits received by a person in monetary or other forms. Lithuanian law does not indicate clearly that personal income for tax purposes has to be only from legal sources. So, in this case, we can say that there is no formal interference to tax illegal income. The main focus is on the one of the oldest countries which has the longest practice in taxing illegal income – US, where in the year of 1916 the Congress changed Internal Revenue Code which stated "gross income means all income from whatever source derived". From that day, courts of US have gone a long way describing what earnings from illegal source have to be classified as taxable income. It is interesting to note that some countries which tax illegal income, such as Canada or Australia, in their local statutes regarding income describe income generally, the same as Lithuanian Personal Income Tax, but the practice of courts in these countries has come to the decision that despite the illegality of income, illegal income also falls under the general description of income and should be taxed like legal one.*

*Also, it is important to note that one of the main principles of the taxation system is justice which is also established in main Lithuanian statute – Constitution. The principle of Justice in the taxation system states that every person should pay taxes according to his/her economical situation. In this case, if a person is getting illegal income and the government does not collect taxes from this income, the principle of justice is broken as taxes are the main source for the government to finance its different social services of everyday life, such as medical care, public security, education, etc. It does not matter if a person gets legal or illegal income: if he/she is living in the state, he/she is using services provided by the government; therefore, it would be unjust to tax only residents with legal income.*

*Summarizing all above, it can be stated that all income despite its source should be taxed. First of all, Lithuanian Constitution puts obligation to pay taxes on all Lithuanian residents. Moreover, the principle of Justice, applied in tax law, requires that everyone would pay taxes according to his/her economical situation. Finally, Lithuanian law describes income quite generally, and this description does not conflict with the taxation of illegal income. However, Lithuania has not applied taxation of illegal income in practice so far.*

### KEY WORDS

*Taxation. Individual activity. Illegal activity. Illegal income. Income.*

Does taxable income include illegal income? Is there any difference between illegal and criminal activity? If income was taxed, how should expenditure be calculated? These issues are the subject of tax law which can provide answers regarding the taxation of illegal income. The taxation of illegal income is not a new idea. In such countries as USA, Canada, Sweden and Austria, illegal income is taxed. It should be noted that the Law on Income Tax of Residents of the Republic of Lithuania gives a general definition of income. According to it, income is any profit received by a person in kind or in cash. Such treatment of income does not contradict the taxation of illegal income. However, the taxation of illegal activity has not been practiced in Lithuania, and issues related to the taxation of illegal income such as deductions from illegal income, voluntary declaration of illegal income and the system of payment have not been regulated so far.

### **Distinguishing characteristics of “Individual activity”**

First of all, it is necessary to make a distinction between income from activity and other income, since the principles of its taxation and the procedure of its financial accounting and declaration basically differ. Income of residents related to business is defined by the Law on Income Tax of Residents as income from individual activity. Individual activity is described in detail in article 2 (7) of the Law on Income Tax of Residents which states that “individual activity includes an independent activity by which a resident seeks to get income and other economic benefit during a continuous period.”<sup>279</sup> With reference to this definition, not all activity of a resident related to the seeking for income can be regarded as individual activity and such income acknowledged as income from individual activity. In the commentary<sup>280</sup> on the Law on Income Tax of Residents based on the legal practice of tax cases two main aspects of individual activity are distinguished and defined:

1. Independence – “such a relation of a resident with the other party of transactions made when operating an activity, which is basically different from the relations between the employer and the employee. The activity of a resident is considered as independent if there are no features characteristic of labour relations (e. g. agreement regarding the salary, work place and functions, work discipline, holiday, etc. ) in his/her relations with the other party of a transaction, a resident him/herself resolves problems related to the activity, covers his/her expenses which are related to the carrying out of the activity, etc.”<sup>281</sup>

2. Continuity – “certain continuity or repetition is a characteristic feature of transactions made by a resident. Occasional transactions can not be regarded as a feature of the pursuit of activity, therefore, such relations do not mean the pursuit of individual activity. Thus, in order for a resident to be regarded as pursuing individual activity, certain continuity must be characteristic of his/her transactions, and there must be a motive and possibilities to make transactions in future. A resident who in each case makes more than one transaction in a short period of time mostly shall not be considered as pursuing individual activity (e. g. a resident leaves abroad and sells several identical items). However, it should be noted that taking into consideration certain circumstances, in certain cases and if there is no continuity, the conclusion can be drawn that a resident has pursued individual activity. Such circumstances may include the scope of benefit and the size of the benefit which constitutes resident’s income; also expenditure related to the receipt of benefit”.<sup>282</sup> When defining individual activity, the Civil Code of Russia applies the criterion of “systematics”.

