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## USA TAX INFRINGEMENTS: CIRCUMSTANCES AND CONSEQUENCES

### **Abstract**

**Introduction.** *The article reveals the content of the violation of tax legislation. The main types of tax offenses are briefly identified and the essence of the application of sanctions is revealed. The circumstances under which penalties, fines, mitigating circumstances may be imposed and the amount of the sanction revoked / adjusted both in the United States and in Ukraine may be indicated.*

**Methods.** *The study used general and special methods of cognition: systems analysis and synthesis, structural and functional method, deduction, logical research to reflect significant research results.*

**Results.** *It is noted that the system of liability for violations of US tax law is enshrined in US law and the division of responsibilities is substantiated by the type of offense, the procedure for liability and the severity of sanctions for the act. All tax offenses in the United States are divided into crimes and offenses, in connection with which criminal and non-criminal liability (i.e. civil). It is determined that the responsibility for violating US tax law is manifested in two components: restorative and punitive. In the law of the USA (and Ukraine) situations of parallel or consecutive bringing both to criminal and civil liability are allowed.*

**Discussion.** *There are no aggravating circumstances regarding civil liability in the United States, and with regard to criminal liability, the list of such circumstances is open, which, in particular, is not typical of Ukrainian regulation. This issue may become a prospect for development in Ukraine by public authorities.*

**Keywords:** *taxes, tax liabilities, fines, sanctions, fines.*

### **Introduction.**

Since taxes in the system of public administration of any country are the main source of budget revenues, each state is interested in ensuring that all tax revenues come to the budget in full and on time. Ukraine and the United States are no exception. It should be noted that without the institution of

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responsibility, only by persuasion, no modern state can achieve the goal of tax collection. The study of the experience of developed countries in the regulation of liability for violations of tax legislation is of interest in terms of its relationship with the legal regulation of the relevant sphere of public relations in Ukraine and accounting for knowledge in domestic tax law. The US experience in this sense is of the greatest interest, so this country was chosen as the basis for the analysis.

#### **Analysis of recent research and publications.**

Analysis of the legal regulation of liability for violation of tax law under US law is impossible without a theoretical and legal view of the institution of legal liability in general and liability for violation of tax law in particular. Given that legal responsibility as a complex institution of law has not been developed in US law, consider the development of domestic jurisprudence.

Legal responsibility has long attracted the attention of researchers in domestic legal science. The issues of legal responsibility are devoted to the works of scientists such as I.A. Kuzmin [1], R.L. Khachaturov [2], Bandurka OM [3], Bogatyreva EM [4], Ponikarov VD [3], Popova SM [3], Bryzgalin A.V. [5], Getmantsev DO [6], Kotsan LM [7], Nepochatenko OO [8] and others.

#### **Purpose.**

The purpose of the article: to briefly investigate and identify the main types of offenses in tax law in the United States and compare with similar offenses in the field of taxation in Ukraine.

#### **Research methodology.**

The study used general and special methods of cognition: systems analysis and synthesis, structural-functional method, deduction, logical research to reflect significant research results.

#### **Results.**

Circumstances or factors to be taken into account by the law enforcement agency are differentiated depending on the type of offense, ie each offense may have its own circumstance, which, for example, aggravates, mitigates or even excludes liability (exempts from it).

With regard to US tax crimes, we propose to consider aggravating and mitigating circumstances. In the United States, there is no clear distinction between exclusionary and exculpatory circumstances: these circumstances are called "defenses" and, in terms of legal technique, rather aimed at neutralizing any of the elements of the crime. With regard to civil liability, it should be noted that there are no aggravating circumstances in the United States, and no distinction is made between mitigating / exculpatory / exculpatory circumstances. In contrast, American law on civil sanctions uses the term "relief", which occurs in compliance with the conditions established by law or the US Internal Revenue Service (hereinafter - DIA) [1].

Thus, the circumstances that aggravate civil liability are not enshrined in law; they were not reflected in law enforcement practice, as the rules on civil fines are very clear and the legislator, establishing liability, did not provide for increased penalties in certain situations. However, the criterion of intent is important from the point of view of the legal qualification of the offense, as the presence of fraudulent intent implies liability under articles that provide for more severe punishment [2]. The repeated nature of the offense and the existence of tax offenses in the past may not aggravate civil liability, but these circumstances indirectly indicate that the offender was aware of the existence of a duty if he had already been prosecuted for a similar offense. This increases the risk of being prosecuted for a more serious offense, such as tax fraud, as intent becomes much easier to prove.

With regard to tax crimes, we will analyze the provisions of Title 18 of the US Code of Laws, as well as the Federal Penal Code, as the FAC does not clarify the procedure for imposing certain sanctions from the standpoint of aggravating (as well as mitigating) circumstances.

