



DEFICIENCIES OF LEGAL REGULATION OF FINANCIAL RESPONSIBILITY ACCORDING TO LEGAL SYSTEM OF UKRAINE

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Summary

The article observes the relationship of the collection of taxes and fees, the order of administration, the range of subjects and tax legal responsibility for tax violations are defined by the Tax Code of Ukraine.

The norms of the Tax Code of Ukraine are analyzed, which is determined by the financial responsibility standards have mentioned discrepancy with the Constitution of Ukraine, revealed the shortcomings of the legal regulation of financial responsibility.

Key words: legal liability, financial liability, the Tax Code.

Аннотация

В статье рассмотрены отношения в сфере взимания налогов и сборов, порядок их администрирования, круг субъектов налоговых правоотношений и ответственность за нарушение налогового законодательства, определяемые Налоговым кодексом Украины. Анализируются нормы Налогового кодекса Украины, которыми определяется финансовая ответственность, некоторое несоответствие указанных норм положениям Конституции Украины, выявляются недостатки правового регулирования финансовой ответственности.

Ключевые слова: юридическая ответственность, финансовая ответственность, Налоговый кодекс.

Statement of the problem.

Theoretical and practical aspects of financial responsibility in the scientific literature has been devoted a lot of attention. It is worth mentioning that for a long time there was a debate about whether the financial responsibility may be considered a separate form of legal liability, whether it is a special kind of administrative responsibilities that are inherent features of financial responsibility and what its base is.

Among the works recently in this context should be noted fundamental work of A. Jwanski [1, p. 79], is a theoretical analysis of financial responsibility, and Y. Rovinsky monograph dedicated to the public enforcement system finance Ukraine [2, p. 70-93]. But with the adoption of the Tax Code of Ukraine, there was a significant event for jurisprudence: the financial responsibility of the theoretical construct developed into a real legal institution, and although it is substantially different from the image of financial responsibility, which was created by scientists, is to look at it from position of a purely practical nature.

The purpose of the article – the typical tax offenses in Ukraine, analysis of the regulatory structures of financial responsibility contained in the Tax Code of Ukraine, and its evaluation in terms of completeness regulation.

The main material. According to Articles 117-128 of the Tax Code of Ukraine, allocate the following types of offenses:

– Violation of the established procedure of registration (registration) in the state tax service.

– Violation of the terms and procedure for providing information about the opening or closing of bank accounts.

– Violation of the taxpayer manner of presenting information about individuals – taxpayers.

– Failure or delay in filing tax returns or non-compliance with regard to amendments to tax reporting.

– Violation of the terms of the legislation storing documents on the calculation and payment of taxes and fees, as well as documents related to meeting the requirements of other legislation, enforcement of which is entrusted to the supervisory authorities.

– Violations simplified tax system individuals – entrepreneurs.

– Withdrawal of property, which is a tax lien, without the consent of the State Tax Service.

– Violation of order receipt and occupancy of the patent.

– Violation of the rules of payment (transfer) tax.

– Violation of the rules of calculation, withholding and payment (transfer) tax at the source of payment [8, p. 111].

Assessing the regulatory structure of the financial liability, the first thing that attracts attention – According to Article 111 of the Tax Code for violation of laws on taxation and other legislation, enforcement of which is entrusted to the

regulatory authorities, the following types of legal liability : financial, administrative, criminal. Financial responsibility for violation of laws on taxation and other legislation established and applied in accordance with the Tax Code and other laws. Financial responsibility is applied in the form of penalties (financial) sanctions (fines) and/or fines.

According to Article 113 of the Tax Code penalties (financial) sanctions (fines) for violations of laws on taxation or other legislation, enforcement of which is assigned to the tax authorities apply the procedure and in the amount prescribed by this Code and other laws of Ukraine. Payment, collection and appeal of penalty amounts (financial) sanctions (fines) are made in the manner prescribed by this Code for the payment, collection and appeal amounts liabilities [8, p. 123].

As shown in further clarification, procedure penalties as such requires more work on it. According to Article 116 of the Tax Code in the case of regulatory agencies to taxpayer penalties (financial) sanctions (fines) for violating laws on taxation and other legislation, enforcement of which is entrusted to the regulatory authorities, such taxpayer shall be sent (handed) tax notices – decision.