3. The Supreme Administrative Court of Lithuania mentioned one more significant aspect of the definition of individual income, i. e. “entrepreneurship and merchantability, which means that all activity from the beginning of its pursuit must have the aim to receive income or other economic benefit.”<sup>283</sup>

However, these criteria are insufficient to discern individual activity from other actions or property operations. Referring only to these criteria, a person constantly gambling in casinos or a person investing in deposits of different banks to get larger interest would be considered as pursuing activity, but it would be *ad absurdum*. The above mentioned criteria should be supplemented with criteria that have been formulated in scientific doctrines. Economic theories of firms try to define business organization and its criteria. In theories of the expenses of transactions, an enterprise (business) is considered as a subject only if it reduces expenses of other participants of the market. The criteria of the

<sup>279</sup> Law on Income Tax of Residents of the Republic of Lithuania (2<sup>nd</sup> July 2002, No. IX-1007).

<sup>280</sup> Law on Income Tax of Residents of the Republic of Lithuania (2<sup>nd</sup> July 2002, No. IX-1007).

<sup>281</sup> *ibid.*

<sup>282</sup> *ibid.*

<sup>283</sup> R. B. p. Commission on Tax Disputes under the Government of the Republic of Lithuania, the Supreme Administrative Court of the Republic of Lithuania. (2006 No A5-902).

concept of “an enterprise” used in the Civil Code should also be considered, i. e. it is necessary to establish property complex, the activity of which would be directed towards the market. Such criteria would help to separate speculation and passive investment from the pursuit of commercial activity. Usually, the government supports the pursuit of activity in various ways. According to tax law, it is allowed to make settlements when pursuing activity which are related to overall activity not to a separate operation. Therefore, in foreign countries, a person usually seeks to prove the criterion of activity regarding a more favorable taxation, but Law on Income Tax of Residents, on the contrary, stipulated higher rates of taxation to a person pursuing activity than to the one who does not pursue any activity. Speculation should not be defined in the same way it was defined in the article 164 of the Criminal Code of 1961 where stipulation was regarded as purchase and resale of goods or other articles having the aim to profit. However, stipulation should be defined as the pursuit of the change of the value of property (usually with the help of quick resale operations) only because of market fluctuations which are not related to the change of the value of a thing. Thus the resale of a thing may be considered as speculation or as business depending on whether the pursuit is to gain profit from market fluctuations or from valuable properties of a thing.

Therefore, the sale of securities, when they are resold frequently, could be considered as speculation; investment in long-term securities – as passive investment, and the increase of the value of securities when actively participating in the management of an established enterprise – as investment activity. The difference is determined not by the level of the engagement of a person or by the value of the benefit that is received, but by the fact that the added value is created in the market.

When trying to find an adequate definition of individual activity, it is appropriate to use the principles of the definition of economic activity. These principles are formulated in detail in legal acts regulating VAT and respectively by the European Court of Justice regarding the application of the VAT directives (6) in the practice of jurisprudence. Article 2 of Law on VAT determines that economic activity is activity (including production, trade, services, agricultural activities, fisheries, mining, professional activity, using of property and/or property rights) the aim of which is to gain any income (regardless of whether the aim of the pursuit of activity is to gain profit). The official commentary to this article states that the possession of stocks (shares, ) also of other securities, bank deposit, bank account or the account of bank card, regardless of whether it brings income, is not considered as economic activity. However, the sale of such securities or other transfer may be considered as economic activity in some cases. Cases of the European Law of Justice where the issue regarding which activity is considered as economic specify that the trade of securities can be considered as economic activity only then when a person obtaining securities participates in the management/administration of that person, but in other cases, it is never regarded as economic activity. According to the decision in the case *Polysar C-60/90*, the acquisition and possession of the shares of the enterprise when having no aim to participate directly or indirectly in the management of that enterprise is not considered as economic activity.<sup>284</sup> However, following this decision, it should not be stated that the mere acquisition and possession of the shares of an enterprise which grants the shareholder with the status of a taxpayer should be considered as economic activity in the sense of the Directive 6. The Court noted that “the mere acquisition of shareholdings in other enterprises does not mean the use of the property with the aim to receive income on the continuous basis, because dividends received from those shares are only the property right to the property. The situation is different when the possession of shares is accompanied by the direct or indirect involvement in the management of the enterprise the shares of which has been acquired with no breach of the rights of holding enterprise. ”

