DOI: 10.63550/ICEIP.2025.97.29.025

Tax Liability in the Intersectoral Understanding

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Keywords: Tax liability · Financial liability · Public finance ·Administrative liability · Criminal liability.

Abstract: The paper is devoted to certain issues of legal regulation of the definition and application of liability measures for violations of legislation in the sphere of financial activities conducted by public legal entities in Russia. In particular, the paper focuses on the issues of doctrine and interpretation of the legislation on the issues of determining the legal nature and place of financial and tax liability in the legal liability system. Our position is reduced to considering tax liability as an element of the legal liability system, not as an independent type but as a type of administrative liability. In this regard, emphasis is placed on the existence of a mutual relationship between regulatory regulation at all levels and the relationship between the legal nature of criminal and administrative liability for violations in the field of public finance. The analysis of the legal institutions under consideration is performed by understanding the unity of the system of legal liability for violations in the sphere of public legal relations. In conclusion, it is summarized that the institution of tax liability does not require theoretical isolation, and its regulatory regulation is, by nature, administrative and legal. Simultaneously, the existence of property liability measures of a compensatory nature does not detract from the possibility of applying a common understanding within the framework of administrative and legal regulation. The research goal is a systematic analysis of scientific views on the legal nature of liability in the field of public finance and the definition of the place of tax liability in the intersectoral understanding. The identification and justification of such proposals meet the criteria of scientific relevance. The materials and results of the research can be used as a theoretical basis for the further scientific development of topics related to the development of legal thought in the field of liability for violations of public finance legislation in Russia.

1 INTRODUCTION

At the end of the last century, the Russian Federation went through a reasonably challenging stage of political and economic transformations. During this period, fundamental changes in legislation are also occurring, including in the field of financial regulation. It has certainly have had an impact on scientific research: a large number of papers have appeared on various aspects of public finance regulation, and the concepts of financial and tax liability have appeared. However, scholars still have no consensus on whether tax liability can be considered a separate type of legal liability (Arslanbekova, 2011; Batorova, Maytaeva, 2016; Gorlova, 2017; Karaseva, 2018; Khasnutdinov, 2014).

Currently, there are two main approaches to solving this issue. Some scholars believe (Bakhrakh, Rossiysky, 2021; Migachev, 2021) that tax liability is one of the subtypes of administrative liability. Others (Kinsburskaya, 2010; Krokhina, 2011) insist that due to the fact that tax law is considered in most law schools to be a sub-branch of financial law, then liability for violations of tax legislation is a type of financial and legal liability, which has a completely

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independent nature.

In this situation, the answer to the question of the type of tax liability is possible only with the application of methods of comparative jurisprudence, taking into consideration the possibility of applying in tax legal relations both measures of a criminal nature, administrative, as well as measures having a compensatory property character. Only a consistent and concretized identification of the main properties of tax liability by comparison with the nature of criminal, administrative, and civil liability will refute the idea of the need to distinguish it as an independent type of liability or a subtype of financial.

2 MATERIALS AND METHODS

The current research proposes to formulate reasonable proposals for determining the legal essence of tax liability and determining the place and role of the specified legal institution in the system of types of legal liability.

Determining the place of the institution of tax liability in the model of administrative liability makes it possible to formulate reasonable proposals for the legal regulation of tax liability measures, solving the issue of whether it is really necessary to develop specific approaches and foundations in the application of tax liability or it is subject to the general doctrinal rules of administrative liability. From a practical viewpoint, these conclusions will make it possible to form a unified approach to the interpretation and application of liability measures in the field of public finance, as well as to solve a global task: the formation of a unified contemporary regulatory environment, in accordance with the need to optimize the rule-making process in the conditions of modern digitalization and the creation of an information system "National unified environment of the interaction of all participants in the rule-making process in regulatory preparation decisions."

The research provides conclusions based on a detailed review of the scientific literature and determines the results of the analysis of the positions of the higher courts in order to achieve the mentioned goal. Methodologically, three primary tasks are consistently solved.

