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## THE STATE OF THE FINANCIAL RESPONSIBILITY FOR THE TAX CODE OF UKRAINE

### ФІНАНСОВА ВІДПОВІДАЛЬНІСТЬ ЗА ПОДАТКОВИМ КОДЕКСОМ УКРАЇНИ

This article analyzes taxes as a social phenomenon that relates directly to everyone. General obligation to pay taxes and fees. Ensuring the rule of law in the tax area, legislated measures legal effect, including pivotal place measures given legal responsibility. Doctrinal and legal certainty concepts, features, objectives, principles and functions of different types of legal liability for tax violations

**Key words:** *taxes, legal liability, tax violations, mechanism of financial responsibility.*

У статті проаналізовано податки як суспільне явище, загальний обов'язок сплачувати податки і збори, забезпечення законності в податковій сфері, законодавчо закріплені заходи правового впливу, серед яких стрижневе місце відведено заходам юридичної відповідальності. Законодавчо визначено поняття, ознаки, цілі, функції та принципи різних видів юридичної відповідальності за порушення податкового законодавства

**Ключові слова:** *податки, юридична відповідальність, порушення податкового законодавства, механізм фінансової відповідальності.*

В статье проанализированы налоги как общественное явление, общая обязанность их платить, обеспечение законности в налоговой сфере, законодательно закрепленные мероприятия правового влияния, среди которых главное место отведено мероприятиям юридической ответственности. Законодательно определены понятия, признаки, цели, функции и принципы разных видов юридической ответственности за нарушение налогового законодательства.

**Ключевые слова:** *налоги, юридическая ответственность, нарушение налогового законодательства, механизм финансовой ответственности.*

The mentioned factors determine the necessity to research institute legal nature of the liability for tax violations, its principles and system characteristics. Theoretical understanding of the problem and identify ways to solve it by legislation promote timeliness and completeness of collection of tax payments in the nature of public budgets and off-budget funds. Purposefully institute legal responsibility and individual species tax law was studied by A.V. Andreev, Z.M. Bud'ko, A.V. Goncharov, T.A. Guseva, A.A. Dudorov, E.S. Efremova, V.O. Zaitsev, A.I. Iwanskiy, O.V. Kapliyeva, V.M. Mordvintsev, A.O. Nikolaev, A.V. Peredomin, A.V. Rozdaybida, L.B. Reydel, R.O. Sergienko, O.A. Sotnichenko, L.V. Ternova, O.O. Tomylin, D.V. Tyutin, K.V. Khomych, E.M. Tsygankov etc.

The purpose of this research is to examine the concept of gender institute responsible for tax violations, the history of its formation, the study of the mechanism of legal regulation, its shortcomings. It should highlight the relevance of the topic, as the tax mechanism of any economic system is an important lever by which to guide the activities of the business sector to the revival or decline.

Formation of the tax system in our country began with the adoption of June 25, 1991 the Law of Ukraine "On Taxation System". This law determined purpose and principles of taxation, given a list of taxes, named tax payers and objects [4]. Thus were founded bases of the tax system, created conditions for its further development.

Current Tax Code of Ukraine on their common features has the advantage that a single document defines a common methodology for state and local taxes, the basic principles and provisions of the tax system, given the unambiguous interpretation of tax terminology, outlines the general pro-

visions of legal regulation of tax administration, accountability for violations in taxation.

Implementation of taxpayers and other subjects of tax obligation objectively cannot rely on a high level of legal culture and awareness of social significance established by the tax law of good behavior. In modern conditions to ensure the necessary level of tax revenue becomes crucial application of state coercion in the tax area.

State coercion in the tax area is implemented through mechanism established by law legal liability. To establish the relationship between state coercion and legal responsibility importance is concept of "duty." Exploring the nature of legal liability, S.M. Bratus noted that the legal responsibility is a duty based on state coercion [9, p. 83]. The main purpose of accountability is to the real state enforcement duties. In tax law, given the specificity of the subject and method of legal regulation, the use of legal liability to the obligated entities of tax relations is always associated with failure or improper performance of tax obligation. Feature of liability for tax violations is it's compensatory and punitive in nature. Content compensation characteristics are necessary compensation state and local governments as a result of non-income taxes, fees and other mandatory payments to the budget and state funds. Along with this application liability punish a particular offender (taxpayer, tax agent) due to failure to perform assigned duties, as well as the prevention of tax offenses.