<sup>284</sup>[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61990J0060&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61990J0060&lg=en)

According to the decision in the case *Wellcome Trust Ltd C-155/94*, the sole realization of property right to the possessed shares and other securities is not considered as economic activity. The concept of economic activity does not include the sale of shares or other securities when they are sold by a person who by trust manages the property of a charity concern. The Court noted that the Commission's position that such an activity is not considered as economic activity in the sense of the Directive should be also taken when evaluating the sale of securities.<sup>285</sup> In the case *Harnas & Helm C-80/95* it was decided that the acquisition and possession of bonds is not considered as economic activity. Income that is received from bonds is not considered as remuneration for the pursuit of economic activity. In case *Cibo C-16/00* it was decided that the participation of the holding company in the management, which includes administrative, financial, commercial and technical services, of an enterprise the shares of which it has bought, is considered as economic activity only because the company acquired the shares and at the same time provided administrative, financial, commercial and technical services.

Therefore, for the trade of securities to be considered as economic activity the following element should be established: the participation in management and the provision of administrative/financial services. Thus the trade of securities, the management of which was insignificant percentage so that it could make any influence on the management and when no administrative or financial services were provided, is not considered as commercial individual activity. In this case, such activity would be considered passive investment or speculation. A person receives income but he/she does not pursue any activity. Passive investment is then when a person seeking to retain the value of property changes its form, i. e. he/she acquires immovable property, securities or gold. Later, trying to retain the value, he/she changes one property unit with another property unit of different form. In this case, it can not be said that a person pursues activity, since expenses are not reduced to market participants, only income is received. An analogous situation would be with speculative actions when a person acquires property expecting to get the rise of its value due to market changes but not because of his/her actions.

According to the official comment to Law on Income Tax of Residents, the trade of securities is considered as individual activity if a resident being a professional investor pursues such activity. It is also highlighted that income from the investment in investment funds and income received pursuant to trust agreements of the management of securities portfolio in stock exchange in all cases is not considered as income of individual activity from the sale of securities or other transfer to ownership. Otherwise, the trade of securities is treated individually<sup>286</sup>.

However, in other explanations, it is pointed out that the trade in FOREX currency market is considered to be an activity since the residents make decisions individually and give certain instructions to the broker company regarding the transactions, however, the residents should pursue such an activity for a continuous period of time<sup>287</sup>. A similar conclusion was made regarding the trade of securities<sup>288</sup>. Because of the activity, a person can combine expenses of a payable period. However, this can not be made in separate transactions. On the other hand, even though it is quite unusual, the taxation of an activity is more complicated than the taxation of a non-activity. Nevertheless, in this case, the reference should be made to the explanation of the European Court of Justice which indicates that only the trade by an investor who provides management/financial services is considered as commercial activity. In other cases, when an investor sells investment units

<sup>285</sup> [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61994J0155](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61994J0155)

<sup>286</sup> mic.vmi.lt/generatepdf.do?id=1000000991

<sup>287</sup> VMI Raštas. Registration No. (18. 18-31-1)-R-6735 2008-07-25

<sup>288</sup> Letter of the State Tax Inspectorate regarding the Calculation and Taxation of Income Received from the Trade of Financial Instruments. Reg. No. (18. 18-31-1)-R-10109 2010-10-25

or securities, it is not considered as an activity. With regard to the pursuit of commercial activity, the essential difference between the trade of securities such as shares and investment units could not be made.

