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THE LEGAL NATURE OF TAX LIABILITY AND SOME ISSUES REGARDING DOUBLE LIABILITY

Annotation

The article discusses the legal nature of tax liability and its place in the system of public liability, in particular, the author examines the relationship between tax and administrative liability. The author analyzes various approaches existing in the doctrine regarding the definition of the legal nature of tax liability and the issue of the relationship between tax and administrative liability.

First of all, the author reveals the concept of administrative liability and analyzes the goals, as well as the legal nature of sanctions of both tax and administrative liability. Further, the author analyzes the decision of the Constitutional Court of the Republic of Armenia DCC-1139 dated 18.02.2014 and, disagreeing with the position of the Constitutional Court regarding the exclusively legally restorative nature of tax liability, presents arguments regarding the legal nature of tax liability.

In the context of considering the issue of correlation of tax and administrative liability, the author mentions an equally important and relevant problem of the qualification of offenses, liability for which is provided for both in the Tax Code of the Republic of Armenia and the Administrative Offences Code of the Republic of Armenia, because a direct consequence of the existence of such a legislative opportunity is the problem of bringing a person to double liability

for committing the same offenses. The importance of a comparative analysis of the norms on the establishment of public liability in both the Tax Code of the Republic of Armenia and the Administrative Offences Code of the Republic of Armenia lies in eliminating the legislative possibility of bringing a person to double liability, in unifying public liability for tax offenses having the same object and objective side. Meanwhile, the author notes that after the adoption of the said decision, the law enforcement practice of the Republic of Armenia developed in such a way that the Administrative Court began to apply the provisions of the Administrative Offences Code of the Republic of Armenia exclusively to an individual (director of a legal entity), and the Tax Code – in relation to the legal entity itself (see, for example, administrative case VD/4859/05/19).

According to the author, the Administrative Court should abandon the vicious practice of bringing an economic entity to double liability in violation of the principle of *non bis in idem* for committing the same tax offense.

Keywords: tax liability, administrative liability, double liability, non bis in idem, punitive nature, purpose of liability.

1. Introduction

The question of the concept, specifics, and sectoral nature of tax liability is debatable. In particular, the dilemma lies in determining the place of tax liability among other types of public liability and, mainly, in the ratio of tax and administrative liability. As a rule, the autonomy (independence) of tax liability from administrative liability is justified by the different goals (objectives) of these two types of liability. The dilemma of differentiation and correlation of tax and administrative liability has not bypassed the case-law of the Constitutional Court of the Republic of Armenia. The Constitutional Court gave its position on the ratio of tax and administrative liability in Decision DCC-1139 dated 18.02.2014, and the purposes of these two types of liabilities at the core. Disagreeing with the mentioned position of the Constitutional Court regarding the exclusively legally restorative (compensatory) nature of tax liability, we would like to note that such liability measures as penalties and fines are punitive in their axiological meaning and are aimed at "education", correction of a person (both physical and legal), in connection with which these measures they cannot be directed solely to compensation for property (financial) damage suffered by the State.

After the adoption of the mentioned decision, the law enforcement practice of the Republic of Armenia developed in such a way that the Administrative Court began to apply the provisions of the Administrative Offences Code of the Republic of Armenia exclusively to an individual (director of a legal entity), and the Tax Code – in relation to the legal entity itself. Thus, the Administrative Court of the Republic of Armenia decided to bypass the existing problem by interpreting the provisions of the Administrative Offences Code of the Republic of Armenia from the point of view of applicability exclusively to individuals, if the disposition of the norm does not explicitly provide for a legal entity as a subject of an offense.

2. Main research

2.1. The legal nature of tax liability: the ratio of tax and administrative liability

In the legal literature, various interpretations of the definition of tax liability can be found, but the most universal definition would be the one according to which tax liability is the application and implementation of sanctions in violation of the norms of current tax legislation.

Considering the legal nature of tax liability, a number of different approaches can be found in the legal literature.

So A.V. Demin groups these approaches into three blocks: 1) we are talking about administrative liability for tax offenses; there are no grounds for separating into a separate type of tax liability, including the use of the term "tax liability"; 2) tax liability is a new, independent type of legal liability with significant branch specifics; 3) tax liability is a type of administrative liability with significant procedural specifics[1].

We believe that at the moment, the most appropriate approach is the latter approach to determining the legal nature of tax liability.

In the context of the above, considering the issue of the relationship between tax and administrative liability, the latter should be considered in two aspects: in a narrow and a broad sense. In a narrow sense, administrative liability is only liability for violation of the provisions of the Administrative Offences Code. In a broad sense, administrative liability includes not only liability for

[1] See also **Demin A.V.** Tax law of Russia: Textbook / A.V. Demin; Feder. Agency for Education; Krasnoyarsk State University; Jurid. in-T. Krasnoyarsk: RUMTS YUO, 2006. 329 p. (in Russian).

violating the provisions of the Administrative Offences Code, but also for violating the provisions of other special laws, for example, the Law of the Republic of Armenia "On Customs Regulation", the Tax Code of the Republic of Armenia, etc.

