SOME LEGAL PRINCIPLES OF LIABILITY FOR COMMITTING A TAX CRIMINAL OFFENSE

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УДК 351.74 : 342.922
DOI: https://doi.org/10.71404/LAW.UA.2024.4.55

The article analyzes the aspects of the relationship between criminal tax offenses and other types of violations of tax legislation. It is emphasized that the fact of committing a tax offense is the basis for legal liability: tax, administrative and criminal. At the same time, the point of view is substantiated that controversial issues between taxpayers and the state should be resolved, first of all, by means of tax and administrative law, and only in case of their ineffectiveness, resort to criminal law mechanisms. It is concluded that all court decisions that have entered into force, adopted within the framework of civil, commercial and administrative proceedings, should have a preliminary significance for criminal proceedings. The application of a preliminary ruling serves as a tool for ensuring the consistency of judicial acts and compliance with the principle of legal certainty.

The action of criminal law norms in the context of inter-sectoral relations arising from the complex legal regulation and protection of tax legal relations and expressing the interdependence between constitutional, tax, administrative and criminal legislation, gives rise to a number of problems for modern legal science and practice. The concept of tax criminal offense can be considered as a generalized designation of a wide range of criminally punishable acts committed by subjects in the process of implementing tax legal relations. In this context, when analyzing tax crime, one should take into account not only the unlawful actions of the taxpayer aimed at tax evasion, but also, in particular, the illegal receipt of tax benefits or unlawful actions of tax officials in the field of tax legal relations. It is determined that the social danger of tax and fee evasion, that is, intentional failure to fulfill the constitutional obligation to pay legally established taxes and fees, consists in the failure to receive funds to the country's budget. The social danger of tax criminal offenses is also due to the violation of the constitutional obligation to pay legally established taxes and fees.

Keywords: tax, fees (mandatory payments), tax criminal offense, criminal liability, criminal legal qualification, delimitation of criminal offenses with related acts.

The interaction of criminal and other branches of legislation is carried out by placing under the protection of criminal law social relations, which are regulated primarily by the norms of another branch. Thus, the fact of committing a tax offense is a basis for bringing to tax, administrative and criminal liability, while the dispute between taxpayers and the state should be resolved primarily by means of tax and administrative law, and only in case of their insufficiency can criminal law measures be applied. Otherwise, a situation may arise in which a taxpayer, brought to tax liability, appeals the decision of the tax authority in court, that is, recognizes his actions as legal in court, but is brought to criminal liability for committing the same tax offense. One of the ways of taking into account decisions made in the course of legal proceedings in tax disputes is the institution of precedent, which provides for the inadmissibility of reviewing questions of fact and law that are relevant to a given case and that were

previously resolved in another. In this case, we are talking about inter-branch precedent, since the same factual grounds underlie criminal and other legal proceedings. In our opinion, such a possibility cannot be ruled out; all court decisions that have entered into force, adopted both in the framework of civil, commercial and administrative legal proceedings, should have a precedential significance for criminal proceedings. The application of precedent is a means of maintaining the consistency of judicial acts and ensures the operation of the principle of legal certainty.

The issue of criminal liability for tax criminal offenses has been reflected in the scientific works of many domestic scientists, including: L. P. Brych, D. I. Golosnichenko, R. Yu. Grevtsova, O. O. Dudorov, M. S. Mishchuk, P. P. Andrushko, P. S. Berzin, N. O. Gutorova, V. O. Navrotsky, O. I. Perepelitsa, E. L. Streltsov, V. Ya. Tatsii, M. I. Khavronyuk, etc.

The purpose of this article is to analyze the features of criminal liability for tax criminal offenses and the correlation of the latter with other tax offenses.

The European Court of Human Rights has repeatedly pointed out in its decisions the need for legal certainty and the possibility of departing from it only in the event of circumstances of a substantial and irresistible nature, in particular, during the consideration of the cases "Pravedna v. Russia" [1]. For example, as stated in the ruling in the case of "Sutyazhnyk v. Russia" [2], legal certainty implies respect for the principle of "res judicata", i.e. the principle of the finality of court decisions. This principle provides that no party may request a review of a final and binding decision solely for the purpose of rehearing the case and issuing a new decision.

When considering cases of tax crimes, courts should not only study the provisions of the Tax Code of Ukraine, but also current resolutions, reviews of the practice of higher courts, which provide for liability for offenses not enshrined in the Criminal Code of Ukraine. For example, before determining the signs of evasion of taxes and (or) fees from an organization, it is necessary to establish the fact of the taxpayer (organization) committing a tax offense. Otherwise, in practice, the situation described above will develop, when for the same facts a person is exempted from tax liability, but is simultaneously brought to criminal liability.

