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FINANCIAL-LAW SANCTIONS AS AN AUTONOMOUS FORM OF IMPLEMENTATION OF PUBLIC-LAW LIABILITY: THEORY, REGULATION AND COMPARATIVE PRACTICE

Monograph

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The author conducts relevant scientific research that has an important applied meaning, namely, theoretical basics, legal nature, characteristics and features of an important parameter of market relations—financial-law sanctions—are studied. After all, extent and number of economic and administrative disputes, and, accordingly, stability and security of doing business, legality of activities of fiscal control bodies, avoiding mistakes by judicial authorities depend on their correct and unified understanding by all entities of financial activities.

Having not only the experience of theoretical research, co-authorship in writing the law on financial-law sanctions, but also extensive, long-term law enforcement own practical activities in the field of public finance, the author emphasizes the further substantiation of independent financial-law liability, and its relationship with other types of legal liability, determines position of financial-law sanctions in the system of financial coercive measures.

The research highlights and systematizes functioning of financial sanctions in Ukraine (taking into account changes in legislation due to spread of COVID-19 and introduction of martial law), experience of leading countries in various legal systems of the world as of the end of 2022.

The monograph is intended for students, postgraduates and teachers of law and economics faculties, entrepreneurs, judicial authorities, employees in fiscal control, law enforcement agencies, who are interested in financial law issues due to areas of expertise or professional activities.

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CONTENT

LIST OF ABBREVIATIONS

ARC	—	Autonomous Republic of Crimea
BCU	—	Budget Code of Ukraine
UK	—	United Kingdom of Great Britain and Northern Ireland
VRU	—	Verkhovna Rada of Ukraine
SCU	—	Supreme Court of Ukraine
IRC	—	Internal Revenue Code
SBU	—	State Budget of Ukraine
STU	—	State Treasury of Ukraine
SFS	—	State Fiscal Service
SCSSM	—	State Commission for Securities and Stock Market
LU	—	Law of Ukraine
USC	—	United States Code
CAPU	—	Code of Administrative Procedure of Ukraine
CRCU	—	Criminal Code of Ukraine
CMU	—	Cabinet of Ministers of Ukraine
CU	—	Constitution of Ukraine
CUAO	—	Code of Ukraine on Administrative Offenses
IMF	—	International Monetary Fund
Ministry of Revenue	—	Ministry of Revenue and Duties of Ukraine
USDT	—	U. S. Department of the Treasury
Ministry of Finance, MFU	—	Ministry of Finance of Ukraine
Ministry of Justice	—	Ministry of Justice of Ukraine
CUCU	—	Customs Code of Ukraine
TCU	—	Tax Code of Ukraine
IRS	—	Internal Revenue Service
USA	—	United States of America
F	—	Federal Republic of Germany
CICU	—	Civil Code of Ukraine
CPCU	—	Civil Procedure Code of Ukraine

INTRODUCTION

In the contemporary phase of global economic transformation, fiscal restructuring, financial instability, and intensified regulatory intervention of the state, the financial dimension of public authority acquires a qualitatively new doctrinal significance. Public finance is not merely an economic subsystem; it represents a legally constructed order grounded in imperium, realized through coercitio publica, and directed toward the protection of utilitas publica. The viability of the modern state, its institutional sustainability, and its capacity to ensure social and economic development depend on the normative coherence of financial law as an autonomous branch within the system of public law.

The financial system of a state constitutes a structured complex of monetary relations concerning the formation, distribution, redistribution, and use of centralized and decentralized funds. These relations exist exclusively in legal form, since public finance operates under the regime of imperative regulation (normae imperativae) and is characterized by vertical subordination and asymmetry of legal status between the state and private subjects. In this sphere, the principle of autonomy of will (autonomia voluntatis), typical for private law, is replaced by the logic of authoritative prescription (praeceptum imperativum).

The internal architecture of financial law is formed by financial-law norms that embody the dialectical unity of hypothesis, disposition, and sanction. However, the concept of sanction in financial law cannot be reduced to its formal structural position within a norm. It possesses a dual ontological status: on the one hand, it functions as an element of the normative construction (norma in abstracto); on the other hand, it manifests itself as a concrete measure of liability applied in response to a financial offense (norma in concreto). The differentiation between the "sanction of a financial-law norm" and "financial-law sanction" is therefore not terminological but conceptual, reflecting the distinction between normative potentiality and legal actuality.

The scientific relevance of studying financial-law sanctions as an autonomous legal category derives from the unresolved doctrinal debate concerning the independence of financial-law liability. For decades, legal scholarship has oscillated between recognizing financial liability as sui generis and subsuming it under administrative or economic liability. This fluctuation has generated conceptual uncertainty (confusio terminorum), weakened systematic interpretation (interpretatio systematica), and undermined the principle of legal certainty (principium certitudinis iuris).

The current legislative framework in Ukraine illustrates this ambiguity. Numerous normative acts employ the term “financial sanctions” without defining their legal nature, thereby conflating heterogeneous institutions of liability. As a result, sanctions that differ in legal grounds, procedural mechanisms, and protected interests are artificially unified under a single terminological umbrella. Such legislative practice contradicts the logic of branch differentiation (divisio ramorum iuris) and disrupts the internal coherence of public-law doctrine.

The problem is not purely semantic. The absence of a clear doctrinal model leads to inconsistent judicial qualification, divergent limitation periods, and contradictory enforcement practice. This situation reveals a deeper methodological deficiency—the lack of a coherent theoretical framework capable of distinguishing financial-law sanctions from other monetary coercive measures. Without such differentiation, the system of public-law responsibility risks losing its structural integrity (integritas systematis).

The present research proceeds from the hypothesis that financial-law sanctions constitute an autonomous form of public-law liability (genus proprium responsabilitatis publicae), defined by the specific sphere of public finance and by the protection of fiscal interests (interesse fiscale). Their legal nature is determined not by the monetary character of enforcement per se, but by the subject matter of legal regulation (ratio materiae) and by the teleological orientation toward safeguarding the stability of public financial order (ordo fiscalis).

Financial-law sanctions perform a complex functional role. Beyond their punitive dimension (functio punitiva), they embody restorative (functio restitutiva) and preventive (functio praeventiva) functions. Through these mechanisms, the state ensures fiscal discipline, protects budgetary resources, and maintains the equilibrium of public financial relations. In this sense, sanctions operate as instruments of normative equilibrium (aequilibrium normativum), balancing individual economic autonomy with the supremacy of public interest.