In light of the above, we state that administrative liability acts as a kind of complex institution, which, among other things, includes *tax liability as an independent kind of administrative liability.* In other words, ***tax liability should be considered as a special kind of administrative liability, which has significant features in the field of the tax process.***

This position is held by a number of legal scholars. Thus, A.V. Bryzgalin calls tax liability one of the types of administrative liability, but notes that the procedure for its application is regulated not by the Code of Administrative Offenses of the Russian Federation, but by the Tax Code of the Russian Federation, that is, by an act of special legislation. But despite this, the administrative nature of tax liability remains[1]. According to V.A. Kinsburskaya, tax liability is a punitive (penal) type of liability, has an administrative nature, and occurs in the case of tax offenses provided for in Chapter 16 of the Tax Code of the Russian Federation[2].

Among other features inherent in liability in general, without taking into account branch affiliation, tax liability has characteristic features inherent only in this type of liability. Firstly, the main, obvious distinguishing feature of tax liability from administrative liability is the object of encroachment of tax offenses – violation of tax legislation (tax offense), which provides for a special procedural order for bringing to tax liability (proceedings on cases of tax offenses). Secondly, tax sanctions, as a rule, are of a property nature (monetary value). Thirdly, a tax offense has a special subject structure: participants in tax legal relations, as well as other persons who have responsibilities in the field of taxation, etc.

S.V. Ignatieva and I.V. Blindyuk, as the main distinguishing feature, point to the specificity of the basis of tax liability – a tax offense[3]. A.S. Garshin, V.N. Vasin, and V.I. Kazantsev believe that the similarity of administrative and tax

[1] URL: http://cscb.su/n/020601/020601009.htm

[2] See also **Kinsburskaya V.A.** Tax and financial liability for violation of legislation on taxes and fees: differentiation of concepts // Law and Economics. 2010. № 6. pp. 31-37. (in Russian).

[3] See **Ignatieva S.V., Blindyuk I.V.** Administrative and tax liability for violation of tax legislation // Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia. 2012. № 1. Volume 53. Pp. 62-64. (in Russian).

offenses is a sufficient basis for the approval of their generic unity, despite the existing procedural differences[1].

Often, the autonomy (independence) of tax liability from administrative liability is justified by the different goals (objectives) of these two types of liability. The main purpose of applying administrative liability to a person is to punish the perpetrator and to prevent offenses; in other words, administrative liability is educative (punitive) in nature. At the same time, the purpose of tax liability is, inter alia, compensation for property damage caused to the state, which characterizes tax liability as legally restorative. However, it should be noted that *the additional characterization of tax liability as legally restorative does not exclude its educative, punitive nature.* In other words, despite the fact that tax sanctions, as a rule, are of a property nature, nevertheless, the application of tax liability pursues not a compensatory and restorative, but a punitive and educative purpose. The very characterization of tax liability as a measure of state-governmental coercion testifies in favor of the punitive nature of the latter.

The Tax Code of the Republic of Armenia (hereinafter – the Code) defines tax liability as **an independent type of legal liability** aimed at ensuring financial stability and financial interests of the state by fully compensating for material damage caused to the state as a result of violation of the provisions of legal acts regulating tax relations, establishing an additional obligation to the taxpayer who committed a tax offense, as well as forcing him to immediately fulfill a tax obligation and prevention of further tax offenses (Article 397, part 2). At the same time, the Code establishes that taxpayers or tax agents are held liable for tax offenses exclusively in cases and in accordance with the procedure established by the Code and the laws of the Republic of Armenia on payments (Article 397, part 3).

Summarizing all the above, it is necessary to mention the position of E.V. Erokhina, who, in our opinion, gives the most precise characterization of the differentiation of administrative and tax liability in the field of violations of legislation on taxes and fees, noting that "(...) the homogeneity of the sphere of legal regulation, as well as the homogeneity of measures of state-legal coercion, indicates that administrative offenses in the field of taxes and fees (provided for by the Code of Administrative Offences of the Russian Federation), as well as tax offenses (provided for by the Tax Code of the

[1] Ibid.

Russian Federation) have a **single legal nature – administrative-legal**"[1] (emphasis made by the author - L.A.).

Considering the dilemma of the legal nature of tax liability in light of administrative liability, the following should be noted.

From the point of view of distinguishing the types of legal liability depending on the functional purpose, administrative liability, along with criminal liability, is referred to as so-called punitive, retrospective liability[2].

Agreeing with the above statement and projecting all the essential characteristics inherent in administrative liability to tax liability, a legitimate question arises whether guarantees aimed at ensuring the rights and freedoms of man and citizen in the appointment of punitive measures of liability (as in the case of criminal liability) should also be applied in the case of administrative (tax) liability?

