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**FISCAL OFFENCES AND INFRINGEMENTS IN THE SCOPE
 OF FLOW OF GOODS ACROSS THE EXTERNAL BORDER
 OF THE EUROPEAN UNION - COMBAT METHODS**

**ЗЛОЧИНИ ТА СУДОВІ ПОРУШЕННЯ В ОБЛАСТІ ПЕРЕВЕЗЕННЯ ТОВАРІВ
 ЧЕРЕЗ ЗОВНІШНІЙ КОРДОН ЄВРОПЕЙСЬКОГО СОЮЗУ: МЕТОДИ БОРОТЬБИ**

The article concerns attempts to characterize tax offences and petty tax evidences occurring during the carriage of goods at the external border of the European Union.

On the basis of statistical data gathered by the Customs Service, the number of proceedings in cases concerning tax offenses and petty offenses was indicated on the basis of the Computer System for Records of Tax Crimes called ESKS. The proceedings conducted were analyzed in the Customs Chambers within the external border of the European Union. The intensity of border traffic was characterized on the example of: passenger cars, trucks, buses as well as passenger and freight trains. Tools used are presented in the detection of fiscal offenses and petty tax offenses by the National Treasury Administration, i.e. risk analysis and investigative IT. The role of border services in providing security throughout the entire supply chain is underlined.

Key words: *tax crime, fiscal offense, risk analysis, forensics, border traffic, security, supply chain, goods.*

Стаття синтетично характеризує фіскальні правопорушення та податкові правопорушення, пов'язані з перевезенням товарів на зовнішньому кордоні Європейського Союзу. На підставі статистичних даних, зібраних митною службою, були вказані статистичні дані про провадження у справах, що стосуються фіскальних правопорушень та дрібних правопорушень на основі комп'ютерної системи обліку податкових кримінальних питань ESKS. Процес було проаналізовано в митних палатах, які працюють на зовнішньому кордоні Європейського Союзу. Інтенсивність прикордонного руху характеризувалася на прикладі автомобілів, вантажних автомобілів та автобусів, а також пасажирських та вантажних поїздів. Представлено інструменти, що використовуються для виявлення фіскальних правопорушень та дрібних правопорушень Державним казначейством, тобто аналіз ризиків та розслідування ІТ. Підкреслюється роль служб прикордонної служби у забезпеченні безпеки у всьому ланцюгу постачання.

Ключові слова: *податкові злочини, податкове правопорушення, аналіз ризиків, криміналістика, прикордонний рух, безпека, ланцюг поставок.*

Стаття синтетично характеризує фіскальні правонарушення і податкові правонарушення, пов'язані з перевезенням товарів на зовнішній кордон Європейського Союзу. На основі статистичних даних, зібраних митною службою, були вказані статистичні дані про провадження у справах, що стосуються фіскальних правонарушень та дрібних правонарушень на основі комп'ютерної системи обліку податкових кримінальних питань ESKS. Процес було проаналізовано в митних палатах, які працюють на зовнішньому кордоні Європейського Союзу. Інтенсивність пограничного руху характеризувалася на прикладі автомобілів, вантажних автомобілів та автобусів, а також пасажирських та вантажних поїздів. Представлено інструменти, що використовуються для виявлення фіскальних правонарушень та дрібних правонарушень Державним казначейством, тобто аналіз ризиків та розслідування ІТ. Підкреслюється роль служб пограничної служби у забезпеченні безпеки у всьому ланцюгу поставок.

Ключевые слова: *налоговые преступления, налоговое правонарушение, анализ рисков, криминалистика, пограничное движение, безопасность, цепь поставок.*

Fiscal offenses and minor offenses committed during the movement of goods across the EU external border are combated by border services, including customs officers, currently customs and tax officers, Border Guards and Police. Their tasks include detecting, prosecuting, combating tax crimes and fiscal offenses. The article discusses the methods used to combat border crime.