The philosophical foundation of financial-law sanctions may be examined through the prism of proportionality (principium proportionalitatis), legality (nulla poena sine lege), and justice (aequitas). A sanction must correspond to the gravity of the financial offense, preserve systemic coherence, and respect the hierarchy of legal values. The principle of proportionality ensures that state coercion does not exceed the bounds of necessity (necessitas non habet legem), while the principle of legality guarantees predictability and transparency of enforcement.

The relevance of this research is further conditioned by contemporary tendencies toward fiscalization of public governance and expansion of regulatory oversight. The increasing complexity of financial administration requires doctrinal clarity in defining the limits and mechanisms of state coercion. Ineffective or conceptually inconsistent regulation of financial sanctions negatively affects business stability, undermines taxpayer confidence, and weakens the authority of fiscal institutions.

The objectives of the study therefore include the formulation of a comprehensive doctrinal definition of financial-law sanctions; identification of their material and procedural characteristics; clarification of their relationship with financial-law liability and financial offenses; differentiation from administrative-economic and civil-law monetary measures; analysis of legislative regulation and enforcement practice; comparative examination of selected foreign jurisdictions; and development of proposals aimed at strengthening conceptual coherence within Ukrainian financial legislation.

Methodologically, the research integrates dialectical analysis, system-structural interpretation, formal-dogmatic examination of normative acts, comparative-legal analysis, hermeneutic clarification of legal concepts, and legal modeling. The empirical basis encompasses Ukrainian financial, tax, budgetary, and banking legislation, judicial practice of administrative and economic courts, and selected foreign doctrinal sources.

The scientific novelty of the study lies in the systematic substantiation of financial-law sanctions as independent measures of financial-law liability. The research develops a clear doctrinal distinction between “financial sanctions” in a broad fiscal sense and “financial-law sanctions” sensu stricto. It is argued that only fines and penalties directly established by financial legislation qualify as financial-law sanctions, whereas other monetary public-law measures should be classified as fiscal sanctions. Furthermore, a unified structural model is proposed linking financial offense (delictum fiscale), financial liability, and sanction as its material embodiment.

Thus, the monograph does not confine itself to a descriptive analysis of the existing legislative framework but seeks to develop a coherent doctrinal model of financial-law sanctions grounded in contemporary principles of systematic interpretation, proportionality, and legal certainty. By clarifying conceptual boundaries and refining categorical distinctions, the research aims to strengthen the theoretical foundations of public finance law and to promote greater structural coherence in fiscal governance within the modern state. The study is based on an integrated methodological approach that combines doctrinal analysis of financial legislation, the comparative legal method, a systemic-functional perspective, and elements of philosophical jurisprudence. Proceeding from the premise that financial-law sanctions represent an autonomous category within public law, the research emphasizes the necessity of distinguishing them from civil-law remedies notwithstanding possible terminological or formal similarities.

Section 1
THEORETICAL BASICS OF DEVELOPMENT AND EXISTENCE OF FINANCIAL AND LEGAL SANCTIONS

1.1. Concept and Content of Financial-Law Sanctions

Inviolability of state and legal regulations in the financial field of activities and their protection against illegal encroachments are ensured, in particular, due to implementing the government prerogative by the state to impose financial-law liability on violators of financial norms and apply financial-law sanctions. It is difficult to overestimate the importance of such a state tool as financial-law sanctions in dealing with financial offenses, but it is necessary to note a certain imperfection in their study by domestic science, the lack of a unified doctrinal approach on understanding the initial knowledge of financial-law sanctions and the need to conduct a detailed study of the specified legal phenomenon in modern conditions of market economy of our country and active reforming the legislative framework.

The term "sanction" (from the Latin sanction—the most stringent resolution) is actively used in scientific research, educational literature, current legislation of Ukraine and in judgments. At the same time, points of view of scientists and options for understanding and explaining the concept of sanction have noticeable differences.

Currently, scientific research in this issue allows dividing into the following sublimated groups due to the synthesis of various approaches:

1) *sanction as adverse consequences*.

Among those, Ukrainian scientist T. O. Kolomoiets notes that sanction represents those coercive measures or adverse consequences of a personal, property or public nature, which the state can apply for violating a specific rule of conduct that is defined in disposition of the norm[1]. Although the mentioned scientists have a unanimous opinion that the reason for applying sanctions, and, accordingly, adverse consequences, is a violation, which should be agreed with. However, T. O. Kolomoiets specifies an object of violation, namely, the rule of conduct included in disposition of the norm and determines nature of measures that represent sanctions. At the same time, it is impossible to equate sanctions with adverse consequences taking into account unjustified limitation of the entire list of adverse consequences for a person only to sanctions;

2) *sanction as a means of coercion.*

V. P. Nahrebelnyi considers financial sanctions as means of state coercion envisaged by financial-law norms, which impose additional burdens on offenders as impact on their financial condition[2]. According to Ya. M. Shevchenko, sanction is a coercive measure applied by the state in case of violation of the law norms[3].

Considering sanctions as means of coercion applied for violations, the mentioned scientists approach their definition somewhat differently. In the first case, it is noted that such a coercion is demonstrated by the state, which is significant in forming an institution of state coercion, which is the only one that can be discussed in this case, and attention is also paid to the fact that sanctions represent additional burdens. However, a significant drawback of this statement is that sanction is not related to the concept of liability, which is covered by the concept of coercion, which, in turn, is not always demonstrated through applying sanctions. Although the second concept is related to the sanction and liability, it does not break the essence of sanctions in full. The last statement is also too simplified;

3) *sanction as an indication of measures of state coercion.*

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1 Kolomoiets, T. O. *Administratyvne pravo Ukrainy: Pidruchnyk* [Administrative law of Ukraine: Textbook]. Kyiv: *Istyna*, 2008. P. 142. [in Ukrainian]

2 Nahrebelnyi, V. P., Chernadchuk, V. D., Sukhonos, V. V. *Finansove pravo Ukrainy*. *Zahalna chastyna: navch. posibnyk* [Financial law of Ukraine. General part: textbook]. Endorsed by V. P. Nahrebelnyi. Kyiv, 2003. P. 199. [in Ukrainian]

3 Shevchenko, Ya. N. *Pravovoe regulirovanie otvetstvennosti nesovershennoletnih* [Legal regulation of the liability of minors]. Kyiv, 1976. P. 29.