The Constitutional Court of the Russian Federation, in its Decision № 23-P dated 14.06.2018, noted that administrative and criminal liability, being varieties of public law liability, pursue the common goal of protecting public interests, such as protecting human and civil rights and freedoms, ensuring legality and law and order, which is why they have similar tasks and principles and thus complement each other[3].

From what has been said, it becomes obvious that the guarantees of fundamental human rights and freedoms that apply when bringing a person

[1] **Erokhina E.V.** Administrative and tax liability for violation of legislation on taxes and fees. A young scientist. № 51 (393), 2021. P. 185. (in Russian).

[2] Administrative liability, to some extent, is similar to criminal liability, which is why we consider it advisable to highlight their main differences. Firstly, the list of administrative offenses and liability for them is established not only by the Code of Administrative Offences, but also by separate laws, while the list of crimes and liability for their commission is established exclusively by the Criminal Code. Secondly, a person is brought to criminal liability for a committed crime only by a court decision (exclusively the judicial procedure for bringing to liability), while for an administrative offense, a person is usually brought to liability by an administrative body (although the judicial procedure for bringing to liability is not excluded).

[3] Decision of the Constitutional Court of the Russian Federation № 23-P dated 14.06.2018 "On the case of checking the constitutionality of Part 1 of Article 1.7 and Part 4 of Article 4.5 of the Code of Administrative Offences of the Russian Federation, paragraph 4 of Article 1 of the Federal Law "On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation on Improving the Grounds and Procedure for Exemption from Criminal Liability" and paragraph 4 of Article 1 of the Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation in connection with the Adoption of the Federal Law "On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation on improving the grounds and procedure for exemption from criminal liability liability" in connection with the complaints of citizens A.I. Zalyautdinova, N.Ya. Ismagilova and O.V. Cherednyak".

to criminal liability, without exception, should also be applied when bringing a person to administrative (including tax) liability.

The dilemma of differentiation and correlation of tax and administrative liability has not bypassed the case-law of the Constitutional Court of the Republic of Armenia[1].

In Decision DCC-1139 of 18.02.2014, the Constitutional Court noted that "(...) the purpose of administrative liability is not to restore violated rights, but to educate the person who committed an administrative offense, (...) in the spirit of observance of laws, (...) respect for the rules of coexistence, as well as the prevention of the commission of new offenses by both the offender and other persons," and as the purpose of tax liability, the Constitutional Court noted "(...) compensation for property damage caused to the state and society, it is a legal liability of a property (financial) nature, which is due to the property nature of the relations existing between the taxpayer and the state (tax relations). In addition, a person who has not fulfilled (improperly fulfilled) tax obligations, if desired, can voluntarily compensate for damage caused as a result of his actions (inaction), before ensuring its enforcement (in court)"[2].

In the above-mentioned decision, the Constitutional Court expressed the legal position according to which "(...) The legislator, guided by its discretion, delimited the spheres of tax and administrative liability, taking into account the constitutional and legal special importance and peculiarity of regulating tax relations in the context of ensuring constitutional order and legality. Such

[1] The reason for considering the issue of the correlation of tax and administrative liability was the appeal of the RA Human Rights Defender, and the constitutional and legal dispute itself was as follows: Article 23 of the RA Law "On Taxes" in force at that time fixed the regulation, according to which:

"In case of delay in paying taxes on time, the taxpayer pays a penalty in the amount of 0.15 percent of the amount of tax not paid on time for each overdue day (in cases established by law, the tax agent).

Daily penalties in the specified amounts are applied if the tax legislation does not provide for a lower amount.

The above-mentioned penalty is applied to the amounts of tax not paid on time (including, in cases established by tax legislation, unpaid by a tax agent), to the amounts of prepaid tax payments, to the amounts of tax on the object of taxation discovered by the results of the audit (underestimated), from the date of their payment for the entire past period, but no more in less than 365 days".

Article 170^3 of the Administrative Offences Code of the Republic of Armenia (hereinafter referred to as the Code) established that "Failure to pay taxes on time entails the imposition of a fine – from ten to twenty times the established minimum wage".

[2] The case on conformity of Article 23 of the RA Law “On Taxes” and Article 170^3 of the Administrative Offences Code of the Republic of Armenia with the Constitution of the Republic of Armenia, raised by the application of the Human Rights Defender of the Republic of Armenia.

a distinction in itself pursues a specific legal purpose and does not raise the issue of constitutionality"[1].