The specific responsibility for certain types of violations of tax law experts see in its direct focus on state compensation for financial losses or municipalities at the stage of their funds of funds as the financial base of their own activities [16, s. 344]. Given the current stage of development of the

domestic legal system and in particular the legal system, it should be noted that the category of "responsibility for tax violations" is complex, as the basis of such liability may act or omission established by the tax, administrative and criminal law. The term "responsibility for tax violations" and "fiscal responsibility" in its content are not identical. In theory, tax law, including Russian scientists emphasized that the tax liability may occur only in the case of tax offenses and their variety – violations of legislation on taxes and fees in connection with the movement of goods across borders. O.O. Drygaylo offers liability for property violations in the tax area at this stage of its development and legal registration isolate as tax liability [12, p. 37].

The final solution to the problem of content construction and development of legal tax liability is possible only if the legal definition not only the concept of a tax offense, but the installation procedure of Procedure of this category of cases. Responsibility for violation of tax laws as comprehensive category includes administrative, financial and criminal penalties.

The 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 discussion about whether the financial responsibility can be considered a separate species of legal liability, whether it is a special kind of administrative responsibility, which features inherent financial responsibility and what are its grounds. Among the works recently in this context it should be noted fundamental work A.J. Iwanskiy [13] devoted to theoretical analysis of financial responsibility, and a monograph by Y.O. Rovinsky dedicated public enforcement system in Ukraine finance [19]. But the Tax Code of Ukraine has been a significant event for jurisprudence: the financial responsibility of the theoretical construct has become a real legal institution, and although it is significantly different from the image of financial responsibility, which was created by scientists, is to look at it from the standpoint of a purely practical nature. In assessing the regulatory structure of financial responsibility, the first thing that attracts attention – it is a certain primitive. According to Article 111 of the Tax Code for violation of laws on taxation and other laws, enforcement of which is assigned to the regulatory authorities, the following types of legal liability, financial, administrative, criminal.

Financial responsibility for violation of laws on taxation and other laws established and applied in accordance with Tax Code of Ukraine and other laws. Financial responsibility is applied in the form of penalty (financial) sanctions (penalties) and / or fines. According to Article 113 of the Tax Code penalties (financial) penalties (fines) for violations of the laws on taxation or other legislation, enforcement of which is entrusted to the State Tax Service, used in the manner and in the amounts established by this Code and other laws of Ukraine.

Payment, collection and appeals amounts of penalty (financial) sanctions (fines) are made in the manner prescribed by this Code for the payment, collection and appeals amounts of liabilities. But, as it turns out in further clarification, the application of penalties as such does not exist. According to Article 116 of the Tax Code in the case of supervisory authorities to the taxpayer penalties (finan-

cial) penalties (fines) for violation of laws on taxation and other laws, enforcement of which is assigned to the regulatory authorities, such taxpayer shall be sent (handed) tax notices – solution. The very same financial sanctions procedure is as follows. According to Article 86 of the Tax Code, results of the checks issued in the form of a report or certificate, signed by officials of the State Tax Administration and taxpayers or their legal representatives. In case of violations during inspections is drawn. In case of disagreement the taxpayer or his legal representatives to the findings of the inspection or facts and data set out in the act (certificate) test, they may submit their objections within five working days of receipt of the instrument (reference). Such representations are considered state tax authority within five working days following the day of receipt (day of completion of the audit conducted by the need to clarify the circumstances that were not examined during the audit and specified in observations) and the response is sent to the taxpayer in the manner specified by Article 58 of the Code for sending (presentation) tax notices. The taxpayer (his authorized person and / or representative) has the right to participate in the objection, as a taxpayer notes in denial. 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 the time of this review.

This message is sent to the taxpayer no later than the next business day after receipt of the objection, but not later than two business days prior to their consideration. Participation of the head of the State Tax Service (or authorized representative) in consideration of objections to the taxpayer of the inspection report is mandatory. Such denial is an integral part of the act (certificate) test. The decision to determine the monetary obligations taken by the head state tax authority (or his deputy) taking into account the outcome of the taxpayer's objections (if any). The taxpayer or his legal representative may be present at the decision.

