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FINES AS A TYPE OF NON-TAXABLE PROCEEDS OF LOCAL BUDGETS AND THE SYSTEM OF ITS ADMINISTRATION

Paper discusses the types of offenses, for which the fines are imposed, proceeds of which eke out local budgets, analyzes the system administration (collection and monitoring of payment) of that penalties and highlights the problems in this field.

Keywords : *non-tax incomes, local budgets, fines.*

Among the *non-tax incomes* of the local budgets special place is taken by the fines because, as it rightly is noted by T. Bulahova, A. Zemtsov [1, p. 59], penalties are essential for filling the local budgets, as they can bring significant taxes to the above mentioned budgets, to act as an effective instrument for regulating the behaviour of legal and physical persons. Moreover, an accumulation of fines in special funds helps to address quickly critical social issues (garbage disposal, equipment, parking etc.). So, the creation of a simple but effective system of penalties enhances the image of power, helps in solving social problems and improving of an external accounting.

However, despite the fact that the *non-tax incomes* of the local budgets are considered in the works by V. Demyanishin, O. Muzika-Stefanchuk, V. Pismenij, O. Shamanic, and I. Yartseva, A. Yabluganov and other scientists, the fines as a kind of the *non-tax incomes* of local budgets in scientific literature are not investigated at full.

Therefore, the purpose of our work is the analysis of funds from foreclosure which fines are delivered to local budgets and research of their administration (i.e., system recovery and control of the payment of the fines).

The term "SHTRAF" in our legislation is relatively new, borrowed from the German ("die Strafe" – any punishment) [2, p. 44]. In the legislation of other

countries along with the term "penalty" is also used the term "pecuniary penalty" [3, p. 54]. The term "penalty" stated in the legislation, means the punishment for many kinds of crimes, as well as a measure of legal responsibility and is widely applied in the administrative, financial, tax, criminal, civil and customs law.

From the analysis of the Art. 69 of the Budget Code of Ukraine [4], we can make the conclusion that the *non-tax incomes* of local budgets in the form of penalties include the fines for violation of the legislation on the patenting (p. 11); administrative penalties imposed by the local bodies of executive power and bodies of local powers or by made by them in the prescribed manner the administrative commissions (p. 12); fines for failure of the budget agreements with entities on the acquisition of goods, works and services at the expense of local budgets (para. 13).

According to the Art. 125 of the Tax Code of Ukraine (TCU), the entity conducting commercial activity, carry out the trade in currency values, activities in the field of entertainment and provision of paid services, pay a penalty: for the infringement of the patent application foreseen by pp. 267.6.1-267.6.3 p. 267.6. 267 TCU (terms and conditions of the placement of commercial patent); for entrepreneurial activity, foreseen by Art. 267 TCU (trade activity point of sale merchandise, activities with provision of paid domestic services trade currency values, activities in the field of entertainment), without obtaining appropriate trade patents or in the violation of the order use shopping patent; for the realization of the goods specified in p. 267.2. 267 TCU without obtaining of preferential trading patent or with violation of the order of its receipt and use of the provided by pp. 267.6.4-267.6.6 p. 267.6. 267 TCU, for trade activities without purchasing a short-term patent, or in the violation of the order of its receipt and use of the provided by pp. 267.6.4-267.6.6 p. 267.6. 267 TCU, for the activities in the field of entertainment provided by the Art. 267 TCU without obtaining appropriate patent or trade in violation of the procedure for its use under pp 267.6.4 and 267.6.5 p. 267.6. 267 TCU. In addition, the penalty imposed for nonpayment of the amounts due to the implementation of certain types of entrepreneurial activities specified in §. 267.1.1 p. 267.1. 267 TCU [5]. According to the Letter of the Ministry of

Incomes of Ukraine "On the Application of the Penalties for the Violations of the Legislation on the Patenting" from 29.01.2010 No. 1846.7.23-7214.97 [6], the decision on the application of the sums or penalty (financial) sanctions according to the results of consideration of materials testing takes the head of the Ministry of the Incomes (or his Deputy) in the place of the State registration of a business entity, indicating in the decision the account of the local budget at the place of the payment for the commercial patent. A document that is required by the payment of a fine is a tax notification-decision that is issued in accordance with the Art. 58 TCU.. The appeal demands payment of a fine which is possible in administrative (regulatory) body of a higher level with the complaint for review of this decision or judicially.