Disagreeing with the above-mentioned position of the Constitutional Court regarding the exclusively legally restorative (compensatory) nature of tax liability, we would like to note that **the applied liability measures such as penalties and fines are punitive in their axiological meaning and are aimed at "education", correction of a person (both physical and legal), in connection with which these measures they cannot be directed solely to compensation for property (financial) damage suffered by the State.**

The accrual of penalties on the principal amount of the tax liability, as well as the imposition of a fine, are carried out in order to "punish" a person for committing a tax offense. And the monetary expression ("material" nature) of these measures of liability (sanctions) is not related to the compensatory nature (purpose) of liability, but solely to the obvious fact of the existing reality that the most effective way to "educate" a person is to impose a monetary penalty on him (burdening him with a monetary obligation for a committed offense). Similar liability measures are also applied when bringing a person to criminal liability and, as a rule, are of an alternative nature; however, this circumstance does not diminish the punitive nature of criminal liability.

The practice of the Russian Federation also testifies in favor of our position, because the ruling of the Constitutional Court of the Russian Federation № 130-O dated 05.07.2001, also confirms the attribution of tax liability to administrative liability, which states that "penalties applied by tax authorities for violation of legislation aimed at ensuring the fiscal interests of the state relate to penalties of administrative-legal nature (for administrative offenses) and are carried out within the administrative jurisdiction"[2].

With regard to specific measures of liability for tax offenses, we can talk about legally restorative (compensatory) nature of the latter, as for example, in the case of the accrual of penalties that "compensate" the property damage caused to the state for the delay in payment, however, on the basis of this, characterizing the entire institution of tax liability as property (financial) is

[1] Ibid.

[2] **Erokhina E.V.** Administrative and tax liability for violation of legislation on taxes and fees. A young scientist. № 51 (393), 2021. P. 185. (*See also* Kucherov, I.I. Tax control and liability for violations of legislation on taxes and fees / I.I. Kucherov, O.Yu. Sudakov, I.A. Oreshkin. – M.: JSC Tsentryurinfor, 2001. 128 p.). (in Russian).

fundamentally the wrong approach. The most acceptable approach is that of A.V. Makarov and T.V. Arkhipenko, who believe that any measure of tax liability is both punitive and restorative, while punitive and restorative are not the sanctions of tax liability themselves, but the functions they perform[1].

It is important to note that the ECHR in the case of *Paykar yev Haghtanak LTD v. Armenia* underlined that "Furthermore, the surcharges and the fines are not intended as pecuniary compensation for any costs that may have been incurred as a result of the taxpayer's conduct. The purpose pursued by these measures is to exert pressure on taxpayers to comply with their legal obligations and to punish breaches of those obligations. The penalties are thus both deterrent and punitive" *(see Paykar yev Haghtanak LTD v. Armenia, Application No. 21638/03, Final, 06/02/2008, §35).*

Noteworthy is the study of the law enforcement practice of the Czech Republic, which is also developing towards the recognition of tax liability (tax sanction) as sanctional (punitive). So, D. Chudek notes the following: "(...) Up to this, the penalty payment has been understood as a flat-rate compensation for potential state harm by the professional public. The Supreme Administrative Court therefore came out of the case law of the European Court of Human Rights, which at that time interpreted the concept of criminal charges very broadly, and usually it also applied it to sanctions in the area of tax law. The Supreme Administrative Court analyzed the Penal Institute in Czech tax law by the test of the so-called Engel Criteria. The third criterion (type and severity of the sanction) was crucial for the final decision of the Supreme Administrative Court. The Supreme Administrative Court stated that the penalty payment was not a flat-rate form of damages, i.e., that it did not have a reparatory character, but especially a sanctioning character, since the purpose was, in particular, to punish the taxpayer. The severity of the sanction was found in a possible interference with the property sphere, that is, property law. The penalty payment is mainly compared with default interest, and claims that if the penalty payment were flat-rate compensation, then it would be required twice (also in the form of default interest)"[2].

[1] Makarov A.V., Arkhipenko T.V. Characteristics of tax liability. Sanctions for violation of tax legislation // Financial law. Publishing house "Lawyer", 2005. № 6. Pp. 20-22. (in Russian).

[2] **Czudek D.** "Ne Bis in Idem in the Tax Process". Prawo Budżetowe Państwa I Samorządu 7 (1), 2019. P. 118.

In other words, the Supreme Court agreed with the opinion that the payment of a tax fine is a criminal sanction and that the committed act has the characteristics of both an administrative (tax)

In conclusion, to all of the above, it should be stated that tax liability is *a type of administrative liability with significant procedural specifics*, in connection with which bringing to tax liability pursues *punitive-sanctional* and *preventive-educative* goals, which, in turn, means that **any procedural guarantees aimed at protecting the rights and legitimate interests of a person characteristic of such intensive measures of influence as the application of punitive measures of liability against a person, must also be applied unconditionally when bringing a person to tax liability.**

