

Administrative Coercion in the Field of Taxes and Fees

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Abstract. The article is devoted to the study of the essence and content of administrative coercion in the field of taxes and fees. The subject of the study is the regulations of the current legislation and the legislation of the European Union governing public relations arising from the implementation of administrative coercion in the field of taxes and fees on individuals and legal entities conditioned upon violations of tax legislation of Ukraine. The research was performed in accordance with the methodology of complex systematic analysis of legal phenomena using special methods of legal science: formal-legal, historical-legal and comparative-legal. In effective legal regulation, which ensures the balance of public and private interests in the field of taxes and fees, administrative coercion should be ancillary in nature and used in cases where the legal regulation exhausts other methods of regulatory influence used in the fiscal function of taxation. The regulatory function of administrative coercion in the legal regulation in the field of taxes and fees and its relationship with the fiscal function of taxation, considering the complexity of their implementation. Ways to ensure the effectiveness of administrative coercion in the mechanism of legal regulation of taxation are considered. A comprehensive system of measures of administrative coercion for violations of tax legislation to ensure their balanced application, in particular based on identifying problems of implementation in law enforcement administrative and judicial practice. New approaches to the concept of administrative process of implementation of measures of administrative coercion for violation of tax legislation, and certain types of administrative process are substantiated. A model of complex reform of the system of administrative coercion in the mechanism of legal regulation of taxation with unification of approaches to reform in the system of administrative and legal regulation is proposed

Keywords: legal responsibility, administrative responsibility, tax responsibility, tax offenses, fiscal function, regulatory function

Introduction

Modern conditions related to external challenges and threats, and the dynamic development of technology in the financial sector necessitate finding and developing optimal and effective ways to achieve financial stability and financial security of the state, in particular in the regulation of tax relations. Administrative coercion should be used in the mechanism of legal regulation in the field of taxes and fees in such a way as to ensure the proper functioning and balance of interests in favour of public authorities and taxpayers. To this end, it is necessary to define the function of administrative coercion in the field of taxation as exclusively regulatory, used to prevent violations of tax legislation.

The existing system of measures of administrative coercion has shown inefficiency, which is indicated in the National Economic Strategy for the period up to 2030 for strategic goal 1 “Ensuring the sustainability of public finances and improving sovereign ratings” [1]. To make administrative coercion more perfect, it is necessary to guarantee the certainty and stability of tax legislation, create a transparent system of tax administration, introduce tax compliance and a risk-oriented approach to tax control. Measures of administrative coercion for violation of tax legislation require systematic revision in the context of the last two trends of economic reform: liberalisation of state coercion and increase

the effectiveness of administrative and legal influence on participants in tax relations to prevent violations of tax legislation.

To ensure organisational and legal guarantees of the legal status of persons subject to measures of administrative coercion for violation of tax legislation, to limit the discretion of subjects of administrative jurisdiction, which may lead to arbitrariness in the application of measures of administrative coercion in the field of taxes and fees, freedoms and legitimate interests of taxpayers and others, considerable attention should be paid to the development of the administrative process in the field of taxes and fees as a procedural procedure and forms that ensure proper implementation and protection of taxpayers, tax agents and other financial market organisations in relations with tax authorities.

The National Economic Strategy for the period up to 2030 sets the task of expanding the number of real taxpayers and directly links property interests with the size and methods of withdrawing from the budget part of the income of individuals and legal entities [1]. The attitude of the state to taxpayers is changing. Therefore, shortcomings in tax legislation that are directly related to the violation of the rights and freedoms of citizens must be eliminated. Administrative coercion should be applied to the legal regulation of taxes and fees to balance

Suggested Citation

Article's History: Received: 22.01.2022 Revised: 24.02.2022 Accepted: 25.03.2022

Yesimov, S.S. (2022). Administrative coercion in the field of taxes and fees. *Social and Legal Studios*, 5(1), 35-40.

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the interests of public authorities and taxpayers. This necessitates theoretical and legal research, which should be further analysed based on the results of practical law enforcement.