*Thus neither passive investment nor speculative trade are considered as the use of property complex to earn income but only to increase the value of property. The increase of value is not considered as business only because of the fact of the increase of the value.*

Individual activity should be interpreted referring to the concept of an unincorporated enterprise (business). Business (enterprise) is considered to be a property complex which is used to earn income. Trying to define the concept of individual activity, it is necessary to take into consideration how individual enterprise is defined when an enterprise is not considered as having the rights of a legal person, i. e. when a separate person is not created. The college of civil cases of the Supreme Court of Lithuanian<sup>289</sup> defines an individual enterprise as an unincorporated enterprise which is connected with the individual commercial activity of a natural person, e. g. a merchant, or businessman. The court indicated that a merchant or a businessman is a natural person but not an individual (personal) enterprise. In this case, an enterprise is only a legal form of business of a natural person, a certain commercial economic activity of a natural person<sup>290</sup>. This means that if an enterprise is not incorporated, it is not considered as an individual legal subject since the term "enterprise" is not associated with an individual subject but with an activity of a natural person, a merchant, business man. A merchant, a business man is a natural person but not an individual (personal) enterprise. An enterprise, in this case, is a legal form of business of a natural person, a certain commercial economic activity of a natural person. Thus, in such cases, the term "enterprise" is not understood as an independent legal subject but a legal form of business of a natural person which does not have an independent legal status and is not an independent, separate person. At the meantime, after the legal regulation of enterprises has changed, the form of an unincorporated enterprise is regarded as an individual activity. The Civil Code of 2000 also agrees with such an explanation of the term "enterprise". It is usual to regard an enterprise as a subject of economic relations which pursues commercial activity. However, after a new Civil Code (1<sup>st</sup> July 2001) has come into force, and the Law on Enterprises of the Republic of Lithuania (1<sup>st</sup> January 2004) has expired, this term should not be used as a synonym for a legal person. An enterprise is a property complex, i. e. the complex of property, property rights and non-property rights, debts and other obligations of a person pursuing business. An enterprise can be bought, sold or leased (by concluding enterprise sale-purchase or lease agreements). The complex of separate property elements is significant for the existence of an enterprise, i. e. not only the general relation of each element to the property subject but the interrelations of the above mentioned elements: general economic commercial purpose due to which the complex of elements can be called property complex and can be regarded as one object. Therefore, article 1. 110 of the Civil Code establishes that an enterprise is property, property rights and non-property rights, debts and other obligations of a person who pursues business (seeks profit).

*In this case, speculative trade of securities can not be regarded as individual activity because when pursuing such an activity, no enterprise (business) is established:*

1. Property complex is not created.

<sup>289</sup>Decision 11<sup>th</sup> April 2001, A. K. v. L. K. L. Kuchalskienė firm, Aleta", UAB, Aleta", civ. c. No. 3K-3-445/2001, category 25. 6. 2, 69. 5. 1, 16. 6, 15. 2. 1. 1, 15. 2. 1. 4,

<sup>290</sup>It is common that the property of a legal person is separated from the property of its participants; an independent civil liability of a legal person for its obligations only by its own property; independent interests and aims of a legal person which differ from interests and aims of its participants; indefiniteness of the term of activity and the existence independently from the change of its participants; the possibility to acquire property and to make transactions on its own behalf, etc.

2. Management/administrative/financial services (to increase the value of enterprises) are not provided to the market.

3. Activity is not oriented towards the market, since there is no reduction of added value or the expenses of transactions.