2.2. Some issues regarding double liability in the context of the legal nature of tax liability

In the context of considering the issue of the correlation of tax and administrative liability, it is impossible to ignore the equally important and relevant problem of the qualification of offenses, liability for which is provided for both in the Tax Code of the Republic of Armenia and the Administrative Offences Code of the Republic of Armenia, because a direct consequence of the existence of such a legislative opportunity is the problem of bringing a person to double liability for committing the same the same offenses. The Constitutional Court of the Republic of Armenia, in its Decision DCC-1139 dated 18.02.2014, also noted that "(...) The position of the applicant is justified in relation to the fact that in the legal acts that are the subject of the study, when establishing liability measures, the legislator should provide for clearer legal regulation to exclude cases of double liability of any entity subject to tax and administrative liability, due to circumstances due to its legal status. Within the framework of existing legal regulations, this approach should also be the basis for law enforcement practice"[1]. The Court also noted that it should be borne in mind that, although the areas of tax and administrative liability for the subject of their legal regulation are objectively different by law (both in terms of purpose and in terms of methods of legal regulation), nevertheless, they are in close mutual connection from the point

offense and a tax reduction offense, and thus the related procedural actions are actions of the same kind.

URL: https://apcz.umk.pl/PBPS/article/view/PBPS.2019.006

[1] The case on conformity of Article 23 of the RA Law "On Taxes" and Article 170^3 of the Administrative Offences Code of the Republic of Armenia with the Constitution of the Republic of Armenia, raised by the application of the Human Rights Defender of the Republic of Armenia.

of view of preventing tax violations (establishment of budgetary discipline), legal consequences of the applied liability measures.

The presence of such legislative "imprudence" in establishing double public liability (both administrative and tax) for the commission of the same offense may be based on the inconsistency of the legislator, given that the problem may also be due to the time factor of the adoption of both the Administrative Offences Code of the Republic of Armenia and the Tax Code of the Republic of Armenia[1], because the Administrative Offences Code of the Republic of Armenia[2] was adopted long before the codified tax legislation.

The importance of a comparative analysis of the norms on the establishment of public liability in both the Tax Code of the Republic of Armenia and the Administrative Offences Code of the Republic of Armenia lies in eliminating the legislative possibility of bringing a person to double liability, in unifying public liability for tax offenses having the same object and objective side.

Thus, for example, in accordance with Article 412 ("Failure to register an employee in accordance with the procedure established by the legislation of the Republic of Armenia, and (or) failure to submit an application for registration of an employee within the prescribed period, as well as attracting a volunteer to conclude a voluntary work agreement without the procedure established by the Law of the Republic of Armenia "On Voluntary Work"") The Tax Code of the Republic of Armenia:

"1. The fact of non-registration of the employee's employment in writing in accordance with the procedure established by the legislation of the Republic of Armenia (i.e. the absence of an individual legal act on employment and a written contract) and/or failure to submit an application for registration in the cases and terms established by part 2 of Article 156 of the Code for a new employee, as well as the fact of involving a volunteer to conclude a voluntary work agreement without the procedure established by the law "On Voluntary Work", during complex or thematic tax audits conducted by the tax authority in accordance with the procedure established by the Government, and in the case of registration of persons engaged in illegal activities, in the course of operational investigative measures in accordance with the procedure

[1] Before the entry into force of the current Tax Code of the Republic of Armenia, the RA Law "On Taxes", adopted on April 14, 1997, was in force, which became invalid on January 1, 2018 with the entry into force of the new Tax Code of the Republic of Armenia.

[2] The Administrative Offences Code of the Republic of Armenia was adopted on December 6, 1985, and entered into force on June 1, 1986.

established by the government, an employer (including persons engaged in illegal activities, or individuals who are not individual entrepreneurs registered in accordance with the established procedure and have received a license) or an organization established by paragraph 3 of part 1 of Article 3 of the Law "On Voluntary Labor" is fined in the amount of in the amount of 250,000 AMD for each unregistered employee or person performing voluntary work.

2. In the sense of the application of part 1 of this Article, the fine imposed on a new employee for failure to submit an application for registration in the cases and terms established by part 2 of Article 156 of the Code shall apply only if a comprehensive or thematic tax audit has revealed the actual person performing the work for whom the application for registration has not been submitted until the end of the day preceding the day of the actual start of the inspection, and in the case of the actual start of work on the day of hiring – before 14:00".

And in accordance with Article 169^5 ("Retention of an employee without an employment contract") of the Administrative Offences Code of the Republic of Armenia:

"The retention of an employee without an employment contract who meets the employment requirements provided for by the legislation of the Republic of Armenia entails the imposition of a fine against the person who committed the violation in the amount of fifty times the established minimum wage for each case of violation.

The same violation committed repeatedly within a year after the application of administrative penalties entails:

the imposition of a fine against the person who committed the violation, one hundred times the established minimum wage for each case of violation".