The data presented in this study concern the period of transforming the Customs Service into the National Fiscal Administration. The National Tax Administration was established on 1 March 2017, which included the Customs Service, Tax Control Offices and Tax Offices. As a result of this restructuring, the competences of the abovementioned services were consolidated. The National Tax Administration, exercising the rights specified in the provisions of the Act of 16 November 2016 on the National Tax [15] controls entities' com-

pliance with customs law and other regulations related to the import and export of goods between the customs territory of the European Union and third countries; recognizes, detects and combats fiscal offenses and tax offenses, including offenses against tax obligations, as well as against customs obligations and the rules of foreign trade in goods, and prosecutes their perpetrators to the extent specified in the Act of 10 September 1999 – Penal fiscal code (Journal of Laws 2007, No. 111, item 765, as amended).

In addition, the provisions governing proceedings in cases concerning fiscal offenses and tax offenses have been included, among others in the following legal acts: Penal Fiscal Code [14], Executive Penal Code [17], Code of Criminal Procedure [18], Penal Code [16].

In contrast to harmonized customs regulations at EU level, protection of trade in goods with third countries

was left to be regulated in the national legal systems of the Member States. This is due to the fact that the European Union does not have the competence to create or to harmonize criminal law [7, S. 285].

Penal fiscal code (pfc) penalizes acts consisting in violating bans and orders of financial law belonging to the area of tasks of the Minister of Finance, i.e. tax, customs, foreign exchange and gambling law.

Financial preparatory bodies are: customs and tax control offices, tax offices. In turn, the overriding authority over the financial organs of preparatory proceedings is:

1. a locally competent tax administration chamber - in matters falling within the jurisdiction of the customs and tax control office and the tax office;
2. the minister competent for public finances, if the order or order has been issued by the tax administration chamber.

The provisions of the Code of Civil Procedure define in what circumstances we deal with a fiscal offense and in which cases with a fiscal offense. The amount of the lowest monthly salary determines whether a criminal act is full of signs of a crime or an offense. Tax offense will be a deed in which the amount depleted or exposed to public debt reduction or the equivalent of the object of the act will not exceed five times the amount of the lowest monthly remuneration, thus currently PLN 10,500.00 (5 x PLN 2,100). [13]. If the amount exceeds the indicated value, we will face a tax offense.

The necessary condition for the perpetrator to be held liable for fiscal offenses and fiscal offenses is, apart from the fact that the perpetrator performs the signs of the prohibited act, the existence of the subjective element, i.e. proving the perpetrator of the guilt. Fiscal offense or fiscal offense can, as a rule, be committed only deliberately and unintentionally only when the Code provides so. It should be clearly stated that in proceedings in cases concerning fiscal offenses / offenses other rules apply than e.g. in tax proceedings – the authority conducting the proceedings must prove the guilt of the accused and not the accused person of his innocence [9, S. 14].

The provisions of the Penal Fiscal Code also apply to infringements of customs regulations in the scope of depletion or exposure to depletion of customs duties, which are related to the direct protection of the European Union budget. However, it should not be forgotten that they equally protect the acts of infringements against the interests of the Polish State Treasury, because the depletion of customs duties is usually accompanied by depletions in taxes related to international trade, i.e. tax on goods and services (VAT) and excise duty.

The specified forms of prohibited acts correspond to a specific regulation of the fiscal code, introducing a gradation of depletion or threats to depletion of public law by the concept of value: small, large and great⁹. A small value is a value which at the time of committing a prohibited act did not exceed two hundred times the minimum wage, so a small value should be understood as a depletion or threat of depletion of public law receivables not exceeding PLN 420,000. A large value is a value which at the moment of committing a prohibited act exceeds from five hundred to a thou-

sand times the amount of the minimum remuneration, i.e. PLN 1,050,000.00 – PLN 2,100,000.00. On the other hand, the value that we consider to be the value that at the time when the offense is committed exceeds the minimum wage a thousand times. So it will be a value exceeding PLN 2,100,000.00 zł. [13].