Aggravating factors in tax crimes are set out in the Federal Penitentiary Manual. Aggravating

circumstances are ranked within the sanctions of the relevant article: in the presence of aggravating circumstances, the punishment will be more severe than in their absence. Aggravating circumstances include: large tax losses to the budget (the more losses, the more severe the penalty); the accused has a previous criminal record; the role of the accused in the commission of the crime [3; 4].

For each crime, the baseline severity is determined first, which is then adjusted, depending on the aggravating or mitigating circumstances. According to the Table of Sentencing contained in the Federal Penitentiary Manual, the final sentence is imprisonment (in months of imprisonment).

The basic level of gravity of crimes, in turn, is determined according to the classification of tax crimes by levels depending on tax losses. Thus, the amount of tax losses determines the basic level of gravity of the crime, and high tax losses are de facto an aggravating circumstance for sentencing. After determining the basic level of gravity of the crime, the sentence can be adjusted.

Having a criminal record in the past is always an aggravating circumstance for tax liability; even when considering cases for which the term of imprisonment does not exceed one year, the courts pay attention to the identity of the offender and the facts of previous criminal prosecution. A person who has once been convicted of a crime for more than one year will fall into the second category. However, statistics show that most tax criminals commit a crime for the first time, and therefore the severity of the offense often depends primarily on the amount of tax losses [5].

In the case of a leading role in the commission of a crime (often tax crimes are committed in a criminal conspiracy) the level of gravity increases depending on the specific circumstances (for example, if more than five people participated in the crime and the offender was given a leading role in the crime; in this case, the severity level increases by 4 units).

In the United States, there is a high degree of judicial discretion, so in some cases, given the seriousness of the act and the circumstances of the crime, the court may impose a more severe penalty than the sentencing table, but this penalty must also be sanctioned; in other words, the term of imprisonment for criminal tax evasion may not exceed five years, but the list of aggravating circumstances is not strictly limited and allows the judge to take into account the circumstances of each case [6].

When prosecuting corporations whose main punishment is a criminal fine, the corporation's file also analyzes the availability of information on the facts of criminal prosecution in the past; moreover, if it is established that the corporation existed on criminal means or functioned in many ways to commit crimes, the amount of the fine should be significant enough to deprive it of its assets and make further criminal activity impossible.

As for mitigating circumstances, in American law they are called mitigating factors. With regard to crimes, the mitigating circumstance is usually the minimal role in the commission of the crime (when a group of persons commits a crime). As a mitigating circumstance, the court may also take into account the fact that the person was not fully aware of the actions, for example, due to a disease, including drug addiction and alcoholism. As a general rule, a person's physical condition and old age cannot mitigate liability, but in exceptional cases the court may still accept these circumstances [7; 8].

Family responsibilities can sometimes affect the size of the criminal fine in the direction of its reduction, but the final amount of the fine must fit into the sanction. Cooperation with the investigation is a mitigating circumstance. With significant cooperation, deviations from the provisions of the Federal Administration on sentencing in the direction of reducing the sentence are allowed. In fact, cooperation with the investigation is most often formalized within the framework of the agreement with the investigation; the accused receives significant reductions, and the punishment is usually much less severe than the sanction of the article.

Civil law does not clearly distinguish between mitigation, exclusion, or exemption from civil liability. The good reputation of the taxpayer, which has traditionally been a mitigating circumstance in many countries around the world, in the United States can be, for example, a reason for exemption from civil penalties. In Ukraine, on the other hand, mitigating and exculpatory circumstances, as well as exemptions from liability, are very different, and therefore the presence of even a very significant number of mitigating reasons can not lead to complete exemption from liability, as the lack of punishment is possible only if a

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person is brought to justice [9].

The presence or absence of a reasonable reason is established after receiving the relevant application from the taxpayer and depends on specific life circumstances. In its most general form, the Practical Guide states that a reasonable cause can be understood as life circumstances and facts for which the taxpayer has exercised a reasonable degree of care and diligence, but still failed to meet the proposed standards of conduct for reasons beyond his control. In the United States, there are many explanations from the Department of the Treasury regarding the application of the exemption from the fine on this basis. Summarizing the provisions of the Practical Guide, as well as the explanations of the Treasury Department, we conclude that officials analyze the taxpayer's compliance with tax laws in the past (for at least the previous three years) when deciding whether there is a good reason. The absence of violations of tax law in the past may be grounds for cancellation of the fine, but if officials for one reason or another still did not consider this fact as independent, the good reputation of the taxpayer should be assessed in conjunction with other circumstances that the taxpayer calls respectful. In addition, good causes in the United States are: death, serious illness of the taxpayer and his family members; in the case of corporate taxpayers, the death or serious illness of the person responsible for the corporation's tax matters or members of his family, if that person was the only person who could file a return and (or) pay the tax [10]. Good reasons also include fires, natural disasters, and other force majeure circumstances that affect the taxpayer, and he was unable to timely fulfill the tax obligation in full.