According to A. H. Pyshnyi, a financial-law sanction is a protective indication of the financial-law norm for measures of state coercion, which are applied by competent authorities for the entity that committed financial offense, and are undesirable and negative for the offender[4].

It should be agreed that sanction expresses certain coercive measures applied by the state to the financial offender, but not through indications of such coercive measures, through their direct embodiment. The sanction is an appropriate liability, which is not the same as the state coercion;

4) *sanction as a response of the state.*

Domestic professor V. B. Averianov considered sanction as a negative response of the state to violation of the legal norm, which arises only in case of illegal conduct or improper implementation of generally established rules[5]. At this stage, it should be noted that not every case of illegal conduct entails applying sanctions, but only that case, which is recognized and normatively established by the legislator as an offense. In addition, although sanction can be generally characterized as a response of the state to the offense, it should be defined more precisely as a measure of liability, since the rest of coercive measures will be also considered as a response of the state;

5) *sanction as an assessment by the state.*

Representative of legal science E. O. Sattina believes that "sanction should be considered as a mandatory element of the norm of law, which envisages the type and measures for state provision of disposition of the legal norm, which includes a final assessment"[6]. It should be agreed that sanction includes a final assessment of the offense by the state, but it is not direct;

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[4] Pyshnyi, A. H. *Poniattia finansovo-pravovoi sanktsii. Problemy finansovoho prava: materialy mizhnarod. nauk. konf.* [The concept of financial-law sanction. Problems of financial law: materials of the International Scientific Conference]. Chernivtsi, 1996. Issue 2. P. 79. [in Ukrainian]

[5] Averianov, V. B. *Vykonavcha vlada i administratyvne pravo* [Executive power and administrative law]. Kyiv: *Izd-vo "In-Yure"*, 2002. P. 597. [in Ukrainian]

[6] Sattina, E. A. *Osnovnye aspekty pravovogo sankcionirovaniya* [Main aspects of legal sanctioning]: dissertation for the degree of Candidate of Legal Sciences Tolyatti, 2001. P. 8.

6) *sanction as a permission to perform certain actions.*

The term "sanction" is also understood as "sanctioning"— permission of the state to perform a certain action. In this sense, the sanction does not act as the third structural element of the legal norm, since, on the contrary, failure to receive this sanction, actions without appropriate permission are in violation of disposition of the legal norm, which entails applying legal liabilities. Actions of parties to legal relations, which consist in obtaining an appropriate government permission from the competent authority, ensure disposition of the legal norm. Sanctioning can be considered as an integral part of law application, as a permission to perform a certain action (activity) envisaged in legal acts;

7) *sanction as an element of the norm of law.*

Legal theorist V. I. Hoiman notes that "sanction is understood as that part of the legal norm, which indicates consequences of fulfilling or failure to fulfill the rule of conduct (disposition of the norm)" [7].

Similarly, T. O. Kolomoiets, a representative of Ukrainian financial-law doctrine, defines a sanction as a component of a legal norm that provides for the application of measures of state coercion in the event of a violation of financial legislation, aimed at preventing offenses and eliminating their harmful consequences [8].

Thus, a sanction may be defined as a part of the legal norm that envisages a measure of state coercion applied in case of an offense and aimed at preventing violations, correcting unlawful behavior, restoring violated legal order, and compensating for damage caused by illegal acts [9].

Certainly, it should be agreed that a sanction is a structural component of the legal norm and is logically connected with its other elements (hypothesis and disposition). However, in this sense,

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[7] Goyman, V. I. *Pravonarushenie i yuridicheskaya otvetstvennost*. *Obschaya teoriya gosudarstva i prava* [Offense and legal liability. General theory of state and law]. Edited by V. V. Lazarev. M.: *Izd-vo MGU*, 1999. P. 136.

[8] Kolomoiets, T. O. *Finansove pravo Ukrainy* [Financial law of Ukraine]. Kyiv, 2010. 456 p. [in Ukrainian]

[9] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of law and state]. Kharkiv: Konsum, 2011. 656 p. [in Ukrainian]

the concept of sanction remains limited when it is used exclusively to denote specific measures of legal liability, since the sanction cannot be separated from the legal norm as an integral whole;

8) *sanction as a measure of state coercion.*

In Ukrainian legal doctrine, a financial-law sanction is commonly understood as a measure of state coercion provided for by a financial-law norm, expressed predominantly in monetary form, and applied by authorized state bodies to subjects who have committed a financial offense, with the aim of ensuring the stability and protection of financial legal relations and punishing offenders[10]. According to O. F. Skakun, a sanction represents a normative determination of measures of state coercion applied in response to an offense and serves as a form of legal liability. M. V. Kostytskyi also emphasizes that a sanction should be regarded primarily as a form of state reaction to unlawful conduct, combining elements of coercion, legal assessment of the offense, and enforcement of legal norms[11].

At the same time, these approaches may be criticized insofar as they tend to overly generalize the concept of sanction by equating it entirely with state coercion, despite the broader and more complex content of the notion of "state coercion" itself. Thus, as follows from the above, the multiplicity of meanings of the term "sanction" indicates its multifunctional nature, which manifests differently depending on the specific legal context.

In terms of objective law, the main point of sanction as a legal liability measure is that sanction of the norm, as its component, regulating consequences of non-compliance with the rule of conduct established by the norm, acts simultaneously as an independent embodiment of state influence on the violator, regulating the type and extent of response of the state to illegal conduct. At the same time, expressing consequences of committing an offense, the sanction acts as an independent measure of liability of entity for non-compliance with the norm of law.

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[10] Nahirna, M. V. *Finansovo-pravova vidpovidalnist* [Financial-law liability]. Kyiv, 2013. 272 p. [in Ukrainian]

[11] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of law and state]. Kharkiv: Konsum, 2011. 656 p. [in Ukrainian]

In terms of subjective law, the main point of sanction is actually non-alternative obligation of the offender to suffer adverse consequences envisaged by the sanction.

The given meanings of sanction are interrelated and that is why sanctions should be considered in a legal tandem for the most complete representation of the concept.

In view of the above, *sanction should be understood as a measure of legal liability ensured by coercive power of the state, aimed at restoring the violated law and (or) punishing a guilty person, envisaged by the legal norms, and which is applied to the offender in case of non-fulfillment of regulations of this norm*.