### **The Volume of the Legal Capacity of a Natural Person and the Criteria of the Legality of Activity**

Is constitutional right to pursue commercial activity related to the establishment form of a legal person or other administrative procedure? Are the activity and income considered to be illegal if requirements of the registration are violated? The Supreme Court of Lithuania investigated a criminal case where a person, pursuant to the article 202 (1) of the Penal Code, was sentenced because he had not registered individual activity of the sale and purchase of real estate in two years time following the established order and, with the purpose to resale, had pursued commercial activity during which he bought parcels from natural persons belonging to them by the property right or their rights to renew the ownership to the real estate that had been managed by former owners by the property rights and he had tried to sell it. Later, he sold the purchased parcel or parcels, to which property rights had been renewed after some time on his own initiative, at a larger price to legal or natural persons. On the one hand, the court agreed that the only fact that the person had started pursuing individual activity but had not informed the tax administrator about it does not make this activity illegal *per se*; the income of this activity can (must) be taxed pursuant to the order stipulated by tax laws. On the other hand, the court indicated that in cases when a person deliberately does not inform about the start of the individual activity, which does not need any license, permission or other special document granting the right to pursue a certain activity, and consciously proceeds the activity hiding it and the income from the activity from the tax administrator, it can be acknowledged that the person pursues activity in *other illegal way*, and when there are other signs of criminal activity provided for in the article 202 of the Penal Code, the person can be brought to justice.

As far as the boundaries of a person's legal capacity is concerned, it is important to determine the establishment of the legal capacity of commercial activity and assumptions to pursue an activity. Assumptions for natural persons to pursue an individual activity, to do business without establishing a legal person are reflected in the legal regulation set by the Civil Code of the Republic of Lithuania. Article 2. 4 of the Civil Code defines the content of the civil capacity of natural persons. This article establishes that besides other rights, the legal capacity of a natural person include his/her right to pursue economic commercial activity in accordance with laws. In the Civil Code, the right to establish legal entities is defined as a separate right of a legal person; therefore, a person may pursue business without having established a legal entity. In the commentary to the article 2. 4 of the Civil Code of the Republic of Lithuania it is indicated that persons who perform this right are recognized as an exceptional group of persons who are not considered as consumers in the sense of civil law but as subjects falling under the category of other group of persons, businessmen, who pursue economic commercial (including professional) activity, and to whom analogous norms of law are applied (within an appropriate scope) as they are applied to other subjects in the market who pursue activity and seek profit, i. e. legal persons<sup>291</sup>. The Constitution of the Republic of Lithuania also establishes the ground for the existence of such a form of the pursuit of an activity as individual activity. Article 48 of the Constitution provides for that every person besides other rights described in the article has the right to choose businessfreely. In the commentary to the article 48 of the Constitution, when commenting on this norm, it is indicated that the state recognizes all forms of occupation ranging from labour relations of different kind to individual activity as

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<sup>291</sup>The analysis (study) of the regulation of individual activity, [www.ukmin.lt](http://www.ukmin.lt), *Authors*: dr. Saulius Aviža, dr. Deividas Soloveičikas, Jurga Gradauskaitė.



equivalent and socially beneficial. Therefore, the right to choose the form of the pursuit of activity including the right to pursue individual activity is constitutional social economic right of a person<sup>292</sup>. It can be stated that together with the introduction of the concept of individual activity in the Civil Code of 2001 and in the Law on Income Tax of Residents of the Republic of Lithuania the constitutional right to pursue commercial activity without establishing a legal person was implemented. In the commentary to the Civil Code of the Republic of Lithuania it is clearly stated that "the idea of the Civil Code is to liberalize the opportunity of a natural person to pursue economic commercial activity without establishing a legal person"<sup>293</sup>. The legal capacity of a natural person in respect to commercial activity is closely related to the definition of illegal commercial activity and criminalization in the Penal Code. The former norm in the Penal Code (Illegal activity of an enterprise) forbade a legal person to the pursue activity on a large scale which is not indicated in foundation documents; however, it was abolished together with establishing the principle of an unlimited civil capacity for private legal persons in the Civil Code, i. e. establishing the provision that a legal person has the right to pursue operations of an activity which are not indicated in the articles of association (but due to violations of foundation documents, civil liability of the management bodies may arise to the participants). Changes in this sphere are gradual because the pursuit of private business activity (article 161 of the Penal Code) was forbidden under socialist system and later only a prohibition to pursue unspecified activity for legal persons remained but was also abolished. What can be said about the right of a natural person to pursue commercial activity?

