TAX CRIMINAL OFFENCES: TYPES AND FEATURES OF CLASSIFICATION

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The article is devoted to the study of the issue of classification of crimes in the tax sphere. From a legal point of view, a tax offense is interpreted as an unlawful, guilty act (act or omission) of a person with criminal capacity, associated with non-compliance with tax legislation or with improper fulfillment of tax obligations, for which legal liability is provided for by the current legislation.

Tax criminal offenses in a broad sense mean crimes in the tax sphere. The taxation system covers a set of national and local taxes and fees, which are collected in accordance with the procedure established by the Tax Code of Ukraine.

Different views and approaches of domestic scientists to the classification of this type of criminal offenses are analyzed. Some of the classifications proposed by scientists are given, and the criteria underlying them are also investigated. It was found that scientists most often use as the main criterion for classification the main object of encroachment, to which damage is caused or may be caused as a result of the commission of a criminal offense. In accordance with this approach, it is proposed to divide criminal offenses in the field of criminal law protection of the taxation system into the following groups: criminal offenses where the taxation system is the only possible main direct object (Articles 212, 212 of the Criminal Code of Ukraine) (tax criminal offenses); criminal offenses where the taxation system is one of the possible main direct objects (Articles 204, 222 of the Criminal Code of Ukraine); criminal offenses capable of causing harm to the taxation system, where the latter can act exclusively as an optional direct object (Articles 201, 211, 213 of the Criminal Code of Ukraine).

Keywords: types, classification, crime, tax criminal offense; taxation system; tax; object of criminal offense; criminal liability.

The system-forming factor for criminal offenses against the taxation system is the sphere of tax legal relations itself, and not the subject of the criminally punishable offense (taxpayer) or the object of such an act (unpaid tax, fee or other mandatory payment). Tax relations are power relations that arise between the state represented by its authorized bodies, on the one hand, and citizens and organizations as taxpayers, on the other. Tax legal relations, as a rule, include power relations regarding the establishment, introduction, calculation, collection and payment of taxes and fees, as well as the performance by officials of state bodies of their professional duties in the tax sphere (implementation of tax control, tax investigations and bringing to justice for committing a tax violation). Tax criminal offenses are broadly understood as offenses in the field of taxation. Thus, the basis for bringing the offender to criminal liability is the composition of such an offense in his actions, that is, when applying the law, it is necessary to be guided by the signs of the offense as a whole and conduct a legal assessment - to qualify the committed act.

According to clause 109.1 of Article 109 of the Tax Code of Ukraine, "a tax offense is an unlawful, culpable (in cases expressly provided for by the Tax Code of Ukraine) act (action or inaction) of a taxpayer (including persons equated to him), regulatory bodies and/

or their officials (officials), other subjects in cases expressly provided for by the Tax Code of Ukraine" [1].

A tax offense is characterized by the social danger or harmfulness of the act, the illegality of the act, the culpable behavior of the person - the subject of the act, as a result of the latter's will, legal liability.

In turn, a criminal offense under the Criminal Code of Ukraine is "a socially dangerous criminal act (action or inaction) committed by a criminal offense subject provided for by the Criminal Code of Ukraine" [2].

The concept of a tax criminal offense can be used as a collective designation for the entire variety of criminally punishable acts committed by subjects during the implementation of tax legal relations. For this reason, in the context of tax crime, one should consider not only the unlawful actions of a taxpayer aimed at evading tax payments, but also, for example, the illegal receipt of tax benefits or the commission of unlawful actions within the framework of tax legal relations by officials of tax authorities, etc.

The scientific doctrine contains a considerable number of approaches to the definition of criminal offenses against the taxation system, tax criminal offenses. For example, V.V. Lysenko proposes the following definition of a tax criminal offense - it is a criminally punishable act "directed against the tax system and causing harm in the form of non-receipt of taxes, fees (other mandatory payments)". The scientist also suggests signs of such acts, which include: "selfish direction; implementation under the guise of legal entrepreneurial activity; continuation over a significant period of time; causing significant material damage to public relations; implementation by individuals or officials of entrepreneurial entities" [3].

O.M. Bandurka, V.D. Ponikarpov, S.M. Popov defines a tax offense as "an unlawful (provided for by the Tax Code of Ukraine), culpable act (action or omission) of a person with tortious capacity, associated with non-fulfillment of tax legislation or improper fulfillment of tax obligations, for which legal liability is established by the current legislation" [4].