The first task is to conduct a comparative analysis of the institutions of financial and tax liability from the standpoint of doctrine. The second task is to understand, by interpreting the legislation in terms of the established measures of tax liability, whether this institutional structure can be considered independent from the viewpoint of implementing government enforcement measures. The third task is to study the mechanism of criminal liability in the field of public finance and, by synthesizing the obtained conclusions, to present an optimal doctrinal model of the legal understanding of tax liability in an interdisciplinary context.

3 RESULTS

One should determine the nature and purpose of the analyzed types of liability. If we are discussing financial liability, its primary purpose is to compensate for losses incurred by the government if the subject of the tax has not transferred or has not fully transferred the taxes and fees to be paid. When discussing tax liability, the administrative nature comes to the fore, since sanctions become punitive.

When analyzing regulatory legal acts, it can be concluded that since, according to the definition of a tax offense, liability for it is established by tax legislation, the norms of other branches of law, including administrative, do not regulate legal relations in this area (Bakhrakh, Rossiysky, 2021).

Nonetheless, the norms recording the component elements of offenses, the object of which are legal relations in the field of taxation, are contained in Chapter 16 of the Tax Code of the Russian Federation and Chapter 15 of the Administrative Code of the Russian Federation. Then, one inquires how they relate to each other and how we should apply these norms.

Since the component elements of offenses provided for by these normative legal acts have a common object and subject composition, some scholars believe that these types of liability are identical and have an exclusively administrative nature (Kinsburskaya, 2013).

In order to draw concrete conclusions about the ratio of different types of liability for violation of tax legislation, it is proposed to conduct a comparative analysis of their goals and functions (Kinsburskaya, 2013).

At first glance, the liability of persons obliged to pay taxes and fees is exclusively punitive in nature. However, if the subject of taxation has not paid

mandatory payments within the prescribed period, then in addition to applying repressive measures to them, it is also necessary to restore the rights of the government, in other words, to replenish the budget. One should also consider that when applying tax sanctions, both punitive and law-restoring functions are performed simultaneously, since the primary task is the fulfillment by the government of its expenditure obligations conducted at the expense of taxation.

From the material expression viewpoint, tax and administrative sanctions are primarily fines. In other words, they have a monetary content and are imposed by a specially authorized body.

In case of non-payment of the mandatory payment, the act of the subject may fall under both the signs of the composition fixed in the tax legislation, and under the signs of the component element of an administrative offense and a criminal offense. The legislator establishes the necessary criteria for their differentiation.

First of all, for proper qualification, the executor of the law should focus on the amount of damage caused to the government, in other words, socially dangerous consequences.

Separately, among the crimes encroaching on the material interests of the government, there is Article 199.2 in the Criminal Code of the Russian Federation. The subject of the component elements of the crime fixed in it is the money hidden by the guilty from enforcement. Therefore, for the correct qualification of acts under Article 199.2 of the Criminal Code of the Russian Federation, it does not matter when exactly the deadline for payment of the tax or levy levied by force has expired. In this case, the fact itself is important that at the time of the commission of the crime, the tax authority, in compliance with the requirements of Articles 46 and 76 of the Tax Code of the Russian Federation, had already taken measures to forcibly recover arrears in taxes and fees to the taxpayer's settlement accounts, which was reliably known to the perpetrator.

The amount of a tax or fee that is not paid within the period established by the legislation on taxes and fees (Article 11 of the Tax Code of the Russian Federation) is recognized as arrears.

Article 199.2 of the Criminal Code of the Russian Federation provides a mandatory requirement for a large amount of hidden property or funds. However, in this case, one should note that the payment of taxes and fees is not included in the first group of mandatory payments. In accordance with Article 855 of the Civil Code of the Russian Federation, payments to the budget and extra-budgetary funds are in the fourth stage for debiting from accounts. Therefore, in order to calculate a large amount of hidden property and funds, one should deduct the amount of funds to be written off to meet the requirements of the first, second, and third stages from the total amount of funds held in the accounts of an organization or individual entrepreneur. Additionally, one should take into account the changes in tax legislation. If certain taxes are canceled during the preliminary investigation or trial, the amounts of arrears should be calculated based on the new tax legislation. One should also note that when calculating a large amount, penalties and fines collected or subject to the collection are not included in the amount of arrears.