As a general rule, financial problems and lack of funds on one's own are a good reason for non-compliance with tax legislation. Meanwhile, the case law of the courts of appeal is extremely heterogeneous on this issue, and in some exceptional cases the lack of funds can still be considered as a good reason for non-compliance with the obligation to pay taxes on time [11].

Circumstances that preclude liability or release from liability are called defenses in US criminal law, which means "method of defense in a case." The term defense can be used in a broader sense - as an argument for defense in a civil or criminal case of an offense, and if this argument is accepted by the court, the person is released from civil or criminal liability.

Currently, financial inability to pay tax is not a circumstance that excludes criminal liability, both for failure to file a tax return and for non-payment of tax. However, this approach has not always been the case in American jurisprudence. Thus, in 1973, the Court of Appeals of the Ninth District in one case concluded that in order to prosecute a person for a violation of intentional non-payment of tax, the prosecution must prove that the taxpayer had sufficient funds to pay their taxes. In other words, the taxpayer could not set intent, which is one of the elements of the crime, because due to lack of funds he had no choice but to pay or not pay tax, so only if you prove the taxpayer's money can be said to be intentional non-compliance tax obligations. Meanwhile, courts in a number of cases have ruled that financial ability to pay taxes is not a precondition for prosecuting violations, as taxpayers simply spend or otherwise withdraw money and avoid criminal prosecution [12–14]. Finally, a number of lawsuits have chosen an approach where the financial inability to pay tax is not taken into account if it is due to the intentional and voluntary actions of the taxpayer himself and he initially had sufficient funds to pay the tax. Currently, it is generally accepted that the prosecution must prove that the taxpayer has sufficient funds to pay the tax, and the lack of funds is not a good reason to be released from criminal liability, although lawyers recommend carefully studying the precedents.

Lack of funds and difficult financial situation can be taken into account when deciding the size of the fine, but with criminal prosecution in principle.

Ignorance of the law can sometimes be the basis for exemption from criminal liability for committing a tax crime. Deliberate ignorance of the law is not a proper way to defend oneself in a criminal case, as the taxpayer acts in dishonesty, specifically protecting himself from information about his tax obligations [15].

US law applies the institution of penetration through the corporate veil in cases where it turns out that under the guise of the corporation in its personal interests acted by its members. An example is a

case in which shareholders - individuals - were brought to justice. The court sided with the tax authority, agreeing that the corporation was the alter ego of its founders. In this case, the criteria were formulated that indicate the need to penetrate the corporate veil and ignore the existence of the corporation:

- 1) lack of normal corporate procedures and formalities;
- 2) mixing of corporate property and property of the founders;
- 3) availability and implementation of corporate finance management functions for participants (major shareholder);
- 4) use of the corporation as a cover to achieve the personal goals of participants (shareholders).

Ignoring the identity of the corporation, thus, the state, instead of bringing it to justice, sometimes brings to justice its members (shareholders). In fact, the application of the concept of penetration through the corporate veil is realized together with the doctrines of business purpose and the priority of the economic being over form [16].

In conclusion, speaking about the means of protection in tax matters, we note that in the United States is quite large movement of opponents of taxation (English: tax protesters). Opponents of taxation are those who do not pay taxes, justifying their behavior by any arguments that have already been considered by various courts and rejected as excuses for non-payment of taxes. The movement of opponents of taxation has become so widespread that the authorities had to present and refute on their official website the key arguments most often used by opponents of taxation.

Conclusions and prospects. Summing up, it should be noted that the system of liability for violations of US tax law is legally enshrined in US law. As a result, the division of responsibilities is justified by the type of offense, the procedure for liability and the severity of sanctions for the act. All tax offenses can be divided into crimes and offenses, in connection with which liability will be criminal and non-criminal (ie civil). The use of the term "civil liability" in relation to liability for violation of US tax law may be very conditional: it should be understood that its most important feature is the non-criminal nature [17].

Liability for violation of US tax law is manifested in two components: restorative and punitive. The most controversial issue in American law remains the legal status of civil fines, as it has a mixed, dual nature.

U.S. law allows for situations of parallel or successive criminal and civil liability, such as the simultaneous obligation of criminal tax evasion and civil tax fraud.

Of particular interest is the collection of interest (interest), because in the US interest (interest) can sometimes be charged not only in the amount of arrears, but also in the amount of the fine, while in Ukraine the interest is strictly tied to the amount of tax and not to penalties.

With regard to mitigating and exculpatory (exculpatory) circumstances, it was found that in relation to criminal liability, all improving provisions of the defendant will be called defenses, and in cases of civil liability it will be a relief - full or partial release from responsibility. There are no aggravating circumstances regarding civil liability, and the list of such circumstances is open to criminal liability, which, in particular, is not typical for Ukrainian regulation.

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