The general theoretical basics of the concept of sanction are the basis for formulating the concept of financial-law sanction, which is endowed with certain specific features due to peculiarities of the financial field of activities of the state and financial law that regulates it. Relations that arise in formation, distribution and spending of funds by the state and its bodies, being the subject of financial law, are regulated by financial-law norms, which are universally binding rules of conduct established by competent authorities and ensured by coercive power of the state in their application. This means that if the rule assigned by the financial-law norm is not executed voluntarily, the state forces the execution of these rules by applying measures envisaged by the sanction of the norm.

Thus, financial norms have a binding (imperative) nature, which is ensured by coercive power of the state, and include the state command. In this case, imperative acts as a peremptory regulation, which excludes changing conditions of norms upon the expressed will of parties to relations.

In general, referring to the concept of imperativeness, the following should be emphasized. The term “imperative norm” originates from Latin: ***imperativus***—commanding, authoritative, derived from ***imperium***—authority, state power. In Roman law, four functions of legal norms—command, prohibition, permission, and punishment—were traditionally distinguished for a long period. However, since command and prohibition are essentially identical in legal nature, they were subsequently combined into a single function. Over time, the punitive function came to be regarded as an auxiliary element of command, as punishment loses its meaning without an obligation to perform or refrain from a certain action. As a result, two basic functions of legal norms remained: the peremptory (imperative) and the permissive (dispositive) ones.

The use of imperative norms in Roman law was primarily associated with public activities of the state, particularly in the sphere of tax collection and other compulsory payments to the treasury, and played a significant role in ensuring the effectiveness of such activities. In modern legal systems, including that of Ukraine, public financial relations continue to be regulated predominantly by imperative norms due to the public nature of financial legal relations. This characteristic of financial-law norms directly affects the form of state influence on violators, which is exercised through measures established by the sanction of a financial-law norm. Such influence is implemented through the imposition of financial-law liability, which, from the standpoint adopted in this study, constitutes a form of state condemnation expressed, in terms of subjective law, as a legally defined, guaranteed, and enforceable obligation of the offender to endure adverse consequences in the form of financial sanctions for an offense committed in the field of public finance.

As regards the definition of the concept of a financial-law sanction, legal doctrine does not demonstrate unanimity, which generally corresponds to broader theoretical difficulties in defining sanctions as a legal phenomenon. Thus, Ukrainian scholar M. V. Karasova defines the sanction of a financial-law norm as "its structural element that indicates coercive measures applied to subjects who violate the disposition of a financial-law norm[12]." This approach considers the sanction primarily as a component of the legal norm.

According to N. I. Khimicheva, sanctions "establish the consequences of violating a legal norm and determine the type and scope of legal liability, including financial-law liability; state

[12] Karasova, M. V. *Finansove pravo Ukrainy* [Financial law of Ukraine]. Kyiv, 2010. 456 p. [in Ukrainian]

coercion aimed at ensuring compliance with financial-law norms is realized through sanctions[13]." This definition is generally acceptable, except for the assertion that sanctions determine different types of liability, since financial-law sanctions function exclusively as measures of financial-law liability.

Ukrainian researcher O. A. Muzyka defines a financial sanction as a complex legal phenomenon encompassing measures of liability, preventive influence, restorative consequences, and other unfavorable effects arising after the commission of a financial offense[14]. At the same time, M. V. Karasova and Yu. S. Krokhina emphasize that financial sanctions are coercive measures provided for by financial law norms, which impose additional property burdens on offenders in the form of fines and penalties[15].

Thus, despite differences in doctrinal approaches, scholars generally interpret financial-law sanctions as measures of legal liability. The shortcomings of such interpretations include, first, insufficient clarification of the specific type of liability involved, which may lead to ambiguous qualification of sanctions, and second, the lack of explicit emphasis on their dual functional orientation—punitive and restorative—which distinguishes financial-law sanctions from other forms of public-law liability.

At this stage, it is also necessary to distinguish between the concepts of "financial-law sanctions" and "financial sanctions," which are often used interchangeably in legislation. Ukrainian legislation widely employs the term "financial sanction," particularly in tax and fiscal regulation. For instance, the Tax Code of Ukraine equates the concepts of "financial sanction" and "penalty (fine) sanction," without establishing a substantive distinction between them[16].

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[13] Khimicheva, N. I. *Finansove pravo* [Financial law]. Kyiv, 2009. 512 p. [in Ukrainian]

[14] Muzyka, O. A. *Finansovo-pravova vidpovidalnist* [Financial-law liability]. Kyiv, 2013. 272 p. [in Ukrainian]

[15] Karasova, M. V., Krokhina, Yu. S. *Finansove pravo Ukrainy* [Financial law of Ukraine]. Kyiv, 2012. 480 p. [in Ukrainian]

[16] Podatkovyi kodeks Ukrainy [Tax Code of Ukraine]: Law of Ukraine of 02.12.2010 No. 2755-VI (as amended).

Furthermore, Article 17 of the Law of Ukraine No. 3817-IX "On State Regulation of Production and Circulation of Ethyl Alcohol, Distillates, Bioethanol, Alcoholic Beverages, Tobacco Products, Tobacco Raw Materials, Liquids Used in Electronic Cigarettes, and Fuel" of 18 June 2024 provides for the application of financial sanctions to business entities in the form of fines for violations of licensing and regulatory requirements[17]. In accordance with the current wording of this Law, financial sanctions in the form of fines are imposed on business entities, including foreign entities operating through permanent establishments in Ukraine, in particular, for the following violations:

production of liquids used in electronic cigarettes without an appropriate license—a fine amounting to 200 percent of the value of manufactured products, but not less than 20,000 hryvnias;

production of ethyl alcohol, distillates, bioethanol, alcoholic beverages, tobacco products, or tobacco raw materials without a license—a fine amounting to 200 percent of the value of manufactured products calculated at wholesale prices, but not less than 85,000 hryvnias;

production of alcoholic beverages using types of alcohol not permitted by law—a fine amounting to 200 percent of the value of manufactured products calculated at wholesale prices, but not less than 15,000 hryvnias;

production of fuel without a license—a fixed fine in the amount of 100,000 hryvnias;

retail trade in fuel or storage of fuel without an appropriate license—a fine in the amount of 50,000 hryvnias;

wholesale trade in beer by producers exceeding the statutory production threshold without proper licensing—a fine amounting to 200 percent of the value of the sold batch of goods, but not less than 50,000 hryvnias;

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[17] Law of Ukraine No. 3817-IX "On State Regulation of Production and Circulation of Ethyl Alcohol, Distillates, Bioethanol, Alcoholic Beverages, Tobacco Products, Tobacco Raw Materials, Liquids Used in Electronic Cigarettes, and Fuel" of 18 June 2024. Official Gazette of Ukraine. Effective as of 1 January 2025. [in Ukrainian]

retail trade in alcoholic beverages or fuel through cash registers or accounting books not specified in the license—a fine amounting to 200 percent of the value of products sold through such devices, but not less than 10,000 hryvnias;

settlement of excise tax or value added tax liabilities through non-monetary forms prohibited by law—a fine equivalent to the value of the shipped products [18];

violation of special restrictions and prohibitions concerning retail sale of alcoholic beverages and tobacco products established by Article 15 of this Law—a fixed fine in the amount established by law at the time of the offense.