The very same procedure to apply financial penalties as follows. According to Article 86 of the Tax Code inspection results (except office) are issued in the form of an act or certificate to be signed by officials of the State Tax



Service and taxpayers or their authorized representatives. In case of violations during the check is drawn. If no such infringement consists help. In case of disagreement the taxpayer or his legal representatives of the inspection findings or facts and data set forth in the act (certificate) test, they may submit their objections within five working days of receipt of the act (certificate).

These objections are considered by state tax authority within five working days following the day of receipt (day complete audit conducted by the need to clarify the circumstances that have not been investigated during the inspection and forth in the comments) and the response is sent to the taxpayer in the manner prescribed by Article 58 of the Code for sending (delivery) tax notices solutions. The taxpayer (his authorized person and/or representative) has the right to participate in the proposal, as a taxpayer shall specify in the objection.

If the taxpayer was willing to participate in the consideration of his objections to the inspection, the state tax authority shall notify the taxpayer of the place and time of this review. This message is sent to the taxpayer no later than the next business day after receipt of his proposal, but no later than two business days prior to their consideration.

The participation of the head of the State Tax Service (or authorized representative) in consideration of objections to the taxpayer of the inspection report is required. Such denial is an integral part of the act (certificate) validation. The decision to determine monetary obligations accepted by the head of the State Tax Service (or his deputy) based on an examination of the taxpayer's objections (if any). The taxpayer or his legal representative may be present at the decision.

Article 14, paragraph 1 Tax Code of Ukraine found that bond taxpayer – is the amount of money that the taxpayer must pay the appropriate budget as tax liability and/or penalty (financial) sanctions levied on the taxpayer in connection to communication in violation of the requirements of tax and other legislation, enforcement of which is entrusted to the regulatory authorities and penalties for violation of legislation on foreign economic activity. [6, p. 108]

Thus, the decision to apply financial sanctions that the standards of Tax Code

of Ukraine entitled «The decision on the monetary obligations», head of a state tax authority, based on the inspection, and if there is objection – the results of the examination of objections.

Analysis of the above rules makes it possible to assert that the proceedings for prosecution of financial responsibility as such does not exist, that financial responsibility is implemented outside the procedural form. Moreover, Tax Code of Ukraine does not actually describe procedures for handling objections taxpayer. What rights enjoyed taxpayer in the process of reviewing its proposal, Tax Code of Ukraine also defines. In other words, the taxpayer in this sense was no procedural rights there. Obviously, the absence of separate proceedings determined to bring to the financial responsibility and makes no proceedings principles inherent in other types of legal liability.

Interesting is also the basis of financial responsibility. The exact composition of offenses that are the basis of financial responsibility as set forth in the Tax Code of Ukraine 117-128. And immediately drew attention to the fact that all financial penalties of a fine are absolutely certain. The fines set or in a specific amount (Articles 117-121, 128), or percentage of the relevant amounts of tax liabilities. This method of determining the amount of fines as a penalty due to a complete lack of Tax Code of Ukraine circumstances mitigating or aggravating.

Another feature of the regulation of the financial liability is the complete absence of rules concerning the definition of the traditional elements of the subjective side of the offense, such as guilt, motives and goals wrongful act. If the motive and purpose is the Faculty – optionally elements subjectively offense, the guilty is its key element.

But anything about the guilt of the person who is attracted to the financial liability, Tax Code of Ukraine is not. There is no mention of it even in the definition of «tax offenses» provided in Article 109 of the Tax Code. This situation gives every reason to believe that prosecution of financial responsibility on the principle of objective attitude to wine, not including any circumstances of the offense, as well as the causes and conditions that led to the commission of such offense.

According to Article 111 of the Tax

Code for violation of laws on taxation and other legislation, enforcement of which is entrusted to the regulatory authorities, the following types of legal liability: financial, administrative, criminal. And in this case it is not clear what financial responsibility is implemented on principles other than principles of administrative or criminal liability?

