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**LEGAL NATURE OF FINANCIAL SANCTIONS, APPLIED FOR  
BREAKING OF THE TAX LEGISLATION**

*Paper studies the scientific approaches to the determination of the financial penalties and their place in the system of legal sanctions. Features of the financial sanctions are analyzed. Copy rights regarding the concept and specific features of financial penalties applied for tax offenses are formulated.*

**Keywords:** *financial penalty, tax offenses, fines, penalties, tax laws.*

An objective necessity to strengthen tax discipline, forming a clear legal status of parties to tax legal relations, as well as the active development of open relationships between regulatory authorities and taxpayers, determine the need for a study of the sanctions applicable for the infringement of the provisions of tax legislation. Many researchers substantiate the need for the research of the totality of legal sanctions that have the nature of monetary penalties. In practice, the determination of the legal nature of financial and legal sanctions, correct identification of the different character of the monetary penalties application, creating a single legal procedure of the bringing to financial responsibility are very important. The term "financial and legal sanction" is actively used in the current legislation, research, academic literature and in judicial decisions. Despite this, the study of financial sanctions for violation of tax legislation remains relevant because there are the problems of the definition of their legal nature, symptoms and types, especially considering the practice of an application of the tax code of Ukraine.

Scientists, lawyers are constantly exploring the nature of legal support of financial and legal sanctions. P. Pustoroslev [1] in the "analysis of the concept of

crime" (1892), considers the financial responsibility as the separate species of the responsibility along with criminal, civil and disciplinary ones. Relevant in the context of a given problem are also the works of J. Beloshupko, L. Voronova, A. Krotyuk, Y. Krohina, M. Kucheryavenko, D. Lilak, d. Lukyanets, A. Muzika, G. Musatkina, A. Pishny, I. Hamenushko and others. However, to the problems of legal characteristics of the financial penalties applicable for the violation of tax legislation, is paid not so much attention that, given the rather prolonged application of the Tax Code of Ukraine, is somewhat unjustified.

The purpose of this paper is an analysis of the legal nature of the financial penalties applicable for the infringement of the dispositions of tax legislation, namely, such species as fine and penalty.

The term "sanctions" (lat. *sanctio* – the strict resolution [2]) means the right to understand the force of the influence for violation of the established order of the activities that have the warning, the UN compensation or account function. At the same time this term is used by the legislator and in the research literature differently and has a different meaning.

In the Russian Federation instead of the usual "financial and legal sanctions" for the violation of the tax legislation on the basis of the Tax Code are "tax sanctions, clear definition of which in the code does not exist" (art. 114 of the Tax Code of the RF) [3].

Sanction, according to O. Lejst, is the basis of all the kinds of a liability [2]. Sanction and responsibility are connected with one another, namely without sanctions the responsibility does not exist. If the offenders are not responsible, the sanction becomes only an abstract threat. This position, of course, should be accepted.

Prerequisite coercion is applied as a structural element of the legal provision, which provides for the form and limits of the State influence over the rejection of the voluntary implementation of legal requirements or the deprivation of the use of permissions. Therefore, sanctions can be fixed in different forms of influence on offending a surveyor who is not always measures legal liability. Sanctions are the

normative measures of public-legal coercion, but not all the coercive measures are the measures of a legal responsibility. With this position do not agree N. Gromov and S. Polunin, who believe that the same forms of coercion can be applied both as the means of warning and sanctions [4, p. 56]. A Pigolkin distinguishes the sanctions of the force in law and sanctions – unfavourable consequences [5, p. 181].

According to A. Ivansky, the concept of "the force in law" is broader than the concept "sanction". The sphere of coercion does not always boil down to the use of weights. Legal sanction is an indication only to those coercive measures which are applied in the case of violation of national legal provisions in the form or the punishment of the offender, or in the restoring of the infringed legitimate interests (i.e. sanctions may have legal restoring or punitive character) [6, p. 155].

The term "sanction" also refers to as the "authorising" one – permission, confirming, approving anything by the authority of the State. In this sense the sanction does not serve the third structural element of legal norms. Rather, the failure of sanctions, implementation of actions without a permit is a violation of national legal norms, which entail the application of measures of a legal liability. Actions of the subjects of legal relations that are stacked in the obtaining of an appropriate individual authorization from the competent organ, is the implementation of national legal norms. In particular, entrepreneurship has a legitimate character, if the subject has received the permission (license) for the respective activities [6, p. 159].