We note that Article 33 of the Law of Ukraine "On the Individual Deposit Guarantee System" provides for the application of financial sanctions to banks. In case of violation by banks of the legislation governing the individual deposit guarantee system, the Deposit Guarantee Fund of Ukraine applies response measures, including the imposition of fines, in accordance with the procedure and limits established by this Law and regulatory acts of the Fund [19].

Thus, when the Fund applies a financial sanction to a bank in the form of a fine, the following amounts may be imposed:

failure to submit, untimely submission, or submission of unreliable information by a bank to the Deposit Guarantee Fund, where such information is required by law or regulatory acts of the Fund, entails the imposition of a fine of up to 0.1 percent of the amount of the bank's authorized capital;

violation by a bank of the procedure for maintaining the depositor database entails the imposition of a fine of up to 0.1 percent of the amount of the bank's authorized capital;

failure to implement or untimely implementation by a bank of decisions, regulatory acts, or binding orders of the Deposit

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[18] Tax Code of Ukraine: Law of Ukraine No. 2755-VI of 2 December 2010 (as amended). Official Gazette of Ukraine. [in Ukrainian]

[19] *Pro systemu harantuvannia vkladiv fizychnykh osib: Zakon Ukrainy vid 23 liutoho 2012 roku* № 4452-VI [On the Individual Deposit Guarantee System: Law of Ukraine No. 4452-VI dated February 23, 2012] / *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2021. No. 50. Article 564. [in Ukrainian]

Guarantee Fund to eliminate violations entails the imposition of a fine of up to 0.1 percent of the amount of the bank's authorized capital.

The imposition of a financial sanction in the form of a fine by the Deposit Guarantee Fund does not release the bank from the obligation to eliminate the identified violations.

In this regard, according to Article 20 of Law of Ukraine No. 222-VIII "On Licensing of Types of Economic Activities"[20] dated March 2, 2015, establishes that financial sanctions in the form of fines may be applied to business entities for: carrying out licensed economic activities without obtaining a license; carrying out activities during the suspension of a license in full or in part; failure to comply with an order to eliminate violations of licensing conditions; failure to notify licensing authorities of changes to information specified in licensing documents; as well as for violations identified during monitoring of licensees, including restrictions concerning residents of states committing armed aggression against Ukraine.

Martial law was introduced in Ukraine by Decree of the President of Ukraine No. 64/2022 dated February 24, 2022[21]. In connection with the introduction of martial law, the State Tax Service of Ukraine clarified that, taking into account the provisions of the Tax Code of Ukraine concerning force majeure circumstances, penal sanctions and measures to revoke licenses are not applied where the failure to obtain, renew, or pay for a license was caused by circumstances of force majeure duly confirmed in accordance with the law. In such cases, licenses related to: 1) production, wholesale and retail trade of alcoholic beverages, tobacco products, and liquids used in electronic cigarettes; 2) production, storage, wholesale and retail trade of fuel, are considered valid for the period of force majeure. At the same time,

[20] *Pro litsenzuvannia vydiv hospodarskoi diialnosti: Zakon Ukrainy vid 02.03.2015 № 222-VIII, № 1775-III* [On Licensing of Types of Economic Activities: Law of Ukraine No. 222-VIII dated March 2, 2015, No. 1775-III]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2015. No. 23. Article 158. [in Ukrainian]

[21] Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine", No. 64/2022 dated 24 February 2022; Tax Code of Ukraine (as amended). Kyiv: Verkhovna Rada of Ukraine.

the relevant obligations must be fulfilled by the business entity immediately after the termination of such circumstances.

According to Article 44 of Law of Ukraine No. 1805-III "On Protection of Cultural Heritage" dated June 8, 2000[22], authorized cultural heritage protection bodies apply financial sanctions in the form of fines to legal entities that are owners, authorized bodies, or contractors for works, in the event of violations of statutory requirements concerning the maintenance, use, preservation, or protection of cultural heritage sites, archaeological territories, and related objects. Decisions of cultural heritage protection authorities on the application of financial sanctions may be appealed in court in accordance with the procedure established by law.

Thus, Article 44 of Law of Ukraine No. 4004-XII "On Ensuring Sanitary and Epidemic Well-Being of the Population" dated February 24, 1994, establishes legal liability of officials, including liability in the form of monetary (financial) sanctions, in accordance with the law. In turn, Article 46 of this Law provides for the application of financial sanctions to enterprises, institutions, organizations, and individual entrepreneurs for violations of sanitary and health legislation[23]. According to the current version of the Law, the following types of financial sanctions may be applied for violations of sanitary and epidemiological requirements:

for transfer to the customer, production, or use of engineering, technological, or design documentation that does not comply with sanitary norms and rules, the developer of such documentation shall pay a fine in the amount of 25 percent of the cost of development;

for sale of products prohibited for release or sale by officials of the state sanitary and epidemiological supervision authorities, the enterprise, institution, organization, or individual

[22] *Pro okhoronu kulturnoi spadshchyny: Zakon Ukrainy vid 08.06.2000 № 1805-III* [On Protection of Cultural Heritage: Law of Ukraine No. 1805-III dated June 8, 2000]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2000. No. 39. Article 333. [in Ukrainian]

