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APPLICATION OF FINANCIAL LIABILITY FOR TAX OFFENSES: FOREIGN EXPERIENCE AND UKRAINIAN REALITIES

Abstract. Peculiarities of application of the mechanism of financial responsibility for tax offenses in Ukraine and in foreign countries are considered. It is argued that violations of tax law are a common type of offense. It is noted that the legal system of many countries, including Ukraine, provides for strict regulation of the tax system, severe control of taxpayers' reporting and the application of financial sanctions in case of violation of tax laws. The tax legislation is analyzed, the norms of which are difficult to understand, and some are ineffective, which is one of the reasons for their non-compliance and the growing number of tax offenses.

Emphasis is placed on the fact that the issue of financial sanctions for tax evasion and other tax offenses has a significant impact on the intensification of globalization processes in the global financial system. Under such conditions, further development of Ukrainian legislation on financial liability for tax offenses should take into account global trends in this area.

Keywords: *tax, tax offenses, financial liability, tax legislation, financial sanctions, tax evasion.*

Formulation of the problem. In today's world, among the main tasks of any state there should be: ensuring economic growth, increasing investment potential, building the economy, helping to solve many social problems. One of the important factors in their solution is the implementation of an effective tax policy – the activities of the state to establish, regulate and organize the collection of taxes. Among its main priorities today are improving the quality and efficiency of tax administration; ensuring justice and equality of the tax system; adaptation of tax legislation to the norms and rules of best foreign practices and international standards.

Violation of tax legislation is a very common type of offense. Therefore, the task of tax policy, and hence tax regulation in any state is to ensure law and order in the field of taxation, which depends on the effectiveness of the mechanism of financial liability arising from violations of the rules governing it. Legislation on financial liability for tax offenses in Ukraine has gone through several stages of formation and further development. Clarification of this issue, as well as the peculiarities of the application of financial liability for violations of tax laws is crucial for identification of prospects for this institution.

Recent publications review. The issues of the application of the mechanism of financial liability for tax offenses were investigated by Dmytrenko E., Getmantsev D., Oleynikova L., Trypolska M., Ivansky A., Usenko R. and others. However, scholars have not studied this issue in terms of current realities that affect the application of financial liability for tax offenses in Ukraine and around the world.

The article's objective is to analyze the peculiarities of the application of the mechanism of financial liability for tax offenses in Ukraine and abroad, also to identify trends that will affect the development of this mechanism in the future.

Discussion. The legal system of many countries around the world provides for strict regulation of the tax system, and severe control of reporting of taxpayers and the application of financial sanctions in case of violation of tax legislation.

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The tasks of tax policy and hence tax regulation, in any state can be divided into three main groups:

- economic (regulatory) tasks – aimed at achieving the established indicators of economic and social development of the country, revival of business activity, increasing international economic relations, solving urgent social problems;
- fiscal tasks – provide for the formation of the required amount of financial resources to perform the state assigned to it functions;
- control tasks – provide effective tax control over the results of tax payments.

Analysis of tax legislation shows a high level of complexity of its norms, the ineffectiveness of some norms and the lack of incentives to comply with their instructions and the procedure for conducting business transactions and payments through formal banking channels. All this affects the mechanism of tax administration and the content of tax policy, among the main areas of which – reducing the number of tax offenses.

In today's environment, the development of the tax system is significantly influenced by the intensification of globalization processes in the financial system. One of its consequences is the cooperation of different countries on taxation, which is reduced to such positions as: transparency of taxation; ensuring fair tax competition between countries. However, there may also be increased tax competition between individual countries, the consequences of which are a reduction in the tax base in the countries where certain stages of the production process take place, lower tax rates, changes in the structure of direct and indirect taxes, etc. [1, p. 193].

Consequently, law and order in the field of taxation depends, among other factors, on the effectiveness of the mechanism of financial responsibility, which comes for violation of norms of tax legislation.