The action of criminal law norms in the conditions of inter-branch relations, which are formed as a result of comprehensive legal regulation and protection of tax relations and express the dependence between constitutional, tax, administrative and criminal legislation, poses a whole complex of legal problems to modern science and practice. One of them is the construction of regulatory provisions on liability for tax offenses and their legal assessment in the conditions of inter-branch relations - a factor that requires consideration in both legislative and law enforcement practice. The complexity and multifacetedness of the problem raised is enhanced by the interweaving of a number of factors of a socio-economic, legal and criminological nature. Firstly, this is the important role of taxes in the conditions of a market economy as the main source of replenishment of the state budget, the formation of budget revenues of all levels, which gives reason to speak about the "eternal" nature of the research topic in the conditions of a market economy. Secondly, this is a continuous change in tax and related legislation, which directly and indirectly affects the stability of law enforcement in the field of taxation and the stability of legal assessments of tax offenses. Thirdly, there is a tendency to increase the number of criminal tax offenses.

Thus, according to the Tax Code of Ukraine (hereinafter - the Tax Code of Ukraine), "a tax is a mandatory, unconditional payment to the relevant budget or to a single account, levied from taxpayers in accordance with the Tax Code of Ukraine. The totality of national and local taxes and fees, levied in accordance with the procedure established by the Tax Code of Ukraine, constitutes the tax system of Ukraine" [3].

The procedure for calculating and paying taxes and fees to budgets of different levels is regulated by the norms of the Tax Code of Ukraine. According to Art. 6 of the Tax Code of Ukraine, "a tax is a mandatory, unconditional payment to the relevant budget, levied from taxpayers in accordance with the Tax Code of Ukraine. In turn, a fee (charge, contribution)

is a mandatory payment to the relevant budget, which is collected from the payers of fees, provided that they receive a special benefit, in particular as a result of state bodies, local self-government bodies, other authorized bodies and persons performing legally significant actions in favor of such persons" [3].

The defining concept of tax and fee settlements is a tax liability - the amount of funds that a taxpayer, for example a tax agent, must pay to the relevant budget as a tax or fee on the basis, in the manner and within the time limits provided for by tax legislation (in particular, the amount of funds specified by the taxpayer in the tax bill and not paid within the time limit established by law).

A tax offense in accordance with clause 109.1 of Article 109 of the Tax Code of Ukraine is "an unlawful, culpable (in cases expressly provided for by this Code) act (action or inaction) of a taxpayer (including persons equated to him), controlling bodies and/or their officials (service personnel), other entities in cases expressly provided for by this Code" [3].

The Code does not contain a definition of the concept of "guilt". However, the conditions under which a person is considered guilty are given in Art. 112 of the Code of Criminal Procedure of Ukraine and consist in the fact that a person is considered guilty of committing an offense if it is established that he had the opportunity to comply with the rules and norms, for the violation of which the Code of Criminal Procedure of Ukraine provides for liability, but did not take sufficient measures to comply with them. At the same time, it is necessary to take into account that the measures taken by the taxpayer to comply with the rules and norms of tax legislation are considered sufficient if the supervisory authority does not prove that by committing certain actions or allowing inaction for which liability is provided, the taxpayer acted unreasonably, unscrupulously and without due care [4].

Thus, the conditions that determine the guilt of a person, within the meaning of Art. 112 of the Code of Criminal Procedure of Ukraine are:

- establishing the possibility of compliance by a person with the rules and norms, for the violation of which the Code provides for liability, but failure by this person to take sufficient measures to comply with them;

- proof by the controlling body that by committing certain actions or allowing inaction for which liability is provided, the taxpayer acted unreasonably, unscrupulously and without due diligence.

It is the ability of a person to comply with the rules and regulations, for the violation of which the Code provides for liability, but the failure to take sufficient measures to comply with them, due to the commission of actions that can be qualified as unreasonable, unscrupulously and without due diligence, provided that this is proven by the controlling body, that is evidence of the person's guilt in committing a tax offense [5].

A tax criminal offense is an unlawful act committed in the tax sphere, the criminal nature of which is recognized by the current criminal legislation of the territory to whose jurisdiction it is attributed. The concept of tax criminal offense can be used as a collective designation for the entire variety of criminally punishable acts committed by subjects during the implementation of tax legal relations. For this reason, in the context of tax crime, one should consider not only the unlawful actions of a taxpayer aimed at evading tax payments, but also, for example, the illegal receipt of tax benefits or the commission of unlawful actions within the framework of tax legal relations by officials of tax authorities, etc.

We tend to believe that a tax criminal offense is a criminally punishable act that encroaches on public relations in the field of the taxation system of Ukraine. Tax criminal offenses include acts against the state taxation system and causing damage in the form of non-receipt of taxes, fees and other payments to the state and local budgets. This type of criminally punishable acts is included in the most general group of illegal acts - economic criminal offenses.