The objective side of the component element of the crime provided in Article 199.2 of the Criminal Code of the Russian Federation consists in the concealment of funds or other property, at the expense of which the collection of arrears on taxes and fees should be made. Concealment should be understood as an act aimed at preventing the enforcement of arrears in taxes and fees on a large scale. Such concealment can be carried out either in the form of an action (opening new settlement accounts and making settlements on them that are not related to the payment of taxes without notifying the tax authority) or by inaction (avoiding mentioning the property). Frequently, the accused justifies their actions to conceal funds by a state of extreme necessity. For example, settlements on newly opened accounts due to the need to ensure the heating season (payments for electricity, gas, etc.), the fulfillment of a government defense order, or the desire to save jobs at a city-forming enterprise. However, the obligation to pay taxes and fees is constitutionally established.

The next issue arises regarding the liability of persons engaged in entrepreneurial activity. Isolation, dangerous nature, and profit-making regularly as a goal are inherently essential signs of entrepreneurial activity. However, the legal definition is often criticized in doctrinal sources, we state that not all main features are included in this definition. Simultaneously, one should note that making a profit is not guaranteed but is a possible result of entrepreneurial activity. For example, the Supreme Court of the Russian Federation has repeatedly stated this aspect. In order to understand whether a person has conducted business activities, it is possible to consider the relationship with counterparties

(whether they have paid for goods, works, services), advertising, etc.

Simultaneously, the absence of profit in itself does not affect the qualification of offenses, since profit-making is the goal of entrepreneurial activity and not its mandatory result (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 18 of 24.10.2006 "On some issues arising from courts when applying the Special Part of the Code of Administrative Offenses of the Russian Federation").

Furthermore, even the fact of the absence of registration of the subject in the tax authorities does not exclude the qualification of its activities as entrepreneurial (Ruling of the Constitutional Court of the Russian Federation of July 2, 2015 No. 1523-O *On refusal to accept for consideration the complaint of citizen Ovchinnikov Andrey Alexandrovich on violation of his constitutional rights by the provisions of Articles 6 and 23 of the Fundamentals of the Legislation of the Russian Federation on the Notary*).

As O. M. Oleynik correctly notes (Oleynik, 2015), for example, the boundaries between entrepreneurial and other economic activities are becoming more mobile under the influence of the development of "uberization," "economy of shared consumption," and "social entrepreneurship." With this in mind, it is reasonable to extend flexible legal mechanisms that were initially focused on business relations to a broader sphere of relations, and to refuse criminal liability for "illegal entrepreneurship" in the form of conducting business without registration, especially since such a mechanism was created in administrative law (Article 14.1 of the Administrative Code of the Russian Federation). Moreover, the sphere of entrepreneurial activity, considering the transformation of approaches and various paradigms, will inevitably require the inclusion of new viable types of activities that meet its characteristics. For example, the independent and aleatory nature of the activity, the development of the digital sphere, and the widespread use of computing equipment and technologies give impetus to the development of a new form of entrepreneurship – mining.

Simultaneously, the Russian Federation is not actively seeking to put such digital operations into legal form. For comparison: the Principality of Liechtenstein has developed a Law *On blockchain*, the volume of which with accompanying materials is approximately 200 pages. It was completed in two years.

Belarus has become another state that has reflected in its legislation the point of view on the nature of mining. In particular, it is recognized that this type of activity is not entrepreneurial and is also not subject to income tax. It occurs only if the person does not act in this regard as an employer or customer under a civil contract.