The study of administrative coercion in the context of administrative and tax law was carried out by scientists: O. Baik [2], L. Bila, S. Kivalov [3], D. Doroshenko [4], O. Ivanyshyna, A. Prokopenko, Yu. Panura [5], M. Kovaliv, I. Krasnytskyi [6], Yu. Nazar [7], O. Ostapenko [8], V. Rarytska [9], N. Skliar [10], M. Berenson [11], A. Monayenko [12] and O. Mamaluy [13]. Implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, in the context of adapting tax legislation requires research on the effectiveness of legal regulations governing administrative coercion in taxes and fees [14]. Considering the peculiarity of the field of research, the methods are based on the principles of theoretical and practical activities of the subjects of tax relations, proposed by O. Baikom [2, p. 85].

The purpose of the article is to study administrative coercion in the field of taxes and fees.

Administrative Coercion in the Field of Taxes and Fees

Administrative and legal coercion in the field of taxes and fees – the type and extent of which are established by law, applied in procedural forms, meets the principles and essence of law, enshrines the rights and freedoms of individuals and legal entities in the tax sphere. The mechanism of legal regulation of taxation distinguishes its own regulation and coercion. Regulation in the field of taxes and fees is exclusively sectoral, manifested in the establishment of tax law in the regulatory norms of tax law. These norms are implemented in the Tax Code of Ukraine, on the basis of which tax relations arise, change and terminate [15]. Such a system of elements of the regulatory influence of the mechanism of legal regulation of taxation allows ensuring the implementation of the fiscal function of the state.

Coercion should be interdisciplinary and expressed in the maintenance of tax law by protective norms only in those areas of law where their own tort. According to D. Doroshenko, intersectoral means that methods and knowledge of various branch legal sciences are used, among which the leading place is occupied by financial law [4, p. 373].

Protective norms should be within the institutions of administrative, criminal, civil, disciplinary and material responsibility. They are implemented in acts of protection value: the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine, on the basis of which arise, change, terminate protective jurisdictional relations [16; 17].

The regulatory function should be the only main function of administrative coercion in the mechanism of legal regulation of taxation, as the implementation of the fiscal function must be ensured by other elements of this mechanism. The regulatory function of administrative coercion determines the objectives of legislation on administrative offenses: protection of human and civil rights and freedoms, legitimate interests of society and the state from administrative offenses, protection of public authority, public order, morality, health, property, environment, ensuring defense and security of the state, prevention of administrative offenses. These tasks

define a set of measures of administrative coercion common to all areas of application of the institute of administrative responsibility. O. Ostapenko noted that the achievement of these tasks is the main purpose of the emergence and development of legal relations in connection with administrative liability, within which the system of necessary measures of administrative coercion is applied [8, p. 32].

The regulatory function of administrative coercion in the mechanism of legal regulation of taxation can be effectively implemented within the institution of administrative responsibility. Otherwise, it is possible to replace the fiscal function, the implementation of which allows the establishment of public funds at the expense of private funds through tax burdens and which characterises tax regulation and tax administration in the narrow sense, but not coercion in taxes and fees as long as provides a general level of taxation. If the general level of taxation is exceeded, along with the fiscal function of the tax, the regulatory function begins to manifest itself with the threat of transition from the system of tax regulation and administration in the narrow sense to the system of actual but not legalised coercion in taxes and fees. It is advisable to prevent the transition from acceptable or justified risk of tax influence to uncontrolled suppression of economic activity conditioned upon the undermining of the tax base and regulatory function due to the loss of controlled influence.

The legal regulation of state coercive measures in the field of taxes and fees outside the legal institutions of legal responsibility leads to a negative result. The task of law is to prevent and end conflicts, to settle disputes, to restore violated rights, to stabilise relations inherent in society, its social and political system, through legal means. Legal grounds should be provided in the legislation on a certain type of public liability, ie administrative liability or in exceptional cases of real public danger – criminal, if it is impossible to ensure the goal of legal regulation in the field of taxes and fees by sectoral tax regulation. This is done through the regulatory norms of tax legislation [15], which are implemented in regulatory tax relations, in which the fiscal function of taxation provides an acceptable level of tax burden. The function of administrative coercion, which is characterised solely as regulatory, should be ancillary to the mechanism of legal regulation of taxation and used in exceptional cases when exhausted other methods of regulatory influence of positive legal regulation, which are used in taxes and fees.