Dmitrenko E., studying the issues of financial responsibility, notes that a financial offense is an illegal, socially dangerous, guilty act of a tortfeasor (a person who can be legally responsible for its actions) who has violated the order of mobilization, distribution and use of public funds regulated by financial and legal norms for which financial liability is provided [2, p. 201]. We support this approach and emphasize that such violation can be committed both by action and inaction. Violation of the deadline for registration with a tax authority, evasion of registration, failure to submit a tax return are the most common examples of tax violations committed by omission. Violations on accounting of income and expenses, objects of taxation can be committed both by action (incorrect reflection of business transactions in the accounting accounts) and inaction (not documenting and not reflection of business transactions in the accounting). A feature of the current mechanism of financial liability for tax offenses under quarantine restrictions related to COVID-19 in Ukraine is that taxpayers are exempt from fines (with some exceptions) and penalties for late payment for the period from March 1, 2020 year to the last day of the month in which the quarantine period ends [3].

Note that the mechanism of financial liability for tax offenses changed with the reforms of the tax system, which were aimed at improving it, making better the quality and efficiency of tax administration, as well as the effective accumulation of resources needed to perform its functions. Special changes were made to: corporate income tax, value added tax, personal income tax and excise tax. The formation of a modern mechanism for applying financial liability to violators of tax legislation (as well as the tax system in general) has passed the following periods:

- the first period (1991-1995) – the formation of the tax system. During this stage, the main taxes in Ukraine were introduced, the principles of taxation were established, and certain norms on the application of liability for violations of tax legislation were adopted;
- the second period (1996-1997) – the development of institutional foundations of the tax system, during which the State Tax Administration of Ukraine was established, which was subordinated to the President of Ukraine, but there was an increase in arrears of taxes and fees, which became a problem to be solved;
- the third period (1998-2007) – introduction of alternative taxation systems, development of a simplified taxation system;
- the fourth period (2008-2009) – further development of the tax system, increasing the efficiency of the tax regulation mechanism, the level of fiscal and regulatory function of taxes. The State Tax Service has become the central body of executive power, the activities of which are coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine;
- the fifth period (2010-2014) – improving the institutional framework of the tax

system, the adoption of the Tax Code of Ukraine and regulatory regulation of the modern mechanism of administration of taxes and fees, significant improvement of financial liability for tax offenses;

– the sixth period (from 2015 to the present) is a stage of modern development of the tax system, during which the number of taxes was significantly reduced and the optimal number of national and local taxes and fees was formed. National taxes include: corporate income tax; income tax; VAT (value added tax); excise tax; environmental tax; rent; toll. Local taxes include: property tax; single tax, and local fees include: fee for parking spaces for vehicles; tourist tax.

Analyzing the stages of formation of the tax system of Ukraine, we note that the mechanism of financial liability for tax offenses was determined only with the adoption of the Tax Code was determined. However, the process of developing legislation in this area is still ongoing and needs the attention of both scholars and legislators, as it is influenced by a large number of external and internal factors. For its development, it is important to implement international standards in the field of taxation, as well as mechanisms for controlling the payment of taxes. It is necessary to draw parallels with foreign tax legislation to understand the prospects for domestic development. World experience is a valuable basis for developing methods to combat tax evasion, creating effective norms that will help taxpayers comply their tax obligations. Globalization and integration of Ukraine into the European space is a difficult challenge facing the legislator. Domestic tax legislation, including aspects of financial liability, need to be further developed on the basis of foreign experience.

At present, the tax system of Ukraine includes all major types of taxes that operate in developed countries. However, the presence of a certain type of tax in the tax system is not yet evidence of the effectiveness of its administration, as the establishment of taxes and fees is insufficient for the formation of state revenues [4, p. 114]. Any economic system of the state cannot exist without revenues, and any tax system cannot function without state bodies that implement state tax policy, apply financial sanctions and ensure the receipt of taxes and fees.

The use of tax functions depends on many factors, including economic, social, political conditions in which such a tax system operates. The set of taxes and fees available in the state cannot be realized without the active and professional activity of executive bodies, which, in accordance with the law, are entrusted with the performance of tax collection functions. The activities of these bodies «ensure» the payment of taxes and fees, «collection of taxes in the prescribed manner», the implementation of «control and responsibility» for the payment of taxes, and so on.