[23] *Pro zabezpechennia sanitarnoho ta epidemichnoho blahopoluchchia naselennia: Zakon Ukrainy vid 24.02.1994 № 4004-XII* [On Ensuring Sanitary and Epidemic Well-Being of the Population: Law of Ukraine No. 4004-XII dated February 24, 1994]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1994. No. 27. Article 218. [in Ukrainian]

entrepreneur shall pay a fine in the amount of 100 percent of the value of the sold products;

for release or sale of products that are dangerous to human life and health as a result of violations of sanitary legislation, sanitary norms, or rules, the enterprise, institution, organization, or individual entrepreneur shall pay a fine in the amount of 100 percent of the value of the released or sold products;

for evasion from presenting products subject to sanitary control to authorized officials, the enterprise, institution, organization, or individual entrepreneur shall pay a fine in the amount of 25 percent of the value of products released from the date of evasion;

for failure to comply with requirements concerning silence and restrictions on certain types of noisy activities established by Parts 2–4 of the Law of Ukraine "On Ensuring Sanitary and Epidemic Well-Being of the Population", the enterprise, institution, organization, or individual entrepreneur shall pay a fine ranging from fifty to four hundred and fifty non-taxable minimum incomes of citizens; in the event of repeated violation after the imposition of a sanction, a fine in the amount of 100 percent of the value of sold products, performed works, or provided services may be applied;

Provisions concerning financial sanctions related to compliance with quarantine measures aimed at preventing the spread of acute respiratory disease COVID-19, including requirements regarding the use of personal protective equipment, were introduced as temporary measures and applied during the period of quarantine established by the Cabinet of Ministers of Ukraine. Following the termination of the nationwide COVID-19 quarantine regime, these provisions no longer have independent regulatory significance and are not applied in current enforcement practice[24].

Financial sanctions are also referred to in certain subordinate regulatory acts, including Resolution of the Board of the National Bank of Ukraine No. 95 "On Approval of the Regulation on Transfer

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[24] Resolution of the Cabinet of Ministers of Ukraine "On Establishing and Abolishing Quarantine Measures to Prevent the Spread of COVID-19", as amended and repealed. Kyiv: Cabinet of Ministers of Ukraine. [in Ukrainian]

of Cash Reserves for Safekeeping to Authorized Banks and Related Transactions" of 17 September 2021, as well as in sector-specific procedures governing the application of monetary penalties to business entities for violations of specialized regulatory regimes[25].

At the same time, it should be emphasized that although the above-mentioned legislative and subordinate acts use the term "financial sanctions", the liability established therein does not always constitute financial-law liability in the strict sense, as it is not directly connected with the sphere of state public finance. In such cases, the term is used to denote monetary sanctions of a public-law nature, applied for violations of sanitary, banking, or other regulatory requirements.

Therefore, two conclusions can be drawn: 1) *either the legislator envisages the possibility of applying measures of financial-law liability for offenses committed outside the financial sphere; or* 2) *there has been a mixing and substitution of legal concepts, which has led to an ambiguous understanding of the relevant legal norms.*

In the first case, the application of financial-law sanctions as measures of financial-law liability for offenses committed outside the sphere of financial activity cannot be regarded as admissible. The specific nature of each branch of law objectively requires the establishment of special coercive measures for violations of its norms. Thus, it is impossible to imagine the application of financial-law sanctions for civil offenses, since the private-law nature of civil legal relations excludes the dominance of one party capable of unilaterally imposing binding rules of conduct, as the state does in financial legal relations. The dispositive principle inherent in civil law leaves the decision on whether to apply civil liability measures to the discretion of the injured party, granting it a right rather than an obligation to seek protection. Moreover, a defining feature of civil liability is that monetary sanctions are recovered in favor

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[25] Resolution of the Board of the National Bank of Ukraine "On Approval of the Regulation on Transfer of Cash Reserves for Safekeeping to Authorized Banks and Related Transactions", No. 95 dated 17 September 2021. Kyiv: National Bank of Ukraine.

of the injured party, not the state budget, as is characteristic of financial-law sanctions.

The specificity of criminal and administrative liability lies in their personalized character, which presupposes the recovery of monetary sanctions from the personal funds of a natural person. A business entity, as a collective subject, cannot act as a criminal offender and, under current Ukrainian law, generally cannot be a subject of administrative liability in the classical sense. Consequently, the application of financial-law sanctions for crimes or administrative misdemeanors is not possible, just as criminal penalties cannot be applied for non-criminal acts or administrative penalties for acts that do not constitute administrative offenses.

The above-mentioned legislative and subordinate legal acts regulate the application of monetary sanctions defined therein exclusively in the form of fines for offenses committed in legal spheres other than the financial one. Therefore, the first conclusion should be regarded as legally unfounded and logically inconsistent.

In further research, it is necessary to turn to the concept of finance and the financial sphere of state activity in its essential dimensions. Finance may be considered in **economic and material aspects**. In the economic sense, finance represents economic relations associated with the formation, distribution, and use of centralized and decentralized monetary funds for the performance of the functions and tasks of the state and local self-government, as well as delegated powers, including the redistribution of gross domestic product and the satisfaction of public needs.

In the material sense, finance comprises monetary funds of the state, territorial communities, enterprises, institutions, and organizations used to ensure societal needs and economic development. The aggregate of such funds constitutes the financial resources of the state. A key distinguishing feature of financial relations is the **mandatory participation of the state**. Other types of monetary relations fall outside the scope of financial relations and are regulated by other branches of law.

Accordingly, finance may be defined as a system of monetary relations concerning the accumulation, distribution, and use of monetary funds for the material provision of state functions and tasks. The totality of such relations—budgetary, tax, currency, public banking, monetary circulation, compulsory state social insurance, and others—forms the financial sphere of state activity.

In view of the foregoing, it becomes evident that the legal acts mentioned above, which provide for the application of monetary sanctions for violations of their norms, do not regulate relations belonging to the financial sphere. Therefore, the "financial sanctions" envisaged therein are not measures of financial-law liability. At the same time, the use of the term "financial sanction" in such acts creates prerequisites for doctrinal disputes concerning the proper interpretation of the nature of liability and the unjustified identification of such sanctions with financial-law liability.

In conclusion, a monetary sanction payable to the state may be established not only by financial legislation. Consequently, *financial-law sanctions must be clearly distinguished from other monetary sanctions by reference to the nature of legal relations*, the type of offense, and the form of legal liability giving rise to the application of the relevant sanction.

This intrinsic connection between financial-law sanctions, the institution of financial-law liability, and the sphere of financial law stems from the fundamental principles of financial law, including the principles of legality and the priority of public financial interests, as well as the principles of justice, expediency, and proportionality of financial-law liability. Measures of financial-law liability embody these principles in practice, ensuring the protection of public financial interests and reflecting the adverse consequences imposed on violators.