As a result of a comparative legal analysis of the above two seemingly different types of offenses, it can be argued that the objective side of the offense in accordance with Article 412 of the Tax Code of the Republic of Armenia already contains the objective side of the offense in accordance with Article 169^5 of the Administrative Offences Code of the Republic of Armenia. In other words, the legislative wording "(...) the absence of an individual legal act on employment and a written contract (...)" with the use of a connecting union "and" as a mandatory sign of establishing the fact of an offense in accordance with Article 412 of the Code, provides for the absence of an employment contract with an employee, which, in turn, is a separate offense

of Article 169[5] of the Administrative Offences Code of the Republic of Armenia.

Another example, Article 244[2] of the Administrative Offences Code of the Republic of Armenia establishes cases of administrative offenses that are subject to consideration by tax authorities, including cases of offenses provided for in Article 170[3] of the Administrative Offences Code of the Republic of Armenia, i.e. cases of non-payment of state taxes and state payments established by law and other mandatory payments paid to the state budget.

According to Article 170[3] of the Administrative Offences Code of the Republic of Armenia, failure to pay state and local taxes, state and local payments (except for local duties), and other mandatory payments established by law paid to the state budget, entails the imposition of a fine in the amount of ten to twenty times the established minimum wage[1].

In particular, under this Article, the tax authority initiates administrative proceedings and imposes **an administrative fine** (in the period from 20.07.2022 to 20.07.2023, 24,969 administrative proceedings were conducted, and an administrative fine in the amount of 842,423,360 AMD was imposed[2]).

At the same time, the Tax Code of the Republic of Armenia provides for liability in case of delay in payment of state taxes within the time limits established by the Code, in particular, it provides for the payment of a fine for each overdue day. Namely, in accordance with part 1 of Article 401, in case of delay in payment of tax within the prescribed time, the taxpayer or tax agent pays a penalty in the amount of 0.04 percent for each overdue day.

It follows from the above that in case of non-compliance with the payment of state taxes and fees within the time limits established by the Tax Code of the Republic of Armenia, the relevant legal act has already established liability, in particular, for each overdue day, the payment of penalties and the implementation of administrative proceedings to recover unpaid tax obligations, as well as the seizure of taxpayer's property, as well as the commission of new violations by other persons.

Thus, the initiation of administrative proceedings in accordance with article 170[3] constitutes a re-administration carried out by the tax authority, which is

[1] The named Article has become invalid since 01.02.2024 (with the entry into force of the RA Law "On Amendments to the Administrative Offences Code of the Republic of Armenia" on 16.01.24 ՀՕ-19-Ն).

[2] URL: http://www.parliament.am//drafts.php?sel=showdraft&DraftID=14435&Reading=1&lang=arm

a direct violation of the principle of *non bis in idem* when bringing a person to liability. At the same time, on January 16, 2024, the law "On Amendments to the Administrative Offences Code of the Republic of Armenia" (HO-19-N) was adopted, in accordance with Article 1 of which the above-mentioned Article became invalid on February 1, 2024.

In the above-mentioned decision, the Constitutional Court noted that the relevant regulatory provisions of the still-in-force Administrative Offences Code do not allow unambiguously (at least theoretically) to exclude the possibility of being brought to double liability (tax and administrative) for the same act in the field of tax obligations (especially on the example of an individual entrepreneur). In other words, the Constitutional Court itself recognized the risk of bringing a person to double public liability in the context of current legislative regulations, which do not clearly distinguish the subjects of tax offenses.

After the adoption of the mentioned decision, the law enforcement practice of the Republic of Armenia developed in such a way that the Administrative Court began to apply the provisions of the Administrative Offences Code of the Republic of Armenia exclusively to an individual (director of a legal entity), and the Tax Code – in relation to the legal entity itself (see, for example, the administrative case VD/4859/05/19). In connection with the above, it should be noted that the director of a legal entity is a representative of the latter, acts on behalf of this legal entity, and his actions are attributed to the legal entity. Thus, in the theory of criminal law, regarding the issue of the relationship between a legal entity and its head, the concept is widespread, according to which the heads of a legal entity act with the intention of committing a crime, and what they have committed is attributed to a legal entity, in other words, they act as a legal entity[1]. However, according to the analysis of the provisions of the Administrative Offences Code of the Republic of Armenia, the subject of administrative offenses in the field of taxes can be both an individual and a legal entity[2], just as the subject of tax offenses established by the Tax Code can be both an individual and a legal entity. Thus, the Administrative Court of the Republic of Armenia decided to bypass the existing problem by interpreting the provisions of the Administrative Offences Code of the Republic of Armenia from the point of view of

[1] URL: https://advocates.am/images/gradaran/2022/Qreakan_uxecuyc_2022.pdf

[2] The Constitutional Court of the Republic of Armenia also mentions this in its Decision DCC-1139 dated 18.02.2014.

applicability exclusively to individuals, if the disposition of the norm does not explicitly provide for a legal entity as a subject of an offense[1]. At the same time, it is obvious that, at least in relation to individual entrepreneurs, in the light of what has been said, there is a violation of the principle of *non bis in idem.*