According to the legislation of Ukraine, the State Tax Service of Ukraine is currently empowered to apply financial responsibility for tax offenses. This body in different time periods had different names: the Main State Tax Inspectorate of the Ukrainian SSR (1990-1994); Main State Tax Inspectorate of Ukraine (1994-2000); State Tax Administration of Ukraine (2000-2012); State Tax Service of Ukraine (2011-2012); Ministry of Revenue and Duties of Ukraine (2012-2014); State Fiscal Service of Ukraine (2014-2019); State Tax Service of Ukraine - since 2019.

One of the divisions of the State Tax Service of Ukraine was entrusted with the functions of detecting and disclosing tax offenses, at a certain initial stage it is the tax police. Later it became the tax militia (this term is used by former soviet republics as an analogous to «police»), as a unit specializing in the fight against tax offenses, also conducted a pre-trial investigation in the field of tax evasion and budget violations. The methods of the tax militia have been repeatedly criticized. The tax militia was accused of abuse of power through the use of special "schemes" of pressure on company directors. The number of seizures of documents by tax militia investigators often significantly exceeded the number of initiated proceedings.

On March 25, 2021, the Law of Ukraine «On the Bureau of Economic Security» came into force, which for the first time in the country created a new law enforcement agency with pre-trial investigation and operative-search activity instead of another similar law enforcement agency without any succession (Law No. 1150) [5]. For the first time in the history of Ukraine, the law enforcement body was not reformed, but terminated as a legal entity, without any guarantees of employment of former tax police officers in the newly formed Bureau of Economic Security.

Along with organizational changes in the mechanism of liability for tax offenses, approaches to the composition of such offenses are also changing. In particular, we should pay attention to the Law of Ukraine "On Amendments to the Tax Code of Ukraine to improve tax

administration and eliminate technical and logical inconsistencies in tax legislation" dated 16 January 2020 № 466-IX (Law No. 466) [6], which introduces a new concept of a tax offense. Now the criteria of guilt and intent must be clearly taken into account in the case of prosecution for tax offenses (paragraph 109.1 of the Tax Code of Ukraine (TCU)) [7].

A prerequisite for bringing a person to financial responsibility is the presence of guilt in the following tax offenses: paragraph 119.3 of the TCU (violation by the taxpayer of the procedure for submitting information about individuals - taxpayers); paragraphs 123.2-123.5 of the TCU (determination by the supervisory authority of the amount of tax liability and/or other liability, the control of which is entrusted to the supervisory authorities, reduction of budget reimbursement or detection of facts of use of tax benefits for other purposes or contrary to conditions or purposes of their provision); paragraphs 124.2-124.3 of the TCU (violation of the rules of payment (transfer) of monetary obligations); paragraphs 1251.2-1251.4 of the TCU (violation of the rules of accrual, withholding and payment of taxes to the source of payment).

The subjects of tax offenses were also corrected by the Law No. 466. Entities prosecuted for tax offenses as of 01.01.2021:

1) taxpayers, tax agents – are financially responsible for committing tax offenses in cases expressly provided by the TCU (paragraph 110.1 of the TCU);

2) a natural person (a taxpayer) - bears financial responsibility provided that at the time of the tax offense full civil capacity (paragraph 110.2 TCU);

3) controlling bodies – are liable in the form of compensation for damage to the person in respect of whom the tax offense was committed, in accordance with the provisions of Article 114 (paragraph 110.3 of the TCU);

4) legal representatives of taxpayers – bear the financial responsibility established for taxpayers in case of non-fulfillment of obligations specified by the TCU (paragraph 110.4 of the TCU);

5) a legal entity (a taxpayer) – is financially responsible for the commission of tax offenses by its separate units, defined by the TCU (paragraph 110.4 of the TCU).