According to V. Rarytska, the tax law of the state is a legal form of the taxpayer's obligation to accumulate financial resources in the state budget [9, p. 195]. To ensure the effectiveness of the fiscal function of taxation and the regulatory function of administrative coercion in the mechanism of legal regulation of taxation, it is necessary to adhere to the balance of public and private interests. An important guarantee of the balance is the administrative process to protect the rights and legitimate interests of taxpayers from their violation by the tax administration. As noted by B. D. Bila and S. Kivalov, legal regulation of sectoral coercion, control and supervision, non-legal forms of activity of subjects of power (as directly determining the properties of legal), administrative responsibility has not undergone radical restructuring, only "cosmetically" assimilated centrism [3]. Without solving this problem, the association of Ukraine and the European Union in the field of economy is impossible.

Implementation of Administrative Coercion in the Mechanism of Legal Regulation of Taxation

According to V. Berenson, Ukraine is undergoing a transition from compulsory to manageable tax status. This will reduce administrative coercion in taxation and redistribution of functions, which is typical for the policy of the European Union in the tax sphere [11, p. 43]. The regulatory function as a function of administrative coercion is implemented in the form of a set of components of prevention, termination, provision, punishment and recovery. In the field of taxes and fees, the precautionary function is aimed at preventing illegal acts that adversely affect the tax system, and ensures the prevention of violations of tax legislation if the threat of relevant tax risks is identified. The purpose of the termination function is to stop illegal actions that encroach on the normal functioning of the tax system.

The security function of administrative coercion in the field of taxes and fees is aimed at repaying tax arrears and allows implementing the tasks of proceedings in the case of violation of tax legislation. The restorative function is aimed at restoring the balance of public and private interests during taxation by effectively protecting and fully restoring the violated rights and legitimate interests of public authorities that own public funds, taxpayers who own private funds. The punitive function of administrative coercion is preventive, it provides for the punishment of persons who have committed administrative offenses in the field of taxes and fees, the composition of which, along with circumstances that exclude exemption from administrative liability, should be established by administrative jurisdiction as grounds for administrative punishment in case of inability to achieve the goal through other measures of regulatory and coercive influence.

According to M. Kovaliv and I. Krasnytsky, with the development of tax legislation over the past decade, its social orientation and the development of the information function along with the control functions are clearly visible [6, p. 370]. The set of measures, in the context of the implementation of functions related to the use of administrative coercion in the mechanism of legal regulation of taxation, is characterised by the fact that measures differ in purpose, methods and grounds, but together ensure law and order in the field of taxes and fees. In tax law [15], they belong to the ways of ensuring the fulfillment of tax obligations, to precautionary measures or to tax sanctions. Methods of ensuring the fulfillment of tax obligations and precautionary measures are defined with elements of civil law structures and in the cases provided by the Tax Code [15] may be replaced by civil law ways of ensuring the fulfillment of tax obligations. This affects their administrative and legal characteristics and prevents them from being properly classified and transferred to the sphere of administrative and legal regulation for systematisation, codification, effective application of law.

Convinced of the insufficient effectiveness of the measures of administrative coercion provided by the tax legislation in the mechanism of legal regulation in the field of taxes and fees, the tax administration proceeds to the application of effective measures of civil liability together with the institution of bankruptcy. Taxpayers are forced to translate tax relations into civil law to more effectively protect the rights and legitimate interests from illegal and unjustified use of administrative coercion for violations of tax law, using for this purpose in

relations with counterparties civil law institution of damages, related to the collection of taxes, fines, penalties for violations of tax legislation. This is not fully consistent with the principles proposed by the National Economic Strategy until 2030 [1].

There are several problems in the mechanism of legal regulation in the field of taxes and fees. First, the methods of securing civil law obligations, civil liability, bankruptcy are civil law institutions and are intended for use within exclusively civil law relationships. Secondly, the inclusion in the mechanism of legal regulation of administrative coercion in the field of taxes and fees violates such principles of civil law as property separation of subjects and tax law, independence of tax payment, principles of legal liability and related measures of state coercion. These circumstances are exacerbated by the lack of a comprehensive system of legal regulation of measures of administrative coercion, which provides a clear distinction in legislation and law enforcement practice of measures, purposes, grounds, conditions and procedure for implementation. This provokes the transformation of the institution of administrative coercion into a struggle of departmental interests. Incomplete codification of administrative liability and lack of systematisation of administrative coercion in the field of taxes and fees – the main causes of shortcomings and gaps in the legal regulation of tax arrears, fines, penalties.