Fiscal offenses and minor offenses resulting from infringements of legal regulations while making, among others trade in goods with foreign countries is indicated in Chapter VII of the Penal Fiscal Code, i.e. art. 85 to 95. These include:

Swindling of a customs clearance (Article 85 of the Penal Fiscal Code) – the offense is committed by a person swindling a permit or a similar document specifying the terms of trade in goods or services with third countries, this act may also be committed in the form of fraudulent misrepresentation of the state body entitled issuing such a document [14]. The document may be, among others, permission for import, export or transit, as well as other document, which will depend on the possibility of trade in goods between EU countries and third countries, for example license, declaration of conformity, declaration of performance, veterinary certificate, phyto-sanitary, permission for weapon, certificate of the competent consul of the Republic of Poland on imports of weapons and ammunition, document accompanying V1 for wine import, *certificate of origin* of goods (form A, certificate of origin, ATR, EUR-1), permission of conservator for export.

Customs smuggling (Article 86 of the Penal Fiscal Code) – act consisting in failure to comply with the customs duty imposed on the person responsible for the goods being transported across the border in order to enter the common customs territory or exit from the common customs territory [14]. Failure to fulfill the obligations may consist in the failure to present the goods to the customs authority or failure to file customs declarations, and thus to prevent the customs authorities from performing control activities. According to art. 5 point 33 of the Union Customs Code (UCC) [12] “presentation of goods to customs” means notification to the customs authorities of the arrival of goods to a customs office or other place designated or recognized by customs authorities and the availability of these goods to customs controls. However, in accordance with art. 5 point 12 UCC “customs declaration” means the act whereby a person, in the prescribed form and manner, expresses the intention to place goods under a given customs procedure, indicating, where appropriate, any specific arrangements to be applied.

It should be noted that customs smuggling falls within the scope of the broadly understood concept of illegal entry or exit into the EU customs area, with the rule that every customs shipment is a form of illegal entry of goods, but not all illegal entry or exit of goods is customs smuggling. It is not, for example, the introduction of goods in breach of obligations arising from the transport of goods by customs or removal from customs supervision [4, S. 102].

Customs fraud (Article 87 of the Penal Fiscal Code) – it is accepted by a person who misleads the customs au-

thority entitled to customs control. As a result of this act, they are exposed to depletion of customs duties. Fraud consists in misleading, exploiting a mistake or inability to properly understand the action taken to obtain a material advantage [3, S. 516]. An example of such an act in personal traffic is an attempt to cross the border within a green line designed for people who do not have goods to declare, of course in case of disclosure, while in the course of trade it will be, among others, presentation of false invoices, possibly false data affecting the determination of the customs value, e.g. declaring the incorrect costs of transport or insurance of goods being imported into the EU. Another example is the falsification of evidence of the origin of goods affecting the use of preferences.

Violation of the temporary admission procedure (Article 88 of the Penal Fiscal Code) – concerns persons entitled to use the temporary admission procedure on the basis of an oral application. Violations of this procedure are allowed, for example, by travelers on the border who do not re-export a particular good or do not take steps to give the goods a new customs-approved destination, which creates a customs debt. In the conditions of passenger traffic, the private temporary admission procedure covers private means of transport owned by persons living outside the common customs territory, according to customs regulations, these vehicles should be re-exported at the latest on the day of the person leaving the territory of the EU.

Changing the destination of goods (Article 89 of the Penal Fiscal Code) – this act is committed by a person changing the purpose, intended use of goods or not maintaining another condition on which the effectiveness of the customs clearance depends, or determination of customs duties lower than that normally applicable to the import of goods from third countries. An example of such a procedure is the import of goods in accordance with the applicable standards, e.g. cigarettes, alcohol or liquids used for moving motor vehicles, and after crossing the border they change their purpose in that cigarettes are sold instead of being used for personal use and the fuel is pumped out from factory tanks and sold to interested persons.