It should be noted that case law contains an analysis of guilt as a key factor in tax offenses. In the court decision of 15 February 2021 in case No. 420/8853/20, the court concluded the absence of the taxpayer's fault due to the entry of erroneous information in the State Register of Real Property Rights was absent [8].

Analysis of the decision of the Khmelnytsky District Administrative Court on February 17, 2021 in case № 560/7224/20 demonstrates that the plaintiff willfully did not reflect the agreed amount of tax/monetary obligation, although he had a real opportunity to file a declaration of value added tax in time, but did not submit it intentionally [9]. Consequently, the issue of financial penalties for tax evasion and other tax offenses is often decided on a case-by-case basis, depending on the damage caused.

Tax offenses are common in all countries, despite the differences between the tax systems of different countries. However, tax tools still remain common. The tax must have the object, subject, unit of taxation, source, rate, tax incentives, method of collection and method of determination. The negative trend of the tax system of Ukraine is the volume of the general tax burden, which is gradually increasing. There are administrative problems of tax regulation, although digitalization and development of information technologies have not the least impact on the de-shadowing of the economy. The introduction of new technologies in the field of taxation not only simplifies the ability to pay taxes by taxpayers, but also improves the interaction between the relevant government agencies and the taxpayers themselves. This is evidence of a tendency to a different understanding and approach to paying taxes, understanding it as a service rather than a burden. However, it is necessary to change the perception of society, motivating the voluntary payment of taxes through information and advertising campaigns.

If we talk about other current trends in the analyzed sphere, we should pay attention to the experience of the United States of America, where such an effective preventive tool as extradition is used to address the growth of transnational crime, tax evasion and strengthen human rights [10]. Note that high-income countries lose more taxes due to global tax abuses. Thus, such countries as a whole lose more than \$382 billion annually, while low-income countries lose \$45 billion. But low-income countries' tax losses are equivalent to nearly 52 percent of their combined health care budgets, while high-income countries' tax losses are equivalent to 8 percent of their combined health care budgets. Similarly, low-income countries lose the equivalent of 5.8 percent of the total tax revenue they typically collect in a year due to

global tax abuses, while high-income countries lose an average of 2.5 percent.

The same pattern of global inequality is clearly visible when comparing regions of the global north and south. North America and Europe lose over \$95 billion in tax and over \$184 billion respectively, while Latin America and Africa lose over \$43 billion and over \$27 billion respectively. However, North America and Europe's tax losses are equivalent to 5.7% and 12.6% of the regions' public health budgets, respectively, while Latin America and Africa's tax losses are equivalent to 20.4% and 52.5% of the regions' total health budgets respectively [11].

Foreign experience shows that the effectiveness of activities to prevent tax offenses depends on the tax authorities, which should have a number of strategies to encourage taxpayers to comply with tax laws. A general strategy can be characterized as a document that defines the content of preventive activities aimed at preventing tax offenses, based on a risk-based approach. This requires tax authorities to apply enhanced control and risk minimization measures and define a plan to overcome those risks when there are current, emerging, and future risks that may entail a violation of tax law. In general, there should be an overall tax compliance strategy that covers the full spectrum of compliance, from encouraging voluntary compliance, combating inadvertent noncompliance, to avoidance, evasion, and serious crimes. However, the specific strategy should be based on each jurisdiction's legal system, policies, legislative environment, and overall law enforcement structure at the stage [12].

However, the strategy can be more effective if the risks (current, new, future) are first assessed, as taking them into account ensures that the risks are minimized. Such a process helps to improve decisions by reasonably prioritizing how to more effectively overcome various risks, including the commission of tax offenses. This should take into account the specific context or environment (cultural, political, legal, economic, and technological) and, if appropriate, draw on the views of other authorities responsible for combating financial crimes [12]. In order to resolve the above mentioned and other problems, taking into account global trends in taxation, the following changes in the tax legislation of Ukraine can be proposed:

- introduce a tax on excess income for transnational corporations which make superprofits during a pandemic, such as global digital companies, to avoid abuses related to profit shifting. Determine multinationals' excess profits at the global rather than national level to prevent corporations from under-reporting profits by moving them to off-shores and taxing them with a flat tax method;

- introduce a wealth tax to fund measures related to the proliferation of Covid-19, penalties for opaque offshore assets, and commitments by governments to eliminate that opacity;

- implement an international tax standards and the comprehensive multilateral tax transparency [11].