Obviously, the lack of separate proceedings determined to bring to financial liability and makes no proceedings principles inherent in other types of legal liability. Interesting bases of financial responsibility. The exact composition of offenses that are the basis of financial liability set out in Articles 117–128 in Tax Code of Ukraine. And immediately draws attention to the fact that all financial penalties of a fine are completely defined. Fines or installed in a specific amount (Articles 117–121, 128), or a percentage of the amounts corresponding tax liabilities. This method of determining the amount of a fine to a fine due to the complete absence 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 aspect of the offense, such as guilt, motives and goals wrongful act. If the motive and purpose are optional elements of the subjective aspect of the offense, the fault is its key element. But anything about the guilt of a person that is attracted to the financial responsibility is not in Tax Code of Ukraine. There is no mention of it even in the definition of "tax offense" provided in Article 109 of the Tax Code. This situation gives every reason to believe that the 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 the offense [20, p. 153].

According to Article 111 of the Tax Code for violation of laws on taxation and other laws, enforcement of which is assigned to the regulatory authorities, the following types of legal liability, financial, administrative, criminal. It is known that the principle of legal liability largely determine its function. Regarding financial responsibility can select only one of its functions a punitive, rather, fiscal. It seems that the main purpose of the use of financial responsibility is an additional budget revenue due to illegal behavior of taxpayers. Instead, if the financial responsibility to put preventive and educational functions, its regulatory structure should look different. First, the financial penalties of a fine should be applied only when the offense which is the basis of financial responsibility, committed intentionally. In this case 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 should exclude the application of any sanctions. The principle of the presumption of innocence, which is the key to all types of legal liability shall attach and financial liability in full. According to Article 3 of the Constitution of Ukraine rights and freedoms and their guarantees determine the content and direction of the state. The state is responsible to the people for their activities. To affirm and ensure human rights and freedoms is the main duty of the state. Obviously, this constitutional principle is fully observed and in tax administration. According to Article 61 of the Constitution of Ukraine legal responsibility of the person has an individual character. The content of this provision is that in sentencing, collection, use other measures related to bringing individuals to legal liability of any kind should be considered the identity of the perpetrator, including those mitigating and aggravating or those who are qualifying signs offense, data on individual lifestyle, its property, the degree of guilt, purpose and motives of the offense, etc., and making this data has finally settled the question of the type and extent of punishment (penalty), the possibility of release person from liability or punishment of [7, p. 528]. The said constitutional principle of individualization of legal liability implemented in the legal regulation

of criminal and administrative responsibility, but on the financial responsibility according to Tax Code of Ukraine it is completely ignored and it can be considered a major loophole in the legal regulation of tax relations.

Certain provisions of the Tax Code regarding liability have disadvantages and legally and technically. 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 regulatory authorities, which led to the failure or improper fulfillment of the requirements established by this Code and other legislation, enforcement of which is assigned to the regulatory authorities. Based on this definition, the objective side tax offense consists of a wrongful act and its consequences in the form of non-performance or improper performance requirements established by this Code and other legislation. In other words, the result of a wrongful act must be otherwise wrongful act. But the logic of this definition if no one of the illegal acts, the tax offense will be absent [14]. An analysis of offenses that are the basis of financial responsibility is not difficult to see that almost all of offenses under Articles 117–122 Tax Code of Ukraine, no signs of tax offenses. 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 shall charge and pay taxes, fees, tax declarations (calculations) to a fine of 170 UAH for each such failure or delay in performance. Failure to return itself is a wrongful act, but it does not entail the failure or improper performance requirements established by this Code and other legal acts. Other items listed above observed 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 offense" in the text of the Tax Code of Ukraine is hardly ever used and then becomes unclear, why was entered in the appropriate definition.

The tax system is the area through which the state receives funds for state regulation, that a certain course of reform and as a part. Responsibility for violation of tax legislation important link in this process. Analysis of the Tax Code of Ukraine concerning financial responsibility makes it possible to draw appropriate conclusions regarding deficiencies in the legal structures of financial responsibility.

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