Considering the issue we have raised from the point of view of the goals of both administrative and tax liability, the question of the proportionality of bringing a single, broadly speaking, entity that has committed an offense in the field of taxes to two punitive measures of liability arises. The Constitutional Court of the Republic of Armenia itself in Decision DCC-1139 dated 18.02.2014 the problem of the correlation of tax and administrative liability in connection with bringing a person to liability both under the Administrative Offences Code of the Republic of Armenia and under the Tax Code was resolved based on an analysis of the purposes of the above two measures of liability, denying the punitive nature of the tax, and meanwhile the court was faced with the issue of violation of the principle of *non bis in idem* when bringing a person to justice under both the Administrative Offences Code of the Republic of Armenia and the Tax Code. In other words, the Constitutional Court found that there was no violation of the principle of *non bis in idem*, with the justification that these measures of liability pursue different goals[2]. It turns out that changing the concept of tax liability as punitive, however, is problematic, at least from the point of view of proportionality of liability.

Moreover, the Tax Code establishes that taxpayers or tax agents are held liable for tax offenses only in cases and in accordance with the procedure established by the Code and the laws of the Republic of Armenia on payments (Article 397, part 3). It turns out that despite the fact that the Code establishes an exhaustive list of legal acts on the basis of which a person can be held liable for a tax offense, however, at the same time, there are elements of tax offenses in the Administrative Offences Code of the Republic of Armenia. In other words, although it can be concluded from the textual wording of the

[1] In other words, the Administrative Court of the Republic of Armenia adheres to the concept of the old Criminal Code of the Republic of Armenia (expired on 01.07.2022), according to which legal entities could not act as the subject of a crime.

[2] It deserves to be noted that in the mentioned decision, although the Constitutional Court did not state a violation of the principle of *non bis in idem*, nevertheless, it did not deny the possibility of its application to the specified legal relations.

specified norm that the purpose of the legislator was to provide for tax offenses only in the Tax Code of the Republic of Armenia, i.e. unification of tax offenses, nevertheless, the existing legislative regulations in this part need to be revised, namely, unification of public liability for tax offenses having the same object and objective side. The Administrative Court should abandon the vicious practice of bringing an economic entity to double liability in violation of the principle of non bis in idem for committing the same tax offense.

3. Conclusion

Tax liability is a type of administrative liability with significant procedural specifics, which means that tax liability also pursues punitive-sanctional and preventive-educative goals. This means that any procedural guarantees aimed at protecting the rights and legitimate interests of a person characteristic of such intensive measures of influence as the application of punitive measures of liability against a person, must also be applied unconditionally when bringing a person to tax liability.

In the context of considering the legal nature of tax liability and recognition of it as of a punitive (sanctional) nature there is a severe necessity in a comparative analysis of the norms on the establishment of simultaneous public liability in both the Tax Code of the Republic of Armenia and the Administrative Offences Code of the Republic of Armenia in order to exclude the legislative possibility of bringing a person to double liability, in unifying public liability for tax offenses having the same object and objective side.

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ՀԱՐԿԱՅԻՆ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅԱՆ ԻՐԱՎԱԿԱՆ ԲՆՈՒՅԹԸ ԵՎ ԿՐԿՆԱԿԻ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅԱՆ ՈՐՈՇ ՀԱՐՑԵՐ

Ամփոփագիր

Հոդվածում քննարկվում է հարկային պատասխանատվության իրավական բնույթը և դրա տեղը հանրային պատասխանատվության համակարգում,

մասնավորապես, հեղինակը քննարկում է հարկային և վարչական պատասխանատվության հարաբերակցությունը: Հեղինակը վերլուծում է դոկտրինում առկա տարբեր մոտեցումները հարկային պատասխանատվության իրավական բնույթի որոշման և հարկային և վարչական պատասխանատվության հարաբերակցության հարցի վերաբերյալ:

Առաջին հերթին, հեղինակը բացահայտում է վարչական պատասխանատվության հայեցակարգը և վերլուծում է թե՛ հարկային, թե՛ վարչական պատասխանատվության նպատակները, ինչպես նաև սանկցիաների բնույթը: Այնուհետև հեղինակը վերլուծում է Հայաստանի Հանրապետության Սահմանադրական դատարանի 18.02.2014 թ. ՍԴՈ-1139 որոշումը և, չհամաձայնելով հարկային պատասխանատվության բացառապես իրավավերականգնողական բնույթի վերաբերյալ Սահմանադրական դատարանի դիրքորոշման հետ, ներկայացնում է իր փաստարկները հարկային պատասխանատվության իրավական բնույթի վերաբերյալ:

