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CRIMINAL LIABILITY FOR TAX OFFENSES UNDER THE U.S. FEDERAL LAW: STRUCTURE, MAIN FEATURES AND LAW ENFORCEMENT POLICIES

Criminal liability for tax offenses under the U.S. federal law is a pretty broad area of criminal law that requires complex legal research. The history of the U.S. tax enforcement developments has an almost century long history. Researching the complex of preventive measures as an important feature of the U.S. criminal tax enforcement additionally proves the thesis that effective opposition to tax crimes requires combination of both repressive and preventive measures.

These abstracts are designed to cover some general principles of criminal liability for federal tax offenses, name major sets of tax crimes and reveal some of the law enforcement aspects in the researched area of criminal law.

Describing the role and place of the National Tax Enforcement Program that was introduced in 1990ies, representatives of the U.S. Department of Justice (“DOJ”) mentioned that this program helps to protect vital interests of American society from illegal behavior in tax area by introducing legal mechanisms of federal tax law enforcement. The primary task of tax prosecutions is preventive influence on «unstable» taxpayers who, in the absence of effective legal sanctions and the mechanisms for their application, can go beyond tax law borders and commit crimes. For such reasons, successful investigations of high-profile cases from this category serve as an effective tax enforcement regulator. Every year about 700–800 persons are found guilty for committing federal tax crimes in the United States. This number is extremely low if compared to the total number of taxpayers

(over 200 million), but at the same time serves as a strong warning to potential violators of tax laws.

Both modern criminal law doctrine and law practice in the United States recognize criminal tax provisions as an important measure in the field of national tax policy enforcement. Proper administration of tax payments, including effective measures of criminal repression is considered to be a justified step in building a democratic and civilized society.

Taking of federal v. state criminal law provisions related to tax offenses it is worth noting that main legal principles as well as principles of criminalization are identical here. At the same time government approaches to designing appropriate regulations prohibiting illegal tax conduct may vary significantly due to differences in the tax rates, taxation structure and also social danger features in revenue relations.

Federal Internal Revenue Service (“IRS”) traditionally divides enforcement of U.S. tax laws between two investigative divisions: the Examination Division investigates civil tax cases and the Criminal Investigation Division investigates potential criminal violations. According to the Internal Revenue Manual, criminal tax investigations serve two purposes: (1) to enforce the tax laws and (2) to encourage voluntary compliance [1].

In order to maximize deterrence of tax violations, the CID focuses on individual participation in sophisticated criminal schemes, as well as high-dollar financial transactions. The IRS is more likely to audit a prominent taxpayer than a relatively obscure person. The Internal Revenue Manual explicitly describes in § 9161.1, as an overriding goal the service aims to investigate and prosecute high-profile taxpayers in order to create maximum, positive impact on the compliance attitudes and practices of taxpayers’ in general. As a result, fewer agents audit returns among the general population, reducing the percentage of total returns audited.

CID special agents are responsible for investigating alleged criminal violations under the I.R.C. and related provisions of Title 18 of the U.S. Code. If the special agent believes that a specific tax matter requires further criminal prosecution, a special agent’s report

is prepared, outlining the details of the investigation and the agent’s recommendations. The whole matter is then referred to the IRS counsel, who in turn makes a referral to the Department of Justice, Tax Division or, when authorized, directly to the U.S. Attorney’s Office, whichever is more appropriate. Referral of a matter to Tax Division terminates the authority of the CID to employ the administrative investigation process [2, p. 997–998].

Attention should be brought to the important fact that the I.R.C. is included in the U.S. Code as Title 26. This make is a valuable integrated part of the federal legislation. Such approach to the location of tax provisions on a “Code in the Code” principle enhances meaningful and logical relationships between different branches of federal law. At the same time we believe that some level of mixing different law provisions in one Code results in blurring meaning and practical application levels of tax norms. Of course, this may become a pretty dangerous sign. Under such situation Ukrainian experience in construing a separate Tax Code with pretty autonomous revenue regulation provisions looks more appropriate and effective.

I.R.C. contains a number of regulations to ensure compliance with their tax obligations by taxpayers. Mostly these are the rules of regulatory nature, and also forbidding requirements that establish severe financial and criminal penalties for noncompliance with fiscal legislation requirements.

To date, U.S. I.R.C. covers 18 statutes criminalizing violations of federal tax laws. These formulations are combined into a single structural element of IRC - Part. Schematically, the place of «criminal law» component of the PC can be illustrated as follows: Title 26 (IRC) – Subtitle F (“Offenses and Administration”) – Chapter 75 (“Crimes, Other Offenses and Forfeitures”) – Subchapter A (“Crimes”) - Part I (“General Provisions”). Below we will name criminal tax prohibitions that are most frequently used in law enforcement practice together with their general analyses.