Conclusions. Analyzing the peculiarities of the application of the mechanism of financial responsibility for tax offenses in Ukraine and abroad, we can conclude that the intensification of globalization processes has a significant impact on the tax system. Compliance with the rule of law in the field of taxation is essential. For this purpose there must be an effective and modern mechanism for the application of financial liability arising from violations of tax law.

A financial offense is an illegal, socially dangerous, culpable act of a tort person who violated the procedure of mobilization, distribution and use of public funds, which is regulated by financial and legal norms, for which financial liability is provided. Such a violation can be committed by either action or inaction.

Trends in financial liability in Ukraine are affected by quarantine restrictions related to COVID-19. The current difficult situation in the world makes it possible to predict the continued exemption of taxpayers from fines (with some exceptions) and penalty (interest fine), as well as the extension of the moratorium on in-house inspections of taxpayers.

The mechanism for applying financial liability for tax offenses is also changing, in particular, nowadays the criteria of guilt and intent must be clearly taken into account when prosecuting for such offenses.

Foreign experience shows that tax losses in many countries make up a large part of their income, especially in low-income countries. An effective mechanism for applying financial liability, risk assessment, and developing tax strategies by authorities to encourage taxpayers compliance with tax laws can address this issue.

Analysis of the formation of the tax system of Ukraine shows that only with the adoption of the Tax Code was determined the mechanism of financial liability for tax offenses.

For the further development of this institute it is necessary to implement international standards in the field of taxation, as well as mechanisms for controlling the payment of taxes.

World experience is a valuable basis for developing methods to combat tax evasion, creating effective rules that will help taxpayers meet their tax obligations. Domestic tax legislation, including aspects of financial liability, need to be further developed in the light of globalization processes and Ukraine's integration into the international financial system.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ЗАСТОСУВАННЯ ФІНАНСОВОЇ ВІДПОВІДАЛЬНОСТІ ЗА ПОДАТКОВІ ПРАВОПОРУШЕННЯ: ЗАРУЖНИЙ ДОСВІД ТА УКРАЇНСЬКІ РЕАЛІЇ

Анотація. Порухення податкового законодавства є поширеним видом правопорушень. Правова система багатьох країн світу передбачає жорстке регулювання системи оподаткування, суворий контроль звітності платників податків та застосування фінансових санкцій у випадку порушення податкового законодавства. Законодавство про фінансову відповідальність за податкові правопорушення в Україні також передбачає фінансові санкції у випадку їх вчинення.

Аналіз податкового законодавства свідчить про високий рівень складності його норм, неефективність окремих із них та відсутність стимулів для дотримання їх приписів. Зазначене впливає на рівень тіньової економіки та зростання кількості податкових правопорушень.

На розвиток систем оподаткування в розвинутих країнах значний вплив має активізація глобалізаційних процесів у світовій фінансовій системі. За сучасних умов податкові органи повинні мати низку стратегій для ефективного реагування на різне ставлення платників податків до виконання своїх зобов'язань. Податкові органи мають здійснювати профілактичну діяльність на основі ризик-орієнтованого підходу. За наявності поточних, нових та майбутніх ризиків, що можуть спричинити порушення податкового законодавства, застосовувати посилені заходи контролю та мінімізації ризиків.

Акцентовано увагу на тому, що питання фінансових санкцій за ухилення від сплати податків та вчинення інших податкових правопорушень часто вирішується в індивідуальному порядку залежно від нанесеної шкоди. За таких умов подальший розвиток законодавства України про фінансову відповідальність за податкові правопорушення має відбуватися з урахуванням світових тенденцій у цій сфері.

Ключові слова: податок, податкові правопорушення, фінансова відповідальність, податкове законодавство, фінансові санкції, ухилення від сплати податків.