According to Art. 27 of the Code of Administrative Offences, an administrative fine is a pecuniary penalty that is imposed on citizens and officials for administrative offences in cases and in the amount established by the Code and other laws of Ukraine [7]. Administrative fines can be overlapped by local bodies of executive power and bodies of local councils or made by them in the prescribed manner the administrative committees for administrative offences foreseen by the Art. 45 (avoidance of examination and preventive treatment of patients with venereal diseases), Art. 46 (intentional hiding of the source of the infection of venereal disease), Art. 92 (violation of the requirements of the legislation on the protection of cultural heritage), Art. 99 (violation of rules of electrical networks), Art. 103-1 (violation of the rules for use of energy or gas), Art. 103-2 (damage of pipelines in proceedings papers); art. 104 (the deterioration or destruction of the collected crop damage plantings of the collective agricultural enterprises, other governmental and public enterprises or farms), Art. 104-1 KUpAP (violation of the order and conditions of seed and seedling industry), ch. 1, 3, 4 and 5. 111 (for violations committed on airfields, not made in the State Register of aerodromes of Ukraine, outside the territory of the airfields and landing stages), art. 136 KUpAP (for committing violations on automobile transport), art. 138 KUpAP (violation of rules of trunk pipelines), art. 141 KUpAP (violation of rules of strip road drainage

ways), art. 142 KUpAP (violation of the land use rules of the detention of areas adjacent to the road routes), art. 149 KUpAP (violation of order of registration and the terms of settlement of residential buildings and residential premises), art. 149-1 (violation of the order of the single State Register of the citizens requiring the improvement of living conditions), art. 150 (violation of the rules for use of living houses and living space), art. 151 (arbitrariness seizure of residential premises), art. 152 (violation of the State standards, norms and regulations in the field of improvement of settlements, improvement of territorial settlements), art. 155-2 (spoof of the buyer or customer), art. 155 KUpAP (violation of rules of trade and provision of services to employees of trade, public catering and services, citizens engaged in business activity), art. 156 (violation of rules of trade in beer, alcohol, slaboalkogol'nimi drinks and tobacco), art. 156-1 (violation of legislation on protection of consumer rights), art. 175-1 (smoking tobacco in places, illegal decision of the respective village, Township, City Council), art. 179 (drinking beer, alcoholic, low alcohol drinks production), art. 180 (bring a minor to the State of an intoxication, (except of the cases concerning the juvenile's parents or persons substituting them), ch. 4, art. 181 (divination in public places), ch. 1, art. 182 KUpAP (violation of the requirements of legislative and other normative legal acts concerning the protection of the population from the harmful effects of noise or the rules of observance of silence in populated areas and public places), art. 183 (knowingly false challenge special services), art. 185-12 (create obstacles in carrying out work related to the maintenance of electricity), art. 186 (arbitrariness), St. 186-1 (illegal acts concerning State Awards). 189 (violation of the rules for the opening and operation of the ink and engraving workshops), art. 189-1 (violation of order of extraction, production, use and sale of precious metals and precious stones, precious stones of organogenic formations and semi-precious stones), art. 196 (violation of rules of teaching karate), art. 212-1 (failure to call in the military commissariat) [7]. The penalty is imposed on the offender by a ruling in an administrative case about imposing of an administrative penalty in the form of a fine. The resolution comes into legal force upon the expiry of the term of appeal

(appeal) this Ordinance, except for the resolutions on the application of prevention, as well as in the cases of the imposition of the fine, levied on the place of committing an administrative offence. The fine must be paid by the infringing party not later than fifteen days from the day of handing him the decision imposing the fine, and in the case of the appeal or protest such a decision not later than fifteen days after notice of the abandonment of the complaint or protest, without satisfaction. Decision of the Administrative Commission may be appealed by the person against whom it is imposed, as well as victims in the Executive Committee the appropriate Council or district in the city, city or regional Court in the manner prescribed by the Code of Administrative Procedure of Ukraine [8]. The Court's decision is final. The person who claimant on administrative offences, is exempted from payment of the State duty (art. 288 P) [7]. Detection of committed crimes relies on the internal affairs organs and other bodies that make up the ruling on administrative offences in accordance with the requirements of the Code and transmit it for consideration to the local executive bodies, executive bodies of local councils or forming in the prescribed manner administrative commissions.

Complaint on the ruling in the case of administrative offences may be filed within ten days from the day of issuing rulings. In case you missed the deadline for valid reasons this period for the claimant, concerning which the rendered resolution can be renewed authority, qualified complaint (the Executive Committee of the Council or district in the city, city or regional Court). Submissions deadline complaint stops execution of the resolution about imposing of an administrative penalty for the consideration of the complaint. A Prosecutor's protest stops the execution of the resolution for the consideration by the protest. Complaint and protest at the ruling in the case dealt with the relevant authorities in the ten-day period from the date of their receipt, unless otherwise was not provided by laws of Ukraine. The relevant authority (Executive Committee of the Council or district in the city, city or regional Court) when considering a complaint or protest on a ruling in the case of administrative offence checks the legality and validity of the resolution and takes one of the following solutions: 1) leaves the resolution without

changes, and a complaint or protest without satisfaction; 2) cancels the order and sends the case for reconsideration; 3) repeals Decree and closes the deal; 4) changes the event collection within the stipulated by the administrative act, responsibility for administrative offences, to foreclosure has not been strengthened [8]

In the absence of an independent income of persons aged sixteen–eighteen years who have committed administrative offences, the penalty will be charged of the parents or persons substituting them. The fine, imposed for committing administrative offences, is introduced by the infringer in the institution of the Bank in Ukraine. In case of failure a lawbreaker fine in deadline, resolution of the penalty is sent to the enforcement Department of the State Executive Service at the place of residence of the offender, or at the location of his property. Resolution on the imposing a fine, according to which the penalty of a fine was conducted fully, with a note on execution returns to State, which issued the ruling.