1. Tax evasion (I.R.C. § 7201). This criminal law norm describes the “core” federal tax crime in the form of willful evasion from paying federal taxes by any means.

2. Willful failure to collect or pay over tax (I.R.C. § 7202). This paragraph criminalizes acts of employers aimed at willful violation of tax law requirements that govern requirements for timely, complete and duly transfer of tax deductions from the employees' salaries to the federal budget.

3. Willful failure to file return, supply information, or pay tax (I.R.C. § 7203). The named criminal law provision is intended to protect fiscal interests of the federal government from the cases of intentional failure of taxpayers to fulfill their direct constitutional duties: to fill in and submit tax return to the IRS, to submit any other information related to tax administration, and also pay calculated federal taxes.

4. Fraud and false statements (I.R.C. § 7206). This paragraph is intended to counter the so-called tax fraud committed by taxpayers directly or by their tax assistants. This provision covers such unlawful acts as deliberate falsification of tax returns and other tax reporting documents, destruction of fiscal documents, assistance in the preparation of false tax documents, concealment of property that is to be taxed and some other forms.

5. Fraudulent returns, statements, or other documents (I.R.C. § 7207). This criminal norm, in contrast to the mentioned above, recognizes submission of knowingly false tax return or other tax document to the IRS Secretary, inspector or any other authorized officer as a crime. Accordingly, I.R.C. §§ 7206 and § 7207 differ mainly in the character of committed unlawful acts.

6. Attempts to interfere with administration of internal revenue laws (I.R.C. § 7212) bans offenses against established order of federal tax administration, as well as individual rights and freedoms of authorized IRS representatives who are entrusted with responsibilities to charge, collect and further tax payments to the federal budget, to perform other related administrative functions.

Location of tax crimes provisions in the relevant part of the I.R.C. makes it impossible to affirm the existence of specific criteria for such location. One of the main ways of classifying criminal tax regulations in the U.S. is, in our view, a functional test. It allows to analyze

the reasons for imposing criminal sanctions, that is the group of tax relations, which is protected by criminal law means. In general the classification is as follows: 1) majority of criminal law sanctions of the Tax Code are aimed to protect the established order of calculation and payment of federal taxes - income tax, taxes on inheritance and gift taxes, some excise taxes, 2) criminal provisions that serve as counter criminal measures to interference with current procedures of tax administration, and also criminalize obstruction of IRS employees in connection with the exercise of their professional functions, and 3) official positions tax crimes that are committed by IRS employees themselves as well as by other public officials whose actions (e.g., providing illegal benefits or other benefits to individual taxpayers) violate applicable tax law requirements, and 4) tax crimes committed by the so-called tax assistants (including auditors, tax lawyers, CPAs) in the course of their professional obligations and in connection with providing informational and advisory services [3, p. 154].

Legal research of Federal Sentencing Guidelines in criminal tax area as well as specific enforcement initiatives to assure voluntary compliance by federal taxpayers is of significant importance as well. Analyses of the plea agreement concept under the U.S. federal law and relevant court decisions demonstrates pragmatic approach of the federal government in the area of taxation – compensation of caused damages, application of compulsory financial penalties and full assistance in returning offenders back into the area of tax compliance. As a result of appealing to progressive U.S. approach in punishing tax offenders, a proposal to limit judicial discretion while choosing appropriate criminal penalties in Ukraine makes sense and requires further substantiation.

Based on relevant U.S. legal theory and practice, as well as current developments in the area of Ukrainian tax law, we would like to make an argument for specifying legal description of criminal offenses against Ukrainian system of taxation. Practical means of realizing such proposal are seen by the author of these abstracts in implementing criminal liability provisions for tax fraud, tax agent

violations and refusal to pay off tax debt into the text of the Criminal Code of Ukraine.

1. *United States v. Peters*, 153 F.3d 445 (7th Cir. 1998).
2. Каменський Д.В. Кримінальна відповідальність за податкові злочини за федеральним законодавством США: монограф. / Д.В. Каменський; наук. ред. О.О. Дудоров; МВС України, Луган. держ. ун-т внутр. справ ім. Е.О. Дідоренка. – Луганськ: РВВ ЛДУВС ім. Е.О. Дідоренка, 2011. – 424 с. – Бібліогр.: С. 379–415.
3. Jacinto J., Fitzmaurice J. *Tax Violations* / J. Jacinto, J. Fitzmaurice // *American Criminal Law Review*. – № 2. – 2008. – P. 995–1037.