The main sign of financial sanctions that determines its legal nature, in our opinion, stands exactly sectoral affiliation. Financial and legal sanction is a structural element of the norms of the financial legislation that determines its nature as a financial one.

Regarding the varieties of financial sanctions, namely tax sanctions, it is worth to mention the position of some Russian scientists. In particular, according to O. Yustus [7, p. 13], financial sanctions in the tax sphere – is the extent of a liability that apply to the authorized State bodies and their officials in the special

procedural order to violators of the rules of tax law that have a monetary character, are included into the corresponding budget or centralized Fund to ensure the State (municipal) fiscal and other interests, the punishment of the offender and to prevent future deviations in behavior that is regulated by the internal norm.

For example, art. 114 of the Tax Code of the Russian Federation [3] provides that the sanction is a measure of responsibility for the committing of tax offenses. This sanction is a fine and penalty legislator announces as one of the ways to ensure the performance of the duties (art. 72 of the tax code of the RF) [3]. However, in practice, as the sanctions both the fine and penalty are applied.

A. Arslanbekova [8, p. 15] believes that the sanction is always a measure of responsibility. Accordingly, financial and legal sanction is a measure of financial and legal liability. Financial and legal sanctions is a measure of the economic liability that apply to authorized government agencies to individuals and legal entities for the violations of financial discipline, expressed in monetary form, and who are enrolled in State and local (municipal) cash funds.

By the definition of O. Muzika, financial sanction is a concept that includes a measure of responsibility; preventive effects; protection as well as unfavourable consequences that arise after committing the offence, the so-called legal (countervailing) measures [9, p. 18]. But here it will be noted that financial and legal sanctions, as well as financial responsibility, perform not only compensation function, but also punitive, which is marked by many researchers.

Academician A. Voronova stated that the sanction of financial and legal provision contains an indication of the extent of humiliating for its offender the effects that are expressed in the use of special financial influence (penalty, penalty, funding, closing accounts, etc) [10, p. 25]. M. Karaseva, Y. Krohina [11, p. 63] point out that financial sanction are coercive measures provided by the financial and legal norms, imposing on the offenders with additional financial burden in the form of penalties and fines.

R. Usenko [12, p. 108] under financial and legal sanctions understands "coercive exposure measures, implemented through the enforcement proceedings

out of court, which are expressed in getting the person to which they are applied, a certain amount of money, which is a measure of legal accountability and consequence of committing that person under the law of tort".

Ukrainian tax legislation (art. 111.2 TCU) [13] provides two kinds of financial and legal sanctions for the violation of tax legislation: penalty (financial) penalties (fines) and (or) penalties. If the second view is more or less clear, even with the character of his reflection in the TCU [13], then with what the legislator was guided in formulating of such a ponderous thing as "punitive (financial) penalties (fines)", is not clear. Therefore, to determine the legal nature of these financial sanctions currently we'll come to the key categories, namely fine. The word "fine" (germ. "strafe") means a monetary penalty, the penalty for guilt [14, p. 112]. Punitive financial and legal sanctions (fines) are established with the purpose of punishing the offender.

According to the Art. 14.1.265 TCU [13], penalty sanction (the financial sanction, penalty) is a fee in the form of a fixed sum and (or) interest that copes with the taxpayer in the connection with the violation of the requirements of the tax legislation and other legislation, the control over the observance of which is based on the regulators, as well as the penalties for the violations in the sphere of foreign economic activities.

For the comparison, it is worth mentioning that before the adoption of the TCU [13] this category includes p. 1.5 of Art. 1 of the Act of Ukraine dated 21.12.2000 No. 2181 "About the Order of the Repayment of Liabilities of the Taxpayers to the Budgets and State Trust Funds" (repealed) [15] as a penalty sanction (fine) is in a fixed amount or as a percentage of the amount of tax liability (excluding interest and penalties), which copes with the taxpayer in the connection with the violation by it the tax rules defined by the relevant laws. As you can see, the essence remained virtually the same, despite a stated absolute evolution of the tax legislation.

Penalty (from the lat. *poena*, punishment) (according to the Brockhaus and Efron encyclopedic dictionary [16, p. 175]) is charged in the force of law with the

taxpayers for late submission of various fees and charges to the Treasury. Late-fee is a fee in the form of interest accrued on the amount of tax debt (excluding penalties) that copes with the taxpayer in connection with untimely repayment of tax liability [17, p. 57]. TCU, namely Art. 14.1.162 [13] defines penalty as the amount of funds in the form of interest accrued on the amount of money in unpaid commitments established by the legislation.

