

чітко усвідомити можливість використання більш сутнісних особливостей європейського досвіду чи для розробки конституційно-правової стратегії удосконалення діяльності органів прокуратури в Україні.

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CRIMINOLOGICAL CHARACTERISTICS OF TAX EVASION

In scientific research and practice, various instruments are used for the disclosure of the content of the crime, which include, for example, criminal law, forensic and criminological characteristics, each of which reveals the content of the subject matter of the study (crime, criminal activity) from its own special point of view. With regard to the criminal legal characteristic, it is of great importance for a complete and objective assessment of the act committed, as well as for determining the boundaries and scope of application of the criminal law [1, p. 155].

In scientific circles, the essence of tax debt of the taxpayer was repeatedly discussed. Thus, according to P. N. Duravkin, tax debt is defined as a set of obligations enshrined in the norms of tax legislation, which constitute a measure of due behavior (active positive or passive positive) of the obliged subject of tax legal relations, which is provided by the force of state coercion [2, p. 7]. N.Y. Onishchuk considered tax debt in several aspects: a) in a narrow (duty to pay taxes) and in a broad sense a) set of duties to maintain tax records, payment of taxes and fees and tax reporting); b) from the point of view of content and essence; c) distinguishing between objective and subjective tax debt; d) as a tax debt of an obligor and a power entity; e) from the position of static and dynamics [3, p. 7].

According to the Tax Code of Ukraine, taxes must be paid by natural persons (residents and non-residents of Ukraine), legal entities (residents and

non-residents of Ukraine) and their separate subdivisions, which have, receive (transfer) objects of taxation or carry out activities (operations), which is the object of taxation under the Tax Code of Ukraine or tax laws, and which are obliged to pay taxes and fees in accordance with this Code. Concluding the consideration of the signs of the subject of intentional evasion of taxes, fees (mandatory payments), we consider it necessary to stop also on the analysis of the identity of the offender, which, as already noted, should be included in the criminal legal characteristics. One of the strong arguments in favour of such a position is the requirements of the Code of Criminal Procedure of Ukraine (hereinafter referred to as the Code of Criminal Procedure of Ukraine), because the establishment of data characterizing the identity of the accused is one of the elements of the subject matter of proof (art. 91 of the Code of Criminal Procedure of Ukraine). In addition, the identity of the offender predetermines his choice of specific ways, means, conditions, circumstances of the commission of the crime, testifies to the reasons for his election of the criminal act and the like. This, in turn, is of great importance for the individualization of criminal responsibility and the justification of possible proposals for its further differentiation. As A.M. Kustov rightly notes, it is important to point to the mandatory body of knowledge of the perpetrator based on the sphere of his activity, including the criminal sphere [4, p. 17].

The most common features that characterize a person who performs tax evasion are: 1) high level of education, social status, material wealth; 2) the existence of extensive ties in various spheres of public life and business activity (authorities and administrations, etc.) and the criminal world; 3) a stable life position on income generation using illegal methods; 4) distribution of role functions; 5) clear knowledge of the peculiarities of business activity, which can be used in the mechanism of commission of criminal acts (technological processes, write-off of raw materials, understatement of production volumes); 6) knowledge of the peculiarities of investigative and operational units [4, p. 70].

The largest share of all tax offences in foreign countries is crimes that violate the tax obligations of payers. Above all, it is a type of socially dangerous attack, such as tax evasion committed by various actors, by various taxes and in a variety of ways. That is why the legislation of most of these countries contains a number of offences that criminalize tax evasion.

In the United States, for example, tax evasion is criminalized under articles of the United States Internal Revenue Code, such as attempted evasion or tax violation (art. 7201); Willful failure to submit tax returns, failure to provide information or non-payment of taxes (art. 7203); Fraudulent or unreliable statements (art. 7206); False tax returns, statements or other documents (art. 7207), etc. These offences are distinguished according to the activity or passivity of the conduct of the perpetrators, the occurrence or non-occurrence of consequences in the form of non-receipt of appropriate funds by the budget, and

the like. All the above offences are characterized by a deliberate form of guilt. One of the most serious crimes (felony) is the offence provided for in article 7201 (attempted evasion or tax violation). Notwithstanding the title of this article, it provides for liability for the completed crime, committed intentionally by any active action aimed at tax evasion (for example, entering information in the declaration, undervaluing the value of the property subject to taxation), as a result of which the budget does not receive the relevant funds.

In Western countries, the effectiveness of combating attacks on the duties of taxpayers is greatly facilitated by taking into account in the design of the relevant crimes the different social dangers of evasion committed by different types of taxpayers, different taxes, different ways, as well as the severity of the consequences of these tax evasion. Thus, the Crimes (Tax Torts) Act of the Australian Union differentiates criminal liability depending on whether the tax evasion of income tax or sales tax was involved.

Such an approach is gradually recognized in the legal science and criminal legislation of post-Soviet countries. As the Russian lawyer S. Pepelyaev rightly notes, there are no universal warehouses suitable for use in any taxes [5]. This is all the more true because different taxes, fees, other mandatory payments are of different importance for the replenishment of budgets and trust funds, and therefore the liability for avoiding their payment in certain cases should be different [6].

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