Removal of the goods from customs supervision (Article 90 of the Penal Fiscal Code) – it is accepted by the person who removes the goods or means of transport from customs supervision. In the course of trade with third countries, the subject of frequent operations are suspensive procedures, the practical application of which does not result in the creation of customs duties and commercial policy measures in relation to the goods covered. The goods covered by customs supervision with the use of seals are most often non-community goods transported through the territory of the Community using the transit procedure.

Customs receiving (Article 91 of the Penal Fiscal Code) – concerns criminal behaviour in the following circumstances of dealing with goods that are subject to customs offenses: acquisition, storage, transport, transmission, transfer, assistance in the sale of goods, receipt of goods and assistance in hiding. Customs receiving is

also a type of prohibited acts subject to frequent violations at the external border of the European Union. They are made by people involved in buying and then distributing excise goods, such as cigarettes, alcohol, diesel fuel, which are imported in accordance with the quantitative standards and then sold at a high profit.

Unjustified repayment of the customs duty (Article 92 of the Penal Fiscal Code) – this is a deed in the situation of misleading the customs authority by providing data aimed at obtaining undue refund of duty or remitting the duty in respect of which the obligation to pay arose [19, S. 299].

Infringement of customs regulations with an offense specified in art. 93 Penal Fiscal Code – this is a gross violation of customs legislation in the area of the free zone or customs warehouse operating conditions. The possibility of running an institution of a free customs zone and customs warehouse depends on obtaining a permit of competent state authorities for such activity, in the case of a free customs area the permit is issued by the Minister of Finance, and in the case of customs deputy head of the customs and tax office. The manner of operation of these preferential institutions is regulated not only by customs legislation, but also obtained permits and regulations of their functioning, which should be properly applied by managers.

Obstruction of customs supervision (Article 94 of the Penal Fiscal Code) – act consisting in failure to provide verbal or written explanations that may be relevant to customs control. The non-disclosure of documents relating to trade in third countries with goods or services is likewise eligible. Control rights in the scope of customs supervision carried out by customs authorities are a basic instrument allowing effective enforcement of the correct application of customs legislation and other regulations applicable to goods traded with third countries. It should be remembered that the control rights of the customs authorities can be exercised against all goods for which there is a reasonable suspicion of violation of the applicable legal order, can be implemented at anytime and anywhere in the common customs area, as well as outside it, if international agreements provide [2, S. 75].

Lack of customs documents (article 95 Penal Fiscal Code) – non-possession of documents relevant to customs control [11]. Such a document may also be in a form of a record of the information medium from which, as with a document in paper form, certain legal consequences may arise.

The obligation to store documentation necessary for the application of customs legislation is provided for in Article 51 par. 1 UKC. The provision of art. 9 of the Act of 19 March 2004 - Customs Law [8] specifies the storage time of documents for 5 years (in turn, Article 51 paragraph 1 defines this period for 3 years). Article 51, paragraph 1 UCC uses the concept of all required documents (by referring to Article 15 (1) UCC) [6, S. 959].

Lack of supervision (Article 96 of the Penal Fiscal Code) – this act charges a person who fails to supervise the observance of rules applicable in the business of a given entrepreneur or other organizational unit, ad-

mitting, even if unintentionally, to commit a prohibited act connected with trade with third countries. Penalties for fiscal offenses are imposed by the court in daily rates, but the daily rate may not be less than one thirty part of the minimum wage nor exceed four hundred times.

In 2018, the daily rate ranges from PLN 70.00 to PLN 28,000.00, while a fine from PLN 700.00 to PLN 20,100,000.00 for a tax offense and from PLN 210.00 to PLN 42,000.00 for a tax offense.

The role of border services in the fight against fiscal offenses and tax offenses is extremely important, which is confirmed, in some statistical data published in various reports. Thanks to continuous modernization, border guards have a well-developed control system to eliminate irregularities. Customs and tax service officers, Border Guards and Police strive to ensure security throughout the entire supply chain. In the field of international cooperation, they promote Activities Safer together at the international forum of the EUCPN (European Network for Preventing Crime) [10, S. 149–150].