Nevertheless, we adhere to the position that mining contains signs of entrepreneurship, and consequently, the entity conducting it has an obligation to pay tax. A business entity cannot be exempt from it, even if it is carried out to the detriment of its profit. The legislation on taxes and fees does not contain norms providing for the exemption of a subject from paying taxes in full, including in a state of extreme necessity. Hence, for example, the difficult financial situation of a taxpayer is considered not as an exemption from prosecution, but as a mitigating circumstance (Article 112 of the Tax Code of the Russian Federation), that is, assuming a subsequent, yet reduced tax payment. The Tax Code of the Russian Federation contains an exhaustive list of circumstances that the legislator recognizes as hindering the full and timely fulfillment by the taxpayer of their constitutional obligations to pay taxes and fees. Among these circumstances, there is also the infliction of damage to the subject of tax relations as a result of force majeure (the absence of serious government defense orders for special products of the enterprise, without which the plant cannot function normally), as well as the threat of bankruptcy of the enterprise in the event of a one-time payment of tax to them.

Therefore, the payment of tax is one of the requirements in the system of requirements for entrepreneurial activity and constitutes a constitutional obligation of everyone. Simultaneously, the impact of the taxation system on entrepreneurial activity is difficult to overestimate: it can both stimulate and slow it down.

For example, aspiring entrepreneurs have the opportunity to use the tax vacation regime for up to two years. Tax holidays are understood as the possibility to use a tax rate of 0% for up to two consecutive years, which is established by the Tax Code of the Russian Federation (Item 4 of Article 346.20 of the Tax Code of the Russian Federation and Item 3 of Article 346.50 of the Tax Code of the Russian Federation) when using simplified or patent taxation systems. However, one of the criteria for using the provisions on tax holidays is the implementation of activities in specific areas, namely

in production, social or scientific, as well as in the field of household services to the population and the share of income from this activity should be at least 70% of total income in this case. In order to develop investment activity in the Russian Federation, new tax instruments (tax incentives and preferences) are emerging to stimulate economic development (Krokhina, 2011; Migachev, 2021; Mnatsakanyan, Mishurovskaya, 2019; Stepanova, 2014). In order to legalize the self-employed, a new tax regime has been introduced that is currently actively used and fully digitalized, which facilitates its use in everyday business practice. Simultaneously, in order to create favorable conditions for business development, as well as to ensure economic stability, the government should improve the tax system and the tax burden. The legislation on taxes and fees, although it does not contain norms providing for the exemption of a subject from paying taxes in full, nevertheless allows for quite a few tools that can significantly reduce the tax burden and legally conduct one's business. For the reasons listed above, it is significantly crucial to consider tax liability, which is inherently administrative in nature, as an intersectoral institution, as influencing various public relations, including those covered by business law. The constant measures developed by the Government of the Russian Federation to support entrepreneurs, ways to legitimize their activities are primarily aimed at replenishing the treasury by attracting citizens of the country to the spheres of small and medium-sized businesses, as well as promoting their employment. Most taxes that are regularly paid by business entities significantly replenish the national budget. The preventive function of legal liability consists in the legal impact of norms on the behavior of subjects of certain social relations, which prevents offenses and eventually displaces undesirable legal consequences. Consequently, the preventive function of tax liability implies a narrowing of the actual and legal possibility to evade tax or avoid paying it at all, as well as the prevention of other offenses provided for in Chapter 16 of the Tax Code of the Russian Federation, a significant proportion of which falls on the sphere of economic entities in the Russian Federation.

Any circumstances mentioned above provide an opportunity only for the postponement but not for the exemption from payment. Even in this case, issues regarding the reorganization of tax arrears, deferral, or installment of its payment, are subject to consideration exclusively by government tax authorities and cannot be resolved by the taxpayer at their discretion and unilaterally.

Also, saving money by an enterprise due to non-payment of taxes is not a means provided for by law and cannot be a basis excluding the criminality of the act. The fact that the actions of the culprit are caused by the need to fulfill the government defense order, maintain the life support of the city, and preserve jobs cannot be taken into account also because the non-receipt of tax payments to the budget system of the government and municipalities has an extremely adverse impact on both the overall defense capability of the country and the normal functioning of the bodies of local self-government and government authorities, including in the field of housing and communal services of the population, wages of public sector employees, etc. Consequently, the harm prevented by the described actions cannot be less than the threatened harm, which means that they do not fall under the definition of extreme necessity and should be qualified as illegal and criminal.