The current Criminal Code of Ukraine provides for criminal liability for committing tax evasion, fees (mandatory payments) (Article 212 of the Criminal Code of Ukraine), which consists in intentional evasion of taxes, fees (mandatory payments) included in the taxation system, introduced in accordance with the procedure established by law, committed by an

official of an enterprise, institution, organization, regardless of the form of ownership or by a person engaged in entrepreneurial activity without creating a legal entity or by any other person who is obliged to pay them, if these actions resulted in the actual non-receipt of funds to budgets or state trust funds in significant amounts. A similar act is also provided for in the form of evasion of payment of a single contribution for mandatory state social insurance and insurance contributions for mandatory state pension insurance (Article 212-1 of the Criminal Code of Ukraine) [6].

In law enforcement practice, there are difficulties in qualifying tax criminal offenses, primarily from the standpoint of related legislation. Today, this is a very complex problem. It is important that difficulties in law enforcement are often due to the imperfection of the legislation in terms of distinguishing tax criminal offenses and other offenses. Tax legislation is quite complex and confusing, and when analyzing the articles of the Tax Code of Ukraine, one gets the impression that its development was mostly carried out by economists. The opinion of modern lawyers was not taken into account to an insufficient extent, especially in the part that concerns violations of tax legislation. Moreover, one of the shortcomings of tax legislation is that the rules of law are formed and are being formed under the strong influence of the immediate acute financial needs of the state.

By the nature and degree of social harm, all offenses are divided into criminal offenses, misdemeanors and other offenses. The specified division has not only scientific and theoretical, but also important practical significance, because it contributes to ensuring effective legal regulation, combating offenses, strengthening law and order. An offense includes civil, disciplinary, administrative and criminally illegal acts. Often, criminal offenses and other offenses are distinguished by the degree of public danger, that is, the division is based on a quantitative criterion. However, this does not quite accurately characterize the actual side of offenses, the basis of which is their qualitative uniqueness. Criminal offenses are socially dangerous criminally punishable acts. Public danger is a clear danger of an act for society, for the most essential interests of the state, and the individual. Recognizing the harm, antisocial nature of other offenses (misdemeanors), it should be remembered that the harm caused by them does not reach the level of public danger [7].

Thus, tax offenses are not only torts provided for by tax legislation, but also tax criminal offenses, liability for which is established by the Criminal Code of Ukraine. The public danger of tax and fee evasion, that is, intentional failure to fulfill the constitutional obligation of everyone to pay legally established taxes and fees, consists in the non-receipt of funds to the country's budget system. The public danger of tax criminal offenses also consists in the violation of the constitutional obligation of everyone to pay legally established taxes and fees. As can be seen from the above, the line between a criminal offense and another offense in the field of taxation is often very narrow, which must be taken into account when qualifying illegal acts of various nature and degree of danger and harm.

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ДЕЯКІ ПРАВОВІ ЗАСАДИ ВІДПОВІДАЛЬНОСТІ ЗА ВЧИНЕННЯ ПОДАТКОВОГО КРИМІНАЛЬНОГО ПРАВОПОРУШЕННЯ

У статті аналізуються аспекти взаємозв'язку кримінальних податкових правопорушень з іншими різновидами порушень податкового законодавства. Наголошується, що факт здійснення податкового правопорушення є підставою для юридичної відповідальності: податкової, адміністративної та кримінальної. Водночас, обґрунтовується точка зору, що спірні питання між платниками податків та державою варто врегульовувати, перш за все, засобами податкового та адміністративного права, і лише у випадку їх неефективності вдаватися до кримінально-правових механізмів. Робиться висновок, що преюдиціальне значення для кримінального провадження повинні мати всі судові рішення, які набрали законної сили, ухвалені в межах цивільного, господарського та адміністративного судочинства. Застосування преюдиції служить інструментом для забезпечення узгодженості судових актів та дотримання принципу правової визначеності.

Дія кримінально-правових норм в умовах міжгалузевих відносин, що виникають внаслідок комплексного правового регулювання та охорони податкових правовідносин і виражають взаємозалежність між конституційним, податковим, адміністративним та кримінальним законодавством, породжує перед сучасною юридичною наукою та практикою цілий ряд проблем. Поняття податкового кримінального правопорушення можна розглядати як узагальнене позначення широкого спектру кримінально караних діянь, вчинених суб'єктами в процесі реалізації податкових правовідносин. У цьому контексті, аналізуючи податкову злочинність, слід враховувати не тільки протиправні дії платника податків, спрямовані на ухилення від сплати податків, а й, зокрема, незаконне отримання податкових пільг або протиправні дії посадових осіб податкових органів у сфері податкових правовідносин. Визначено, що суспільна небезпека ухилення від сплати податків і зборів, тобто навмисного невиконання конституційного обов'язку сплачувати законно встановлені податки та збори, полягає у недоотриманні коштів до бюджету країни. Суспільна небезпека податкових кримінальних правопорушень також обумовлена порушенням конституційного обов'язку сплачувати законно встановлені податки та збори.

***Ключові слова**: податок, збори (обов'язкові платежі), податкове кримінальне правопорушення, кримінальна відповідальність, кримінально-правова кваліфікація, розмежування кримінальних правопорушень із суміжними діяннями.*