Assumptions to pursue individual activity are not created in laws on tax (in the case of the Republic of Lithuania, not in the Law on Income Tax of Residents of the Republic of Lithuania) but are established in legal acts which regulate the scope of the legal capacity of a person and the rights and obligations of persons in general. Laws on tax (and bylaws intended for their implementation), when establishing an obligation to perform formal acts before starting to pursue individual activity or after having started to pursue it, establish not the competence of the tax administrator to grant the right to pursue individual activity but the obligation of the taxpayer, the person who pursues individual activity, to register in the Register of tax payers providing assumptions to the tax administrator to ensure the proper performance of tax obligations of a person. Accordingly, in laws on tax, other guidelines related to the rights and obligations of persons who pursue individual activity are established which determine only the mode of the taxation of persons who pursue individual activity.

For the comparison, article 171 of the present Penal Code of Russia can be indicated regarding illegal commercial activity which is pursued without a license or without registration, i. e. if a natural person does not register individual activity, he/she is punished pursuant to the above-mentioned article. However, article 23 of the Civil Code of Russia provides for that a natural person can pursue commercial activity only after having registered individual activity. Even though in Russia such registration procedure is accomplished in State Tax Inspectorate, it is much more complicated if compared to the presentation of the notification about the pursuit of individual activity in Lithuania. In the process of such registration, the suitability of a subject to do business is examined and the Certificate of Registration is issued. Also, in Russia, a person can start pursuing commercial activity after the receipt of the Certificate of Registration (sometimes State Tax Inspectorate may refuse to issue the certificate), whereas in Lithuania, a person must notify about the activity only after it has been started, i. e. the right to pursue activity is not related to the receipt of the administrative document. The Civil Code of the Republic of

<sup>292</sup> JOVAIŠAS, K. Commentary on the Constitution of the Republic of Lithuania. Part 1. P. 425.

<sup>293</sup> MIKELĖNAS, V. BARTKUS, G. MIZARAS, V. Commentary on the Civil Code of the Republic of Lithuania. Second book. Asmenys. – Vilnius: Justitia, 2002, P. 22.

Lithuania does not provide for the restriction of the legal capacity of a person, i. e. the right to pursue commercial activity is not related to registration. Therefore, the performance of such actions when having infringed procedures should not be classified as crime. Article 2. 4 of the Civil Code stipulates that natural persons have the right to pursue economic commercial activity and the right to establish enterprises or other legal persons, i. e. they can do it by incorporating a legal person or by not incorporating it. The obligation to notify about the activity undertaken is not the condition which determines the rise of the right to pursue it. Licensed activities are an absolutely different issue. In this case, due to the great risk for the health and safety of persons, the pursuit of certain activities should be carefully controlled by public authorities, thus a person has no right to pursue such activities without licenses. An example of such an activity could be the provision of illegal medical services or the sale of arms which can be legal if all necessary permits have been received. On the other hand, there are activities which are forbidden per se, e. g. drug trade. However, such an activity is classified only in accordance with the article which directly forbids the act itself. The pursuit of illegal activity is then when a person pursues activity evading requirements of the law which are applied to the provision of certain services or goods (e. g. the use of forbidden preparations, materials). The pursuit of such an activity is extremely dangerous and due to this reason an exceptionally strict sanction is stipulated in the Penal Code. In my personal opinion, since the object of an act provided for in this article is an offense against economy and the order of business but not against the financial system, a person who has not properly notified about the pursuit of individual activity and has received income from it should be punished in accordance with articles 220 and 221 of the Penal Code since he/she has concealed the declaration and payment of taxes due but not the pursuit of the activity itself. When a person pursues activity which does not require a license and which is legal, but he/she conceals income received, he/she makes criminal act because of the concealment of income and not because of the concealment of the act, since the declaration of an activity does not mean the unconcealment of income. The declaration of activity is of exceptionally administrative nature, and the concealment of income from such an activity is considered as crime. On the other hand, as mentioned herein-above, the mere purchase or sale of property when no other actions are performed in relation to this property should not be considered as activity but as speculation or passive investment. Only if property is improved or is managed in another way, this could be recognized as business but not as speculation.

***This paper has been reviewed by the organizing committee of the conference.***