These shortcomings are: the lack of a clear delineation of responsibilities and measures of administrative coercion; wide discretion in the application of measures of administrative coercion; mixing measures of administrative coercion with civil law methods of ensuring the fulfillment of obligations; subsidiary use of institutions of civil liability and bankruptcy to fill the shortcomings of the mechanism of legal regulation of administrative coercion. According to O. Ivanyshyna, I. Prokopenko, Yu. Panury, thanks to coordinated and verified actions and measures of the state can minimise and overcome problems. It is necessary to ensure a certain balance, namely: on the one hand, the state must position a respectful attitude towards taxpayers who create financial and economic security of the state, and on the other – increase their responsibility to the state by forming a high tax culture [5].

Measures of administrative coercion should not be confused with the responsibilities imposed on the subjects of tax relations. This leads to the fact that forms of guilt (intent or negligence) as a subjective aspect of administrative offenses are used not only when deciding on the imposition of tax sanctions as a measure of administrative liability for violations of tax law, but also when deciding on the amount of tax duty [7, p. 1248]. This should be determined on the basis of the legislation on taxes and fees [15], considering the actual circumstances of the taxpayers, regardless of guilt in tax offenses.

Administrative Liability for Tax Offenses in the Context of the Implementation of the Fiscal Function in the Field of Taxes and Fees

The permissive type of regulation of the legal status of a public administration entity does not provide for the possibility of administrative discretion, let alone legal regulation, which provides for extensive use of administrative discretion on legal structures and institutions such as abuse of subjective rights of taxpayers, tax benefits. This contradicts the main purpose of tax control, defined by the legislator: to ensure the correctness of calculation, completeness and timeliness of payment

to the budget system of Ukraine of taxes and fees, fines and penalties. Leads to the replacement of the fiscal function of taxation by the regulatory function of administrative coercion, not properly legalised in the institution of administrative responsibility.

The Constitutional Court of Ukraine has repeatedly in its rulings and rulings expressed the legal position that the provisions of tax legislation do not allow additional amounts of taxes to be added in excess of the law, but are determined by actual indicators of economic activity of the taxpayer [18]. In the legislation [15] and law enforcement practice in the field of taxation [16; 17] the tendency is intensified during the implementation of measures of administrative coercion to violate tax legislation or tax abuses of civil law institutions, the use of which involves a wide degree of administrative discretion of the subjects of administrative jurisdiction. It is a question of possibilities of bringing to legal responsibility during realisation by the taxpayer of the right of presumption of legality of decisions of the taxpayer in case of legal uncertainty (item 4.1.4 of item 4 of the Tax code of Ukraine [15]). Such a model of behavior in some cases is recognised as an abuse of subjective tax law, an act related to obtaining tax benefits is classified as an offense. This is non-payment or incomplete payment of taxes, tax evasion depending on the amount of arrears, as it involves direct intent.

The Tax Code of Ukraine [15] focuses tax authorities on accounting for economic transactions to properly assess the tax consequences, to assess the relationship between the commercial purpose and the purpose of tax savings identified by the taxpayer due diligence in choosing a counterparty, which is to verify the integrity of the counterparty as a taxpayer. Honesty comes down to the reality of the taxpayer's counterparty's performance of civil obligations. With such legal regulation of abuse of subjective tax law, the legislator opened opportunities for administrative discretion of tax authorities in the case of administrative coercion in cases of tax fraud and abuse.

Illegal provision of tax benefits, if it was the result of illegal behavior of the taxpayer, the taxpayer is subject to recovery of arrears, fines and penalties from the moment when the tax authority learned or should have learned about the lack of grounds for tax benefits. If the tax authority recognises the taxpayer's conduct as lawful, the application of coercive measures is excluded. If illegal – as arrears, the amount of which accrues and collects fines, the issue of legal liability of officials is resolved. In this situation, the decision on which the qualification of the tax debt depends on whether the taxpayer's conduct is lawful or unlawful is not taken within the administrative procedure of consideration and review of the case of an administrative offense. This may lead to complete discretion of the tax authority, bordering on arbitrariness, when officials at administrative discretion determine the grounds

for the application of administrative coercion, the procedure and time from which the statute of limitations for application is calculated.

N. Skliar [10, p. 46] notes that even greater ambiguity in the future implementation of the principle of responsibility for “guilt” introduces paragraph 112.2 of Art. 112 of the Law No. 466-IX [19], according to which a person is found guilty of an offense if it is established that he had the opportunity to comply with the rules and regulations for violation of which the Tax Code of Ukraine [15] provides liability, but did not take sufficient measures regarding their observance.

The described tendencies, considering the position of the Supreme Court, outlined in the article by R. Khasanova and A. Biriukova [20], in legal regulation and law enforcement practice lead to violation of the principles of administrative coercion: on personification; inadmissibility of deterioration of the position of the person to whom they are applied in the following stages of the administrative process; compliance with the deadlines set by law for the application of remedial measures and the statute of limitations for bringing to administrative responsibility; reviewing the case of an administrative offense to ensure a comprehensive, complete and objective consideration and making a lawful decision in the case during the appeal or appeal of the adopted act of administrative liability.

Conclusions

Dualism in the legal regulation of measures of administrative coercion in the legislation on taxes and fees and in the legislation on administrative offenses, mixing and replacing measures of administrative coercion by civil law institutions level the legal and organisational guarantees of taxpayers' rights in administrative relations. This may lead to a violation of constitutional rights, freedoms and guarantees of their implementation by the direct subjects of tax relations and third parties – owners, whose rights are violated by illegal seizure of property by non-tax method. As a result, in the legal regulation and application of measures of administrative coercion for violation of tax legislation there is an illegal bringing of persons to administrative responsibility, illegal use of measures of administrative coercion for violation of tax legislation.

These problems can be solved by systematising, unifying and codifying measures of administrative coercion within the institution of administrative responsibility, in administrative and administrative-procedural legislation without exception to the general rules and procedures. As an intermediate stage of such a process, the concept of full codification of administrative responsibility can be adopted in the draft Code of Ukraine on Administrative Offenses (Offenses) with sectoral codification by systematising and unifying other measures of administrative coercion in tax legislation.

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Адміністративний примус у сфері податків та зборів

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Анотація. Стаття присвячена вивченню сутності та змісту адміністративного примусу в сфері податків і зборів. Предметом дослідження є нормативно-правові акти чинного законодавства та законодавства Європейського Союзу, що регулюють суспільні відносини, що виникають під час реалізації адміністративного примусу у сфері податків і зборів щодо фізичних та юридичних осіб внаслідок порушення податкового законодавства України, а також наявна правова доктрина й сформована правозастосовна практика. Дослідження виконано відповідно до методології комплексного системного аналізу правових явищ з використанням спеціальних методів юридичної науки: формально-юридичного, історико-правового та порівняльно-правового. В ефективному правовому регулюванні, що забезпечує баланс публічних і приватних інтересів у сфері податків і зборів, адміністративний примус повинен мати допоміжний характер та застосовуватися у випадках, коли у межах правового регулювання вичерпано інші способи регулюючого впливу, що використовуються при реалізації фіскальної функції оподаткування. Охарактеризовано регулюючу функцію адміністративного примусу у правовому регулюванні у сфері податків та зборів та її співвідношення з фіскальною функцією оподаткування з урахуванням комплексності їх реалізації. Розглянуто способи забезпечення ефективності адміністративного примусу у механізмі правового регулювання оподаткування. Визначено комплексну систему заходів адміністративного примусу за порушення податкового законодавства з метою їх збалансованого застосування, зокрема на основі виявлення проблем реалізації у правозастосовній адміністративній та судовій практиці. Обґрунтовано нові підходи до концепції адміністративного процесу реалізації заходів адміністративного примусу за порушення податкового законодавства, а також окремих видів адміністративного процесу. Запропоновано модель комплексного реформування системи адміністративного примусу у механізмі правового регулювання оподаткування з уніфікацією підходів до реформування у системі адміністративно-правового регулювання

Ключові слова: юридична відповідальність, адміністративна відповідальність, податкова відповідальність, податкові правопорушення, фіскальна функція, регуляторна функція