According to the definition of O. Stepaniuk, a tax offense is "an unlawful (committed in violation of tax legislation), culpable act (action or omission) of a person, associated with non-fulfillment or improper fulfillment of a tax obligation, for which legal liability is established, a culpable act associated with non-fulfillment or improper fulfillment of a tax obligation" [5].

G.V. Bekh, O.O. Dmytryk, D.A. Kobylnik divide tax offenses, depending on the characteristics of the object, into: offenses that encroach on tax relations, related to the direct implementation of tax collections and directly causing financial losses to the state, and offenses that encroach on relations that ensure compliance with the established procedure for management in the field of taxation [6].

L.G. Davtyan notes that various types of tax criminal offenses "form a kind of system: criminal offenses committed in connection with the emergence of the right to engage in entrepreneurial activity; criminal offenses characterized by transactions with specific objects; criminal offenses aimed at non-payment of tax payments by unlawful termination of entrepreneurial activity; criminal offenses in certain areas of entrepreneurial activity; criminal offenses in the field of foreign economic activity; criminal offenses characterized by unjustified receipt of tax benefits" [7].

A.D. Marushev proposes dividing tax criminal offenses into the following six groups:

«1) acts related to violation of the procedure for carrying out certain types of entrepreneurial activity (violation of the procedure for carrying out operations with scrap metal (Article 213 of the Criminal Code of Ukraine);

2) acts aimed at violating the established procedure for the manufacture and use of certain types of goods (products): illegal manufacture, storage, sale or transportation for the purpose of selling excisable goods (Article 204 of the Criminal Code of Ukraine);

3) acts related to the unlawful termination of entrepreneurial activity for the purpose of non-payment of tax payments: bankruptcy (Article 219 of the Criminal Code of Ukraine);

4) tax criminal offenses in certain areas of entrepreneurial activity (banking institutions, agriculture, industry, etc.): evasion of taxes,

fees (mandatory payments) Article 212 of the Criminal Code of Ukraine); legalization (laundering) of funds obtained by criminal means (Article 209 of the Criminal Code of Ukraine);

5) acts related to foreign economic activity: smuggling (Article 201 of the Criminal Code of Ukraine);

6) criminally punishable acts aimed at non-payment of tax payments by unjustified receipt of tax benefits: fraud with financial resources (Article 222 of the Criminal Code of Ukraine)" [8].

Taking into account the procedural approach, the scientific doctrine expresses the position that tax criminal offenses should include acts for which criminal liability is provided for in Articles 204, 209, 212, 2121, 219 of the Criminal Code of Ukraine [9]. The basis of such a proposal, as it seems, is the criterion of the subjectivity of criminal offenses.

Z.M. Budko divides tax offenses in general according to the criterion of the specific object into: "violations related to the procedure for accounting of taxpayers and filing tax reports; violations related to the calculation, payment, withholding and transfer of taxes and fees; violations related to non-execution of decisions of tax authorities; violations of the rights and legitimate interests of taxpayers [10].

A.O. Pavlyukh, generally supporting the above approach, concludes that the specified list of tax criminal offenses, which, in the scientist's opinion, is built on the basis of the economic component, "can be expanded according to the principle of causing material damage to the state as a result of a tax criminal offense. From the point of view of law enforcement, the following acts are closest to this principle: Art. 191 (embezzlement, embezzlement of property or taking possession of it by abuse of official position); Art. 193 (illegal appropriation by a person of someone else's property or treasure found or accidentally found in his possession, which has special historical, scientific, artistic or cultural value); Art. 194 (intentional destruction or damage to property); Art. 197 (violation of obligations to protect property); Art. 199 (production, storage, acquisition, transportation, shipment, import into Ukraine for the purpose of use in the sale of goods, sale or marketing of counterfeit money, government securities, state lottery tickets, excise duty stamps or holographic security elements) and so on to criminal offenses against the environment, Art. 365 (abuse of power or official position), Art. 366 (official forgery), Art. 358 (forgery of documents), etc. [11].

Mostly scientific discussions on the classification of tax criminal offenses are related to the definition of the object of this type of offense (generic, specific, direct). More often, it is the object of the criminally punishable act that is proposed as a classification criterion underlying the division of criminally punishable acts against the taxation system (tax criminal offenses). According to the current Criminal Code of Ukraine, criminal offenses that encroach on the taxation system are placed among criminal offenses in the field of economic activity, which has repeatedly caused criticism among scientists and prompted some representatives of science to propose separating this group of criminal offenses into a separate section.