Continuing the analysis, it should be emphasized that examining legal relations and types of liability involving the application of monetary sanctions not established by financial legislation allows the legal nature of such sanctions to be clarified and substantiates the appropriateness of using the term "financial sanction" in a broader, non-technical sense. Thus, in the case of conducting economic activity without a license where such activity is subject to mandatory licensing, Part 1 of Article 20 of the Law of Ukraine

No. 222-VIII "On Licensing of Types of Economic Activities" of 2 March 2015 [26] provides for the application of monetary sanctions to business entities.

The legal nature of these sanctions indicates that the offense is committed within the framework of economic legal relations, as evidenced both by the circle of offenders—business entities only—and by the nature of the regulated activity. Given that business entities include both legal persons and sole proprietors, such sanctions cannot be classified as criminal or administrative fines in the classical sense.

Economic activity regulated by economic law combines elements of both public and private law, unlike financial law, which belongs exclusively to the public-law sphere. This dual nature explains the participation of the state in economic relations through regulatory mechanisms such as licensing. Licensing functions as a means of state regulation aimed at ensuring a unified economic policy and protecting public and consumer interests.

Thus, financial sanctions applied for violations of the Law of Ukraine No. 222-VIII "On Licensing of Types of Economic Activities" dated March 2, 2015 demonstrate certain features traditionally attributed to administrative-economic sanctions, in particular, an administrative-economic fine.

It should be noted, however, that references to the Economic Code of Ukraine are made exclusively in a historical and doctrinal context, since this legislative act has lost its validity as a result of legislative reform. Nevertheless, its provisions remain relevant for understanding the evolution of the concept of administrative-economic sanctions and the formation of approaches to delimiting economic-legal and financial-legal liability.

Article 241 of the former Economic Code of Ukraine defined an administrative-economic fine as a sum of money paid by a business entity to the relevant budget in case of violation of the established rules of economic activity. At the same time, Part 2 of Article 241 provided that the list of violations for which such

[26] Law of Ukraine "On Licensing of Types of Economic Activities", No. 222-VIII dated March 2, 2015 (as amended). Kyiv: Verkhovna Rada of Ukraine.

a fine could be imposed, as well as the amount and procedure for its collection, were to be determined by laws regulating tax and other relations in which the offense was committed.

Such legislative construction was characterized by excessive generality and blanket references, which in practice blurred the boundaries between administrative-economic and financial-legal sanctions. In particular, the extension of administrative-economic fines to violations committed in the tax sphere effectively deprived financial-law sanctions of independent legal significance, despite the fact that taxation undoubtedly belongs to the financial field of state activity rather than to the economic sphere in the classical sense.

A similar situation may be observed in the application of the Law of Ukraine On State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohols, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes, and Fuel, which authorizes state bodies to impose fines on business entities for violations in the relevant sphere. Considering the circle of subjects involved and the nature of the regulated activity, such sanctions also display features of administrative-economic liability. However, their precise legal nature and doctrinal boundaries remain insufficiently defined both in theory and in law-enforcement practice.

The legal nature of administrative-economic sanctions has traditionally been analyzed through the prism of their complex character, combining elements of administrative-legal and economic-legal liability. Ukrainian legal doctrine substantiates that such sanctions occupy an intermediate position within the system of public-law coercive measures: they are applied by public authorities in the public interest, yet are addressed exclusively to business entities as participants in economic relations. This duality explains the specific grounds, subjects and procedural framework of their application and distinguishes them from both classical administrative penalties and purely financial-legal measures.

Judicial practice further confirms the ambiguity in understanding the legal nature of financial sanctions. Courts of different jurisdictions have, in certain cases, qualified financial sanctions imposed by the National Bank of Ukraine as measures of civil-law liability, while in other cases administrative courts have applied different limitation periods to identical legal relations. Such inconsistency reflects the absence of clear and systematic legislative regulation and the doctrinal uncertainty surrounding administrative-economic sanctions.

In view of the foregoing, the loss of validity of the Economic Code of Ukraine may be regarded not merely as a technical legislative reform, but as confirmation of the doctrinal instability of the concept of administrative-economic sanctions, which had long been constructed on a complex intersectoral basis. Historical reference to the former Code is therefore justified exclusively for the purpose of tracing the evolution of legislative approaches and substantiating the necessity of clear sectoral differentiation between financial-legal and other types of public-law sanctions.

According to the Procedure for Concluding Protection Contracts for Cultural Heritage Monuments approved by Resolution of the Cabinet of Ministers of Ukraine No. 1768 of December 28, 2001, a protection contract establishes a legally binding regime for the use of a cultural heritage monument and the territory on which it is located. Where the monument is classified as being of national significance, the contract is concluded by the local cultural heritage protection authority subject to approval by the central executive authority. The Procedure further provides for the possibility of imposing monetary sanctions upon the owner or other obligated party and establishes the duty to compensate for damage caused to the monument.

It follows that liability may arise within a contractual framework. However, the mere existence of a contract does not automatically determine the legal qualification of the sanctions imposed. Although the protection contract possesses certain characteristics of a civil-law agreement, it differs fundamentally from classical contractual models governed by the principle of freedom of contract (autonomia voluntatis). The obligation to conclude such a contract is established directly by law (ex lege), and the content of liability is predetermined by statutory provisions rather than negotiated by the parties. Thus, the contractual element operates within a regime of statutory compulsion (coercitio legis), reflecting the special protective status of cultural heritage objects.

The protection contract does not regulate commercial exchange or economic activity aimed at profit generation. Instead, it serves as a legal instrument ensuring preservation of cultural value for present and future generations, which corresponds to the doctrine of public interest protection (ratio protectionis). The owner assumes obligations aimed at maintaining the monument, while the authority exercises supervisory and control functions. This asymmetry of rights and obligations further demonstrates that the legal construction transcends a purely civil-law model.

Where a protection contract has been duly concluded, monetary sanctions imposed for breach of its terms may, under certain circumstances, resemble liquidated damages. Nevertheless, even in such cases, the underlying rationale of liability is grounded in statutory protection of public interests rather than in private compensatory logic. Moreover, in situations where a contract has not been concluded due to evasion by the owner, liability may arise directly on the basis of statutory norms. This confirms that the primary legal basis of sanctioning is legislative rather than contractual.