Հարկային և վարչական պատասխանատվության հարաբերակցության հարցի քննարկման համատեքստում հեղինակը բարձրացնում է ոչ պակաս կարևոր և արդիական խնդիր՝ կապված այն իրավախախտումների որակման հետ, որոնց համար պատասխանատվությունը նախատեսված է ինչպես ՀՀ Հարկային օրենսգրքում, այնպես էլ ՀՀ Վարչական իրավախախտումների վերաբերյալ օրենսգրքում, քանի որ նման օրենսդրական հնարավորության առկայության ուղղակի հետևանքն է նույն իրավախախտման կատարման համար անձին կրկնակի պատասխանատվության ենթարկելու հիմնահարցը: Ինչպես ՀՀ Հարկային օրենսգրքում, այնպես էլ ՀՀ Վարչական իրավախախտումների վերաբերյալ օրենսգրքում հանրային իրավական պատասխանատվություն սահմանող նորմերի նախատեսման համեմատական վերլուծության կարևորությունը կայանում է անձին կրկնակի պատասխանատվության ենթարկելու օրենսդրական հնարավորության բացառման, նույն օբյեկտ և օբյեկտիվ կողմ ունեցող հարկային իրավախախտումների համար հանրային իրավական պատասխանատվության միասնականացման մեջ: Մինչդեռ հեղինակը նկատում է, որ վերոնշյալ որոշման ընդունումից հետո Հայաստանի Հանրապետության իրավակիրառ պրակտիկան ձևավորվել է այն ճանապարհով, որ Վարչական դատարանը սկսել է ՀՀ Վարչական իրավախախտումների վերաբերյալ օրենսգրքի դրույթները կիրառել բացառապես ֆիզիկական անձի (իրավաբանական անձի տնօրենի), իսկ Հարկային օրենսգիրքը՝ հենց իրավաբանական անձի նկատմամբ (տես, օրինակ, թիվ ՎԴ/4859/05/19 վարչական գործը):

Հեղինակի կարծիքով, ՀՀ Վարչական դատարանը պետք է հրաժարվի նույն հարկային իրավախախտում կատարելու համար *non bis in idem* սկզբունքի խախտմամբ տնտեսվարող սուբյեկտին կրկնակի պատասխանատվության ենթարկելու արատավոր պրակտիկայից:

Հիմնաբառեր. հարկային պատասխանատվություն, վարչական պատասխանատվություն, կրկնակի պատասխանատվություն, non bis in idem, պատժիչ բնույթ, պատասխանատվության նպատակ:

ПРАВОВАЯ ПРИРОДА НАЛОГОВОЙ ОТВЕТСТВЕННОСТИ И НЕКОТОРЫЕ ВОПРОСЫ ДВОЙНОЙ ОТВЕТСТВЕННОСТИ

Аннотация

В статье рассматривается правовая природа налоговой ответственности и ее место в системе публичной ответственности, в частности соотношение налоговой и административной ответственности. Автор анализирует существующие в доктрине различные подходы относительно определения правовой природы налоговой ответственности и вопроса соотношения налоговой и административной ответственности.

В первую очередь, автор раскрывает понятие административной ответственности и анализирует цели, а также правовой характер санкций как налоговой, так и административной ответственности. Далее автор анализирует Постановление Конституционного Суда Республики Армения от 18.02.2014 г. ПКС-1139 и, не соглашаясь с позицией Конституционного Суда относительно исключительно правовосстановительного характера налоговой ответственности, приводит свои аргументы относительно правовой природы налоговой ответственности.

В контексте рассмотрения вопроса соотношения налоговой и административной ответственности автор поднимает не менее важную и актуальную на сегодняшний день проблему квалификации правонарушений, ответственность за которые предусмотрена как в Налоговом кодексе РА, так и в КоАП РА, ибо прямым следствием наличия такой законодательной возможности является проблема привлечения лица к двойной ответственности за совершение одного и того же правонарушения. Важность сравнительного анализа норм об установлении публично-правовой ответственности как в Налоговом кодексе РА, так и в КоАП РА заключается в устранении законодательной возможности привлечения лица к двойной ответственности, в унификации публично-правовой ответственности за налоговые правонарушения, имеющие одинаковые объект и объективную сторону. Между тем автор замечает, что после принятия указанного Постановления правоприменительная

практика Республики Армения складывалась таким образом, что Административный суд стал применять положения КоАП РА в отношении исключительно физического лица (директора юридического лица), а Налоговый кодекс – в отношении самого юридического лица (см., например, административное дело ВД/4859/05/19).

По мнению автора, Административному суду РА следует отказаться от порочной практики привлечения хозяйствующего субъекта к двойной ответственности за совершение того же налогового правонарушения с нарушением принципа *non bis in idem*.

Ключевые слова: налоговая ответственность, административная ответственность, двойная ответственность, non bis in idem, карательный характер, цель ответственности.

Հոդվածը հանձնված է խմբագրություն 14.04.2025 թ., տրվել է գրախոսության 16.04.2025 թ., ընդունվել է տպագրության 26.04.2025 թ.: