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GROUNDS FOR INITIATING A PRE-JUDICIAL INVESTIGATION IN CASES OF INTENTIONAL TAX EVASION BASED ON ACTS OF TAX AUDITS

The imperfect mechanism of initiating pre-trial investigations and the premature initiation of criminal proceedings in cases of tax evasion have a negative impact on the reputation of law enforcement agencies responsible for pre-trial investigations in cases of intentional tax evasion. Sometimes, it also has signs of a negative impact on the legitimate activities of taxpayers and is often perceived by taxpayers as pressure on business. Statistics of criminal proceedings that result in sending indictments and convictions clearly indicate the problem of premature initiation of criminal proceedings.

The existing criminal procedural mechanism for initiating criminal proceedings based on a report of a criminal offense received within 24 hours of such a report makes it impossible to verify the presence of signs of a crime in such a report. At the same time, the investigator and prosecutor have no right to refuse to enter information about a criminal offense into the Unified Register of Pre-trial Investigations, as indicated in Article 214(4) of the Criminal Procedure Code of Ukraine.

Analysis of recent research and publications: In Ukraine, the issue of unfounded initiation of proceedings under Article 212 of the Criminal Code of Ukraine [1] has been studied by lawyers such as O. Palamarchuk, S. Khanin, and O. Babich. In order to better understand and correctly interpret disputed issues, the author also analyzed the relevant practice of the Supreme Court of Ukraine and the practice of the European Court of Human Rights.

The obligation to enter information about a criminal offense into the Unified Register of Pre-Trial Investigations and to initiate a pre-trial investigation is established by Part 1 of Article 214 of the Criminal Procedure Code of Ukraine [2]. Refusal to register a statement or notification of a crime is not allowed, as established by Part 4 of Article 214 of the Criminal Procedure Code. At one time, a negative practice emerged that led to the unjustified initiation of a pre-trial

investigation against taxpayers, to unjustified pressure on them by conducting temporary access to property and documents, searches, interrogations, conducting investigatory (search) actions, etc., and caused and still causes a certain resonance among business representatives and society as a whole.

We analyzed the statistics for January-October 2022 regarding the number of registered criminal offenses under Article 212 of the Criminal Code of Ukraine and the results of their pre-trial investigation. According to the reports, we have the following figures: 308 proceedings have been opened, suspicions have been handed to 16 persons, none have been referred to court, and 303 proceedings have been closed. For comparison, we provide examples of the same reports for other years: for January-December 2018, we have the following indicators: 1099 criminal offenses were recorded, 256 criminal proceedings were closed, 253 were sent to court, and 39 indictments were issued. For January-December 2020, 910 criminal proceedings were recorded, 124 were closed, and only 10 were sent to court [3]. These indicators may indicate ineffective work by the relevant authorities and the registration of criminal proceedings without the presence of elements of the crime or with other violations.

Thus, registering a criminal case under Article 212 of the Criminal Code of Ukraine based on a tax audit report does not meet the criteria for a criminal offense, due to the absence of the subject matter of the crime in the form of non-payment of taxes, fees, and other mandatory payments to the budget and state targeted funds. However, the presence of an agreed tax notification decision also does not indicate the presence of a criminal offense under this article, as the calculation of tax liabilities as a result of the audit does not always indicate intent to evade tax payments, but rather a violation of tax legislation. Also, the subjective side of the crime has to be clarified, in particular by analyzing the tax audit report to establish the persons responsible for the calculation and payment of taxes to the budget. Implementing the above recommendations reduces the burden on law enforcement agencies, introducing a risk-based model for combating intentional tax evasion, and reducing the burden on businesses.

Literature

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