An in-depth analysis of the issue of fiscal offenses and minor offenses in the field of the flow of goods across the external border of the European Union requires the citation of statistical data in border traffic at the external EU border. The discussed area is in the jurisdiction of the local customs chambers (IC) in Biała Podlaska, Białystok, Olsztyn and Przemyśl. In 2016, the borders exceeded in total 11 365 379 passenger cars, including the IC in Biała Podlaska 4 424 241, Białystok 1 298 735, Olsztyn 2 375 089 and Przemyśl 3 267 314 (Polish citizens 5 631 391, while foreigners 5 733 988). In total, 1 649 391 trucks were transported, including the IC in Biała Podlaska 880 360, Białystok 422 349, Olsztyn 123 437 and Przemyśl 223 245 (Polish citizens 368 075, while foreigners 1 281 316). The statistics of border crossings for buses are presented in total by the number 214 019, including the IC in Biała Podlaska 108 204, Białystok 36 109, Olsztyn 18 951 and Przemyśl 50 755 (Polish operators 48 482, foreign operators 165 537). In total, passenger trains exceeded the limit of 5 182 (Polish operators 797, foreign operators 4 385), freight trains in total 31 415 (Polish operators 9 217, foreign operators 22 198).

The data presented above shows that the highest intensity of passenger and freight traffic took place in 2016 at border crossings in the jurisdiction of the Customs Chamber in Biała Podlaska, ie 39% alone personal, 53% of trucks, 51% of buses. However, the smallest movement was recorded at the passages belonging to: the Customs Chamber in Białystok – 11.4% alone. personal, IC Olsztyn 7.5% alone trucks, 8.9% of buses.

However, the scale of crimes and offenses at the external border of the European Union is presented in statistics and reports. When analyzing statistical data published in the Statistical Bulletin of the Customs Ser-

vice²², it should be pointed out that the number of proceedings in cases concerning fiscal offenses and petty tax offenses based on the Computer System of Registry of Treasury Fiscal Securities as at 27/01/2017 amounts to 160,701 cases in all customs chambers, of which 123 283 cases were kept in chambers located at the external EU border. The total estimated value of seized goods and means of payment in all customs chambers in Poland is 768 212 257 PLN, while in customs chambers located on the external EU border, i.e. in Biała Podlaska, Białystok, Olsztyn and Przemyśl, goods and means of payment were taken for PLN 378,019,725, which is 49.2% of the value of detentions made by the Customs Service in Poland.

Helpful tools used in detecting tax crimes and offenses, including by the National Tax Administration are risk analysis and computer forensics. According to EU standards, all controls in the areas of the National Tax Administration are made on the basis of, inter alia, the results of the risk analysis. Such controls are aimed at identifying and estimating the magnitude of this risk and determining the resources necessary to limit it. Assumptions are aimed at directing control in areas with high risk level, which include among others trading in tobacco, alcohol and fuel products [5, S. 4].

In August 2014, the Head of the Customs Service approved the standards of computer forensics in the Customs Service [20]. As can be seen from this document, the main tasks of investigative IT specialists include: recovery, protection and analysis of digital data found on various types of electronic media that are used by criminal groups. The use of methods and tools of computer forensics is aimed at strengthening the operational and investigative capabilities of the National Fiscal Administration, which in turn will improve the efficiency of customs and tax services in the detection of irregularities affecting the economic interest of Poland and the European Union.

When analyzing the intensity of border traffic, one should expect an increase in tax offenses and petty offenses in connection with the emergence of new threats, for example related to the large number of refugees arriving in the EU. An uncontrolled influx of emigrants may result, for example, in increased smuggling of weapons, hazardous and radioactive materials. In connection with the constant changes in the law in terms of customs and taxes, impoverishment of the society and the destabilization of control systems, the activities of organized crime groups are intensified. They use all emerging opportunities and gaps in the right to conduct illegal activities in the field of border crime and offenses. In view of these threats, it is necessary to strengthen control activities at the border and inside the country by responsible services as well as to expand international cooperation.

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