Therefore, the Criminal Code of the Russian Federation comes into effect if the level of public danger of committed offense reaches a critical point and the amount of mandatory payments that have not been received into the budget system causes severe damage to the financial foundations of the government and local self-government.

4 DISCUSSION

Scholars in various branches of law have paid attention to the correlation between different types of liability provided for the commission of tax offenses.

In general, it is possible to systematize scientific viewpoints on this issue as follows:

- Tax liability is a separate type of legal liability;
- Tax liability is a type of administrative liability;
- Tax liability is a complex institution that includes the norms of administrative and criminal law;
- Tax liability is a subtype of financial liability.

Thus, for example, D. V. Vinnitsky points out that tax and administrative liability are related.

Due to significant differences in the procedural form in cases of tax offenses, many scholars propose to combine all the norms on tax offenses in the Tax Code of the Russian Federation. However, this position meets objections. A. Kh. Shoniya and V. I.

Khamenushko, on the contrary, believe that tax liability has an exclusively administrative nature, since the Tax Code of the Russian Federation does not have a procedural implementation procedure similar to the Criminal Procedure Code and the Administrative Code of the Russian Federation (Shoniya, 2017).

5 CONCLUSION

Administrative punishment is a measure of public enforcement applied to someone who has committed an administrative offense. Its purpose is general and special prevention.

Tax liability is also a measure of public enforcement. In turn, it pursues several interrelated goals: punitive, preventive, and law-restoring.

A common form of external expression is a monetary fine.

We should focus on their differences. First of all, the difference is in the person to whom the sanction is applied. In tax law, these include individuals and legal entities, in other words, direct participants in tax legal relations. In administrative law, there are officials of organizations. Undoubtedly, the procedure for bringing liability is also different, and in the conditions and procedure for imposing punishment. However, it does not affect the essence of the institutions under consideration in any way. In other words, from the standpoint of the key understanding, these types of liability have no differences.

Liability under tax law is administrative but with an independent implementation procedure in relation to special entities.

However, the Administrative Code of the Russian Federation defines administrative liability for tax offenses only of individuals (unlike tax regulatory legal acts, where legal entities are also subjects), which cannot but cause some doubts, since the possible damage from tax offenses of legal entities can be much more significant than violations of tax legislation by individuals.

Therefore, it would seem that all provisions mentioned above confirm a certain correctness of understanding the administrative and legal nature of liability for tax offenses.

We have already mentioned the standpoint that tax liability is a subtype of financial liability. It has recently gained considerable popularity. Then, it is necessary to clearly distinguish between tax offenses and violations of the legislation on taxes and fees.

One should note the goals of punishment of one or another kind. For administrative and criminal law, sanctions are punitive and preventive in nature. It is primarily retribution to the perpetrator for the committed and preemptive acts. Victims must act in a civil procedure if they want to restore their violated property rights.

For the tax law, the primary goal is to make up for the damage caused to the government budget. Most of the measures envisaged (collection of arrears, penalties), although they do not constitute the essence of tax liability, are necessary for the timely and complete formation of budgets at all levels of the budget system of the Russian Federation, the funds of which go to government-guaranteed public expenditures, for example, to finance healthcare costs, which is currently extremely relevant and in demand.

At the same time, one should note a substantially important circumstance – the fact that, in many cases, the restoration of the violated material interest of a public legal entity can also be implemented out of court. In the same way, a person who has violated the legislation of the Russian Federation on taxes and fees may, at their own will, restore the property interest violated by them by paying penalties for the overdue payment on their own. The option of voluntary execution by the offender of the financial sanction imposed on them does not change the essence of the enforcing quality of this measure. The government, as a superior entity in this type of legal relations, always has the right to apply punitive and sanctions measures to the person guilty of committing an offense, as well as to force the perpetrator to undergo legal procedures and restrictions provided for by legislation in each specific case which result from the need to apply the appropriate legal sanction to them.

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