For example, L.P. Brych notes that "relations in the field of taxation go beyond economic ones; tax evasion causes harm not only to the taxation system, but also to other spheres of life - defense, social security, science". In addition, the scientist defines financial relations as an independent object of criminal law protection and points out the need to allocate an independent chapter "Criminal offenses against the financial interests of the state" in the Special Part of the Criminal Code of Ukraine [12, pp. 13-16].

P.P. Andrushko notes that not all economic criminal offenses (in accordance with Section VII of the Criminal Code of Ukraine) are related precisely to the violation of the grounds and procedure for conducting entrepreneurial activity. The scientist states that "the obligation to pay taxes, fees, and other mandatory payments arises not only in connection with the implementation of entrepreneurial activity, therefore, evasion of their payment encroaches on the financial activity of the state in the formation of the revenue part of the budget, the established

procedure for payment by taxpayers of those mandatory payments to budgets that are determined by the state" [13, p. 18].

R. Yu. Grevtsova suggests considering the concept of tax criminal offenses in a narrow and broad sense, where in a narrow sense such acts are those that encroach on the right of the state to receive taxes, fees, and other mandatory payments, liability for which is provided for in Art. 212, 212i of the Criminal Code, and in a broad sense - acts that are not only committed in connection with taxation, but also directly encroach on social values in the field of taxation (such values are their main direct object) (Art. 192, 211, 222, 364, 365, 367 of the Criminal Code of Ukraine) [14, p. 179]. Professor O.O. Dudorov rightly notes that tax criminal offenses "there are grounds to include smuggling (Art. 201 of the Criminal Code of Ukraine), the social danger of which, among other factors, is determined by the fact that this act prevents the formation of the revenue part of the state budget at the expense of the receipt of mandatory (customs) payments. The latter, as is known, are not only an effective means of economic policy (their collection may be aimed at creating favorable conditions for the development of domestic commodity producers, forming a rational structure of the consumer market, improving the state of the balance of payments of the state, etc.), but also play an important fiscal role" [15].

This position is also reflected in the current legislation. Thus, the Customs Code of Ukraine [16] establishes duty as a special type of tax collected during customs clearance of goods that are imported into the customs territory of Ukraine or exported beyond its borders.

Indeed, in the case of concealment or provision of inaccurate data regarding a commodity (item) that is moved across the border and for which duty must be paid, its value may be understated, and therefore the amount of tax paid may be reduced, which accordingly violates the established procedure for taxation and the receipt of financial funds to the relevant budgets. This is where the social danger of smuggling in terms of violating tax legal relations is manifested. The main direct object of smuggling is the established procedure for moving the relevant items across the customs border of Ukraine as a necessary condition for the normal activity of customs authorities to collect mandatory payments provided for by law, carry out customs control and customs clearance of items, and the taxation system should be considered as an additional object of this criminal offense.

Accordingly, being an indirect tax on certain groups of goods, the excise duty is actually paid by the consumer, is one of the stable and significant sources of filling the state budget. And accordingly, the actions specified in the disposition of Art. 204 of the Criminal Code of Ukraine lead to non-revenues to the budget, which gives grounds to attribute this encroachment to those that violate public relations in the field of taxation, despite the diverse manifestations of the social danger of this act [20].

A separate act that harms public relations in the field of taxation is the issuance of regulatory legal acts that reduce budget revenues or increase budget expenditures contrary to the law (Article 211 of the Criminal Code of Ukraine). Thus, this provision establishes a ban on the issuance by an official of regulatory legal acts that reduce budget revenues or increase budget expenditures contrary to the law, if the subject of such actions was budget funds in large amounts. In turn, according to the note to Article 210 of the Criminal Code of Ukraine, budget funds include funds included in the state budget and local budgets regardless of the source of their formation. The social danger of this criminal offense is manifested in the form of violation of the requirements of budget legislation and failure of state and local budgets to receive due revenues, or violation of the established procedure for the introduction and collection of taxes, fees, and other mandatory payments [21].

The main encroachments on public relations in the field of taxation are currently the acts provided for in Article 212 of the Criminal Code of Ukraine, which provide for criminal liability for intentional evasion of taxes, fees (mandatory payments) included in the taxation system, introduced in accordance

with the procedure established by law, committed by an official of an enterprise, institution, organization, regardless of the form of ownership or by a person engaged in entrepreneurial activity without creating a legal entity or by any other person who is obliged to pay them, if these acts resulted in the actual non-receipt of funds to budgets or state trust funds in significant amounts; and Art. 212i of the Criminal Code of Ukraine - intentional evasion of payment of a single contribution to mandatory state social insurance or insurance contributions to mandatory state pension insurance, committed by an official of an enterprise, institution, organization regardless of the form of ownership or by a person carrying out entrepreneurial activity without creating a legal entity, or by any other person who is obliged to pay it, if such an act resulted in the actual non-receipt of significant amounts of funds to the mandatory state social insurance funds [19].