Unlike fines, penalties, as a financial and legal sanction for the violation of tax legislation are defined in multiple or percentage to the unpaid amount of tax liability. The fundamental difference between the fine and penalties is that the basis of an application of the penalty are committing tax offences are illegal, guilty act, and the application of penalties not formally associated with the crime, even though its charges are the result of violations of tax legislation.

Thus, in accordance with the tax laws, financial and legal sanctions have punitive (penalty) and legal restoring character (fee-late). The presence of the punitive function is a specific sign which distinguishes the sanctions that fix the measures of legal liability from measures of the protection. The main purpose and function of the measures of protection – the restoration of violated rights of [6, p. 168].

Legal restoring sanctions are directed to the compensation for the harm caused by the State's financial crime, i.e. the penalty function is the compensation of losses inflicted to the State.

The characteristic signs of the financial and legal sanctions can be attributed as the origin of the special proceedings on the cases, concerning financial offences, as well as the appearance of its own procedural rules, periods of limitations and specific evidence. In particular, the extent of financial liability (penalties and fines) are applied in court or out of court according to the results of the tax audit, which detected the violation [6, p. 198].

Analyzing the concepts and features of the inherent financial and legal sanction for the violation of the tax legislation, you can single out the most typical of their signs: 1) Act by providing a method of financial and legal regulation of

social relations and the means of ensuring financial and legal liability for tax offences; 2) have a powerfully-forced nature of the failure or improper performance of tax obligations imposed on the subjects of tax relations; 3) apply specially authorized bodies of State power, bodies of the income and fees; 4) actual ground their application acts as legal fact is committing tax offences; 5) regulations consolidate the extent of financial and legal liability for the violation of tax legislation; 6) have foreigners violating and legal restoring nature; 7) have a monetary expression;

One of the aspects of the problems of the determination of the legal nature of financial and legal sanctions attributing them to a special type of legal liability is financial one. For example, in the opinion of Pr. M. Kucheryavenko [17, p. 218] financial and legal responsibility for the violation of tax legislation is in the form: charging the entire amount of concealed or low payment in the budget in the form of the tax; fine (which imposed tax authority); penalties for delay are charged with tax payer.

M. Kucheryavenko selects the features of financial and legal sanctions that do not allow them to equate administrative sanctions (unlike other scientists [17, pp. 28–33]). Firstly, they differ on the subject (administrative ones refer only to the individuals, financial and legal – to the physical). Secondly, administrative sanctions are implemented in monetary form, this term is more suitable for them, whereas financial sanctions are considerably more moneys. Thirdly, financial and legal sanctions for tax offences for the Foundation have tax coercion, which is characterized by specific features, the sign features which is the application of financial and legal sanctions without regard to fault the offender (in this sign of the authors consider as a feature of the State tax enforcement).

Y. Starilov defines the signs of the tax measures of coercion that are established by the different branches of law and applied in taxation [18, p. 102]. You can cite only a few of them: the mechanism of legal regulation of the tax force is determined by the administrative, financial and criminal law; extrajudicial measures of tax enforcement, which is carried out in the sphere of free

administrative relations; procedure for the applying of the tax coerced is determined particularly by the financial law and administrative-procedural norms; specific procedure for the application of coercive measures for tax it operational effects (response) [18, p. 108]. In general, we do not agree with the scientists who believe the tax sanctions to be a kind of administrative or civil one. Sectoral affiliation is the main sign of tax penalties, so they definitely have the measures of a financial responsibility.

**Conclusions.** Therefore, it is worth noting that the State of improper regulation of relations connected with the involvement to financial liability for tax offences, the use and implementation of financial and legal sanctions for violation of tax legislation, causes a different practice of applying measures of responsibility and differentiated judicial practice. A considerable number of regulations that establish the concept of financial, economic, administrative-household, penalties do not draw a clear definition and delineation of these definitions. A large number of regulatory acts involves the application of administrative sanctions (out of court). The lack of common definitions and legislative strengthening the notion of financial and legal sanctions has led to the fact that current legislation should place permanent duplication and law of conflict legislation. The consequence of this is that quite often the same concepts and terms have several definitions in each individually adapted regulatory act. We believe that every kind of financial-right sanctions (for example, tax, budget, currency, etc.) must find its reflection in the current legislation, which in the future will accurately differentiate them and will remove the need for scientific discussions in this field. Therefore, in our opinion, should be legislatively consolidated the following definition of tax sanctions as enforcement measures, the tax is intended to recover taxpayer's established order of the payment of taxes and fees as an extra material charge of the tax provisions offender.