

SECTION 2. FINANCE LAW

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2.1 Tax evasion is a negative factor of the economic security of Ukraine

In Ukraine today, especially in wartime conditions, the negative consequences of underfunding state structures from the state budget are being observed more than ever. From 1991 until now, the state budget of Ukraine has always been in surplus, which means more expenditures than revenues. Therefore, the situation of underfunding of the main administrators, rejection of many items of their budget requests is quite logical. Therefore, the situation of underfunding of the main administrators, rejection of many items of their budget requests is quite logical. A significant part of the budget consists of taxes, and therefore the problem of tax evasion is a crime that affects the economic security of the state and is an integral component of national security.

In its reports, the Ministry of Finance of Ukraine provides the following statistics regarding revenues to the state budget of Ukraine as of 2022 - tax revenues accounted for 56.92% of the budget. These are such statistical data [8]:

- internal taxes on goods and services – 34.50%,
- taxes on income, profit and increase in market value – 15.58%,
- value added tax on imported goods – 14.73%,
- value-added tax on domestic goods (taking into account budget compensation) – 13.79%,
- personal income tax – 8.75%,
- corporate income tax – 6.83%,
- rent and fees for the use of other natural resources – 5.16%,
- excise tax on excise goods manufactured in Ukraine – 3.57%,
- excise tax on excise goods imported into Ukraine – 2.41%,
- taxes on international trade and foreign operations – 1.48%,
- other taxes and fees – 0.19%.

The relevance of the problem is enhanced by the fact that taxpayers are constantly updating and creating new tax evasion schemes. That is why state control bodies must constantly change their algorithms for dealing with tax offenses, and the legislative branch of government, in accordance with new challenges, must improve the current legislation on the way to combat this negative phenomenon. "Analysis of legislation, organizational processes, information space, communicative and methodological support indicates significant gaps in the implementation of state policy in the field of state financial control" [11, c. 124] in Ukraine, including in the field of payment of taxes and fees. The problem of combating and preventing offenses in the tax sphere under the control of state bodies of all countries of the world is not accidental, this indicates the importance of its solution, both at the state level and at the geo-economic level. In Ukraine in 2021, up to 800 criminal proceedings from the category of tax evasion were registered every month, and only 10% of them were brought to court for further consideration.

Taxation largely depends on the level of tax culture of taxpayers, which largely determines the formation of tax behavior of all its participants. The tax behavior of the population is determined by value orientations, including legal norms, motivations, customs, traditions and customs that have a direct impact on the formation of tax culture. Its level is quite low in Ukraine. Article 67 of the Constitution of Ukraine imposes a legal obligation on every person to pay taxes: "everyone is obliged to pay taxes and fees in the manner and amounts established by law", this is one of the characteristic features of state sovereignty. "The main source of law in Ukraine is a normative legal act" [10, c. 11], that is why it is so important to provide the legal meaning of this concept. Article 6 of the Tax Code of Ukraine defines: "tax is a mandatory, unconditional payment to the relevant budget or to a single account managed by taxpayers"; "fee (fee, contribution) is a mandatory payment to the corresponding budget or to a single account managed by fee payers, with the condition that they receive a special benefit, including as a result of acts for the benefit of such persons by state bodies, local self-government bodies, other by

authorized bodies and persons of legally significant actions" [13]. As for payment terms and amounts, they are prescribed in the Tax and Customs Codes of Ukraine.

The economic security of the state depends on many factors, in particular, the efficiency of its tax system takes an important place among them. An indicator of the effectiveness and productivity of the functioning of the tax system is the scale of the use of tax avoidance (legal) and evasion (in violation of the law) schemes in the country. For example, let's list the main schemes and the amount of budget losses from them for 2021 in Ukraine (statistics are given in accordance with studies conducted by the CASE Ukraine Center for Socio-Economic Research and the Institute of Socio-Economic Transformation [14]):

- *distortion of the tax base:*
 - decrease in turnover of natural persons-entrepreneurs (concealment of sales volumes) – losses amounted to UAH 1-6.3 billion,
 - non-transfer by enterprises of a single contribution to mandatory state social insurance and insurance contributions to mandatory state pension insurance,
 - submission of knowingly false data due to understatement of income, property valuation or other subject of taxation,
 - non-submission or incomplete submission of relevant documents required for tax calculation,
 - non-submission or late submission of tax returns,
 - providing unreliable documents for tax calculation (concealment of income, property, etc),
 - non-withholding or absence of transfers of personal income tax amounts to the budget;
- *embezzlement of value added tax:*
 - formation of a scheme tax credit – losses amounted to UAH 24-30 billion;
- *violation of customs regulations:*
 - manipulation of the customs value of goods,

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- interrupted transit,
- schemes of offenses using postal transfers;
- *transfer of profits offshore* – losses amounted to UAH 15-35 billion;
- *abuse of tax benefits and preferences and special regimes*:
 - individual entrepreneurs pay cash to their unregistered employees instead of hiring them – losses amounted to UAH 6-10 billion,
 - submission of unreliable documents for the purpose of illegally obtaining tax benefits or preferences,
 - failure to provide information regarding the loss of grounds for receiving tax benefits;
- *minimization of taxes through the services of conversion and transit centers* – losses amounted to UAH 17-25 billion;
- *the shadow market for renting agricultural land and agricultural products* – losses amounted to UAH 10-46.5 billion.

Statistical data confirm the importance at the state level of combating illegal ways of tax evasion. These offenses have socially dangerous consequences, namely in the form of actual failure to receive funds at the local or state level or state trust funds in significant, large or particularly large amounts. The object of the criminal offense of evasion of taxes, fees (mandatory payments) is the procedure established by law for the taxation of individuals and legal entities, which is ensured by the receipt of taxes, fees or other mandatory payments in the system of forming the revenue part of the state, local budgets or state trust funds. The presence of an intention to avoid paying taxes, fees, and other mandatory payments can be evidenced by:

- misrepresentation in accounting or reporting documentation;
- non-posting of cash received for the performance of works or services;
- keeping double (official and unofficial) accounting;
- use of bank accounts that have not been reported to the state tax authorities;
- overestimation of actual costs included in the cost of goods sold;
- and other.

Offenses are characterized by the presence of actions that are expressed in the evasion of paying taxes or fees, and in the future, feeling their impunity, business entities switch to fictitious entrepreneurship, as a result, the rapid growth of the shadow economy. This is a direct threat to the country's economic security. According to statistical data of the Ministry of Economy of Ukraine, the level of the shadow economy in 2021 was 32% of the official gross domestic product, in 2020 – 30%, in 2019 – 28% [9]. Therefore, for Ukraine, the need to create a system of control and monitoring of threats to economic security, including from the side of criminality, as well as finding constructive ways to limit and eliminate them by law enforcement agencies, becomes imperative.

Tax evasion is one of the types of economic crimes. Unpaid taxes narrow the revenue base in the state and municipal budgets, which exacerbates the problem of the state's lack of funds. The preservation of this phenomenon causes enormous damage to society, disrupting the normal functioning of the state as a whole. Tax evasion has become part of Ukrainian business culture, since not every action of a taxpayer in the context of reducing the tax burden occurs due to a violation of current legislation, entrepreneurs are actively searching for legal methods of reducing their tax payments. Tax evasion is an action or inaction of an economic entity that occurs according to the relevant schemes in violation of the tax legislation of Ukraine, and therefore it is an offense involving criminal (Criminal Code of Ukraine) or administrative liability (Code of Ukraine on Administrative Offenses). In Article 123 of the Tax Code of Ukraine, intentional evasion of taxes also includes financial responsibility (payment of a fine and penalty), but this does not exempt persons from administrative or criminal liability. Conducting business without registration on the territory of the country, which automatically implies non-payment of taxes to the state budget, is a violation of tax legislation, it is a direct sign that this organization is a component of the shadow economy, that is, an illegal business.

In the system of national security, economic security is the material basis of the country's national sovereignty, which ensures other components of national security. It «a state of dynamic equilibrium of the economic system, in which the

organizational and functional architecture of the institutional environment of the system of state regulation of the national economy is built on the principles of non-discretion and allows early detection of endogenous and exogenous threats, maximum elimination of the negative effects they provoke, prompt adaptation to changes in the external and internal environments with taking into account the supranational, national and local target orientations of the sustainable development of the economy and on the basis of balancing the interests of various groups of economic agents» [7, c. 69]. An increase in the amount of tax evasion leads to a greater volume of underfunding of the state budget, and therefore Ukraine becomes weaker as a sovereign state. That is why it is so important to eliminate existing threats, in particular in the field of tax offenses. In our opinion, for this purpose it is necessary:

- implementation of permanent state monitoring and control over tax evasion processes; expansion of opportunities for tax authorities to carry out documentary checks of taxpayers (legal entities and individuals, financial institutions, permanent and representative offices of non-residents) on legal grounds, and for law enforcement agencies to reproduce actions aimed at detecting and combating tax offenses;

- application by all institutions of state power of media, economic, legal and administrative measures of influence on business entities aimed at preventing tax evasion;

- improvement of national legislation in the field of taxation, taking into account the economic efficiency of the adopted laws. Namely, the preserved balance of conditions prescribed by current legislation, where, on the one hand, the legal obligation of an individual or legal entity is to pay mandatory payments to the state and local budgets, to state trust funds - the violation of which will have the consequences of legal liability, and on the other hand, the availability of the opportunity to perform these actions is the creation of a favorable tax climate for the growth of entrepreneurial activity. Strengthening responsibility for offenses that have particularly negative trends of influence on the economic security of the state;

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- extrapolation of constructive domestic and foreign experience, both in law-making and in the practice of work of bodies of the executive branch of government;
- constant study of newly formed tax evasion schemes in the economic space of Ukraine and the world and timely response to them, in particular, the introduction of new legal norms to combat this phenomenon.

Among the positive steps at the state level, the following should be mentioned: the law of Ukraine "On Amendments to the Tax Code of Ukraine regarding the improvement of tax administration, elimination of technical and logical inconsistencies in tax legislation" entered into force. However, a significant number of constructive proposals are enshrined in draft laws submitted to the Verkhovna Rada of Ukraine for consideration. All of them are designed to "support financial stability in the country in the context of the transition to the free movement of capital, increase the effectiveness of tax regulation, and introduce uniform requirements for the transparency of doing business in Ukraine according to international standards" [12]. Let's call them: Draft Law on Amendments to the Tax Code of Ukraine on the introduction of a tax on withdrawn capital and the implementation of standards for countering the erosion of the tax base and the withdrawal of profits abroad, Draft Law on Amendments to the Tax Code of Ukraine on the submission of a single report on a single contribution to mandatory state social insurance and personal income tax, Draft Law of Ukraine on Amendments to the Tax Code of Ukraine on Electronic Identification and Electronic Trust Services, Draft Law of Ukraine on Amendments to the Tax Code of Ukraine and some legislative acts of Ukraine on support of borrowers whose property was destroyed or damaged as a result of the armed aggression of the Russian Federation against Ukraine, Draft Law of Ukraine on Amendments to Clause 9 of Subsection 8 of Chapter XX of the Tax Code of Ukraine on Certain Features of Taxation of Gambling Business and other.

The decision of the State Tax Service to create a Department of Tax Investigations in its structure is also effective and productive in this direction. This body is directed to the constant analysis and monitoring of the sphere of tax payment in Ukraine and the world, the study of tax evasion schemes and the development of

mechanisms for combating such offenses. In this context, it is absolutely necessary to change the national legislation regarding active ways of combating emerging new tax evasion schemes and shadow business. Amounts of unpaid taxes from the shadow sector of Ukraine's economy indicate the growth of significant losses to the country's budget in recent years.

Conclusions. For all countries of the world, not only for Ukraine, the problem of non-payment of taxes is quite acute and relevant. Tomy Therefore, it is worth studying the international and domestic constructive experience in combating and preventing offenses in the field of taxation and using it in the system of combating this phenomenon. The public danger of tax evasion, fees, and other mandatory payments arises from the reasonable failure of every individual and legal entity to pay taxes and fees in the manner and amounts established by law. To ensure economic security, the following are the primary tasks in the context of reducing potential threats to the national economy:

- constant monitoring and assessment of the level of tax evasion,
- modernization of the tax system of Ukraine, which excludes burdensome tax procedures, unfair tax burden, hidden criminalization of fiscal authorities and business representatives. Improving the system of tax administration of taxes and fees, ensuring its transparency, moderate reduction and even distribution of the tax burden among taxpayers depending on the type of activity,
- purposeful, organized work at the state level on the development of the tax culture of taxpayers, the formation of law-abiding tax behavior and an intolerant attitude towards non-payment of taxes,
- development of the tax culture of tax authorities themselves (for this, it is necessary to increase the requirements for the qualifications of employees, create incentives and positive motivation for their work (for example, increasing the level of pay, prestige of the profession, technical equipment), to change priorities in the work of tax authorities (efforts to collect more taxes should give way to the desire to objectively check taxes and provide assistance to taxpayers),

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- purposeful state policy in the fight against the lack of income to the state budget,
- detection, prevention and neutralization of offenses related to tax evasion,
- creation of obstacles for the development and spread of tax offenses at all levels of government,
- change in society's negative attitude towards the taxation mechanism, countering the criminalization of the economy and corruption.