It is known that the principle of legal liability largely determines its function. With respect to financial responsibility can select only one of its functions – a punitive, rather, fiscal. It seems that the main purpose of the application of financial responsibility is additional budget revenue due to the wrongful conduct of taxpayers. In contrast, if the financial responsibility put preventive and educational functions of the regulatory structure ought to look different. First, the financial penalties of a fine should be applied only when the offense which is the basis financial responsibility, committed intentionally. In this case, it becomes clear direction punitive sanctions. If the offense occurred for reasons that do not depend on the will and consciousness of the taxpayer, or persons authorized to charge or pay taxes, it must exclude the application of any sanctions. [3, p. 103-117].

The principle of the presumption of innocence, which is the key to all kinds of legal liability, should be proper and full financial responsibility. According to Article 3 of the Constitution of Ukraine human rights and freedoms and their guarantees determine the essence and orientation of the state. The state is responsible to the people for their activities. The promotion and protection of rights and freedoms is the duty of the State. Obviously, this constitutional principle is fully observe and in tax administration.

According to Article 61 of the Constitution of Ukraine legal responsibility of a person has an individual character. Contents of this rule is that when sentencing, collection, use other measures related to bringing a person to the legal responsibility of a species should be considered the identity of the perpetrator, including the following mitigating and aggravating or those that are qualifying features of the offense, information about the lifestyle of the person of its property, the degree of fault, purpose and motives of the offense, etc., and in view of these



data has finally settled the question of the type and extent of punishment (penalty), the possibility of release persons from liability or punishment (penalty, etc.) [3, p. 528].

Since the financial, administrative and criminal responsibility is still there different types of liability, holding a person in one and the same tax offenses to multiple types of liability does not conflict with Art. 61 of the Constitution of Ukraine, according to the norms of which no one shall be brought twice to the legal liability of the same kind for the same offense.

The said constitutional principle of individualization of legal liability implemented in the legal regulation of criminal and administrative responsibility, but on the financial responsibility for the Tax Code of Ukraine it completely ignored and it can be considered a significant gap in the legal regulation of tax relations. Certain provisions of the Tax Code in respect of liability have disadvantages and legal-technical nature.

Thus, Article 109 of the Tax Code established that tax offenses – a wrongful act (action or inaction) of taxpayers, tax agents and/or their officers and officials of regulatory authorities, which led to the failure or improper performance requirements established by this Code and other legislation, enforcement of which is entrusted to the supervisory authorities. Based on this definition, the objective side tax offense consists of a wrongful act and its consequences in the form of non-fulfillment or improper fulfillment of the requirements prescribed by this Code and other legislation. In other words, the result of a single wrongful act must be wrongful act of another.

But the logic of such a determination in the absence of one of the illegal acts, the tax offense is missing. An analysis of offenses that are the basis of financial responsibility, it is easy to see that almost all of offenses specified in Articles 117-122 Tax Code of Ukraine, there are no signs of a tax offense.

For example, Article 120 of the Tax Code provides for liability for failure or delay in filing tax returns by the taxpayer or other person obligated on and pays taxes, duties, tax declarations (calculations) to a fine of 170 UA for each such failure or delay in filing. Failure to submit the declaration itself is a wrongful

act, but it does not entail the failure or the requirements established by this Code and other legal acts. Other articles listed above, there is the same pattern: the objective side of the offense consists of only one element.

Also, pay attention to the fact that in the future the term «tax delinquency» in the text Tax Code of Ukraine barely used and then it becomes unclear what was generally administered in an appropriate definition of Tax Code of Ukraine.

Conclusions. Even a brief analysis of the Tax Code of Ukraine relating to financial responsibility, makes it possible to draw the appropriate conclusions concerning deficiencies in the legal design of financial responsibility:

1) Financial responsibility for Tax Code of Ukraine is not typical procedural form.

2) The regulatory structure of the financial responsibility for Tax Code of Ukraine is not consistent with the principle individualization of legal responsibility, enshrined in Article 61 of the Tax Code.

3) Prosecution of financial responsibility is based on the principle of objective attitude of guilt.

4) In bringing financial responsibility for Tax Code of Ukraine person who is attracted to her, has no procedural rights.

In view of the above we can conclude that the regulatory structure of the financial responsibility for Tax Code of Ukraine requires significant improvement and further research in this area should focus on creating a model of financial responsibility, which would fully meet the constitutional principles of legal liability.

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