Monitoring of the proper implementation of the violators of its obligation to pay the fines imposed on the local executive authorities and executive bodies of local councils or educated them in the prescribed manner of the Administrative Commission, however, in the case of appeal against the ruling in the case of administrative offence in court, as well as failure in voluntarily committed the violation fine control is relied on the departments of the State Executive Service.

Fines for failure comply with the provisions of budget agreements with entities on the acquisition of goods, works and services at the expense of local budgets is a kind of economic sanctions, that rely on the subjects in the event of failure to comply with their contractual terms concluded administrator of budget funds for the purchase of goods, works and services at the expense of local budgets. A person who has violated the economic obligations under this contract, shall pay to the local governments, along with compensation for damages, punitive sanctions. According to Part 1 of Art. 230 of the Commercial Code of Ukraine (GKU) [9], punitive sanctions are economic sanctions in several forms. Commercial Code does not defin exactly what is to be understood under each of

these types of economic sanctions and how they differ from each other. Civil legislation defines all three types of penalty responsibility as the varieties of forfeit. So, in the Art. 549 of the Civil Code of Ukraine [10] it is stated that the forfeit (fine, penalties) is a monetary amount or other property that the debtor must give the lender in the case of the debtor commitments, however, separately given the concept of fine and penalty: fine is calculated as a percentage of the amount of enforced or improperly performed obligations and penalties is calculated as a percentage of the amount of time made money commitment for each day of delay. As Mamutov states[11, p. 459], unlike the economic penalty of liability, which may apply only in monetary form, civil penalties can be implemented including foreclosure of the party in fault.

Very important is the question of the determining of the size, which levies punitive sanctions. This size may be defined both in the law and in the contract. Unlike the determination of the amount of damages where there are evaluation category, the penalties are strictly tied with the amount of enforced commitment, days of delay, the percentage ratio. According to the general rule, if the law defined the size of the penalties, modify it by agreement of the parties, such changes will be deemed void. At the same time, in accordance with part 2 of art. 231, which norms apply if legal relations is the so-called public element (in our case – local budgets) to violators of the terms of the contract apply punitive sanctions (unless otherwise provided by law or contract) in the following amounts: for violations of the terms of the commitment to quality (completeness) of goods (works, services) will be charged a penalty equal to twenty percent of the cost of poor quality (nekomplektnih) goods (works, services); for violations of the terms of performance of obligations will be charged penalty in the amount of 0.1 per cent of the value of goods (works, services), of which entered delay execution for each day of delay, and delay more than thirty extra days will be charged a penalty equal to seven per cent of the specified value. Administrative fines are paid by the infringing party voluntarily or by the decision of the administrative court.

Administrative fines are paid by the infringing party voluntarily or by the solution of the administrative court. So, the administration of these fines are engaged in various organs and institutions. Thus, the detection of violations of tax legislation, which provides for imposition of penalties in the form of fines, is carried out with the divisions of the Ministry of Incomes of Ukraine, administrative offences – organs of Internal Affairs and other relevant bodies, violations of economic legislation, local executive authorities and executive bodies of local councils, which concluded with the entity contract on purchase of goods, works and services at the expense of local budgets. Clearance requirements on payment of the relevant penalties are: units of the Ministries of Incomes (tax notices), local executive bodies, executive bodies of local councils or educated them in the prescribed manner the Administrative Commission (decision in the case of administrative offences or the requirement of the payment of commercial fine). It is believed that the offender must perform his duty of paying fines voluntarily.

The system of the Appeal of Imposed Fines is complex and extensive one. The requirement to recover penalties can be appealed both in the administratively (regulatory body of higher level), and in other courts. Thus you can litigate in one, then another, then resort to unscrupulous violators delay maturity of fines. When a judicial appeal against the penalty administrative fine duty with charging and control over monetary fines relies on the departments of the State Executive Service, which must be much better.

Therefore, the system of administrative fines in local budgets is challenging, complex and inefficient one. Many institutions are somehow involved in the replenishment of these budgets, control system and charging fines are sent to local budgets as multi-level, complex and, in some cases, inefficient. It may be stated that the system of the administrative penalties as a kind of *non-tax incomes* in the local budgets needs an improvement, which can be the subject of further research

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