Thus, the object of a criminal offense under Art. 212 of the Criminal Code of Ukraine is the procedure for taxation of legal entities and individuals established by law, which ensures the formation of the revenue part of the state and local budgets, as well as state target funds, at the expense of taxes and fees (mandatory payments). Then, as the object of a criminal offense, Art. 212i of the Criminal Code of Ukraine - the procedure for paying insurance premiums established by law, which ensures the formation of the revenue part of this system [18].

Outwardly similar acts differ in the objective side in the subject of the offense. Thus, the subject of the first criminal offense is funds that are subject to payment as taxes and fees (mandatory payments) included in the taxation system and introduced in accordance with the procedure established by law, and the subject of the second is funds that are subject to payment as a single contribution to mandatory state social insurance and insurance contributions to mandatory state pension insurance [17].

It should also be noted that the signs of violation of public relations in the field of taxation include the element of fraud with financial resources (Article 222 of the Criminal Code of Ukraine). This act is formed by the legislator as a multi-object offense. Including, this act may cause harm to the taxation system. This situation is possible when the act consists in the unlawful receipt of a tax benefit or an attempt to obtain it. The objective side of the specified criminal offense is realized in the provision of the persons specified in the disposition of Art. 222 of the Criminal Code of Ukraine to state authorities or local self-government bodies, banks, other creditors of knowingly false information in order to obtain subsidies, subventions, grants, loans or tax benefits, while the deception is passive in nature and consists in concealing information that the person was obliged to report on the basis of the law or contract.

So, based on the analysis of the definition of the concept and classification of criminal offenses that encroach on the taxation system, we can come to certain conclusions. Thus, taking the object of the offense as the main criterion for classification, criminal offenses in the field of criminal legal protection of the taxation system should be divided into the following groups: criminal offenses in which the taxation system is the only possible main direct object (Articles 212, 2121 of the Criminal Code of Ukraine) (tax criminal offenses); criminal offenses in which the taxation system is one of the possible main direct objects (Articles 204, 222 of the Criminal Code of Ukraine); criminal offenses that may cause harm to the taxation system, in which the latter may act exclusively as an optional direct object (Articles 201, 211, 213 of the Criminal Code of Ukraine).

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ПОДАТКОВІ КРИМІНАЛЬНІ ПРАВОПОРУШЕННЯ: ВИДИ ТА ОСОБЛИВОСТІ КЛАСИФІКАЦІЇ

Стаття присвячена дослідженню питання класифікації злочинів у податковій сфері. З юридичного погляду, податкове правопорушення трактується як протиправна, винна дія (дія або бездіяльність) деліктоздатної особи, пов'язана з недотриманням податкового законодавства або з неналежним виконанням податкових зобов'язань, за яку чинним законодавством передбачено юридичну відповідальність.

Під податковими кримінальними правопорушеннями в широкому сенсі розуміються злочини у податковій царині. Система оподаткування охоплює сукупність загальнодержавних

та місцевих податків і зборів, які стягуються відповідно до процедури, встановленої Податковим кодексом України.

Проаналізовано різні погляди та підходи вітчизняних науковців до класифікації цього виду кримінальних правопорушень. Наведено деякі з запропонованих вченими класифікацій, а також досліджено критерії, що лежать в їх основі. Виявлено, що науковці найчастіше використовують як основний критерій класифікації основний об'єкт посягання, якому завдається або може бути завдано шкоди внаслідок скоєння кримінального правопорушення. Відповідно до такого підходу, пропонується розподілити кримінальні правопорушення у сфері кримінально-правової охорони системи оподаткування на такі групи: кримінальні правопорушення, де система оподаткування є єдиним можливим основним безпосереднім об'єктом (ст.ст. 212, 2121 КК України) (податкові кримінальні правопорушення); кримінальні правопорушення, де система оподаткування є одним із можливих основних безпосередніх об'єктів (ст.ст. 204, 222 КК України); кримінальні правопорушення, здатні завдати шкоди системі оподаткування, де остання може виступати виключно як факультативний безпосередній об'єкт (ст. ст. 201, 211, 213 КК України).

***Ключові слова**: види, класифікація, злочин, податкове кримінальне правопорушення; система оподаткування; податок; об'єкт кримінального правопорушення; кримінальна відповідальність.*