The dual structure of these relations illustrates the limits of branch differentiation (divisio ramorum iuris). While the form of enforcement is monetary, the protected interest does not belong to the sphere of public finance but to the sphere of cultural heritage protection. Consequently, these sanctions cannot be qualified as financial-law sanctions sensu stricto. Their monetary character alone does not suffice to determine their branch affiliation. As demonstrated earlier, financial-law sanctions are characterized by their connection to public financial relations and by their role in safeguarding fiscal order (ordo fiscalis).

The legislator's use of the term "financial sanctions" in this context reflects a broad and generalized understanding of monetary liability. However, terminological designation does not determine legal nature (nomen iuris non mutat substantiam rei). The participation of a public authority or the monetary form of sanction cannot transform non-financial legal relations into financial-law relations. Therefore, equating such measures with financial-law sanctions solely on the basis of terminology would contradict the principle of systematic interpretation (interpretatio systematica) and distort the conceptual boundaries of financial law.

Thus, the *conclusion regarding the improper use of the term "financial sanctions" to denote measures other than financial-law liability is confirmed. Taking into account that the common features of such monetary sanctions are their public nature and their allocation to the relevant budget, and in order to avoid ambiguous interpretation of legislative provisions concerning the legal nature of these sanctions, it would be more appropriate to define them as* ***fiscal sanctions*** *(from the Latin fiscus—treasury)*.

In other words, compliance with financial-law norms is ensured by the state's ability to apply coercive measures for violations of obligations established by financial legislation. Liability for financial offenses is expressed in the sanction element of the relevant legal norm.

Financial-law sanctions, understood as coercive measures, form part of the general system of state coercion and represent a response by the state, through its authorized bodies, to violations of financial legislation. They constitute an external material manifestation of state coercion for committing a financial offense. By expressing the negative assessment of the state toward unlawful conduct, financial-law sanctions reflect the degree of social danger of the offense and establish legal limits of state coercion, thereby functioning as a measure of financial-law liability.

Representing a measure of financial-law liability, a financial-law sanction reproduces the state coercion, which consists in ordering to apply negative measures determined by the law to the violator of financial-law norms. Taking into account public and legal nature of financial law and liability, which entities can include both juridical and natural persons, that is based on involving these participants in tax, currency and other legal relations, financial-law sanctions are applied to both juridical and natural persons under the same procedure.

An analysis of the current legislation of Ukraine now allows talking not only about the general property nature of financial-law sanctions, but specifically about their monetary nature, since the real types of sanctions—fine and penalty—are levied only in monetary form, while property, according to the Civil Code of Ukraine[27], can be understood as the whole range of material objects, which may entail civil rights and obligations, as well as property rights and obligations. Existing in two legal planes—as a structural element of the financial-law norm and independent legal phenomenon as a measure of liability, these concepts of sanction are closely related. It is manifested in the fact that the sanction of the financial-law norm, regulating possible consequences of non-compliance with disposition of the norm and envisaging specific measures of influence on the violator, is implemented with the help of a special mechanism and in a special order, thereby forming a derived legal category of financial-law sanctions. They embody coercive measures of negative influence on the violator of financial-law norms, which list is clearly determined by legislation and which are applied on the grounds and in the order established by the legislator. Thus, financial-law sanctions represent a special tool for implementing the state coercion for violating financial-law norms.

An important indicator of any concept is its content. Its essence as an internal content of phenomenon hidden from direct perception is revealed through content of the concept. Logically, content of the concept is a set of essential and distinctive features of object, quality or variety of similar objects reflected in this concept. Content of the sanction as a structural part of the legal norm is determining that the sanction indicates possible consequences of the entity's relevant actions.

It should be noted that the differentiation between public-law financial sanctions and private-law remedial mechanisms corresponds to the general structure of continental European legal

[27] *Tsyvilnyi kodeks Ukrainy: vid 16.01.2003 № 435-IV* [Civil Code of Ukraine: No. 435-IV dated January 16, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 4044. Article 356. [in Ukrainian]

systems. In German law, for instance, delay interest (§ 288 BGB) and contractual penalty (§ 339 BGB) function as civil-law instruments aimed at protecting the creditor's private interest, whereas fiscal penalties and tax surcharges belong to the sphere of public financial regulation. Similarly, French law distinguishes between intérêts moratoires and clause pénale under the Code civil, while financial penalties imposed by tax authorities are governed by public-law statutes. The Draft Common Frame of Reference (DCFR) and the UNIDROIT Principles of International Commercial Contracts also conceptualize agreed payment for non-performance as a private-law remedy independent of public sanctions. This comparative perspective confirms that the mere monetary form of a measure does not determine its legal nature. Therefore, content of financial-law sanctions is establishing and determining possible consequences of actions of the party to financial legal relations in case of non-observance (violation) of disposition of the financial-law norm. Content of financial-law sanctions is expressed in establishment by the state of a method and means of security, protection and provision, observance and fulfillment of subjective rights and obligations envisaged by the financial norm by parties to financial legal relations.

It should be determined that **financial-law sanctions** are understood as *measures of financial-law liability of monetary nature, which are ensured by coercive power of the state, applied in accordance with a specific procedure by authorized state bodies and their officials if the entity—natural or juridical person—commits a financial offense for punishing violators and compensating for damage caused to the state and are included in mandatory structural elements of the norms of financial law*. Financial-law sanctions are independent measures of financial-law liability in the system of legal sanctions and are objectively envisaged by the current legislation and practically applied for violating financial-law norms. Such an independence of financial-law sanctions is determined and confirmed by a *set of features,* which they have and which study should be carried out in order to prove their individual status.

1.2. Features of Financial-Law Sanctions

An analysis and determination of the system of features of financial-law sanctions involve establishing their properties, which, taken together, make it possible to identify the distinctive qualities of financial-law sanctions arising from their specific nature, determined by the particularities of financial law.

In general, the concept of a "feature" can be understood as:

a) a philosophical category that expresses such an aspect of an object which determines its difference or similarity with other objects and is manifested in its relations with them;

b) a stable characteristic of an object;

c) an aspect of an object that determines its difference or similarity with other objects and is manifested in interaction with them.

Thus, a feature is a persistent particularity of the object under consideration, which determines its similarity or difference from other objects.

Legal theory traditionally identifies the following main features of sanctions of legal norms:

- connection with the state;
- negative assessment of the act;
- coercive nature;
- formal certainty;
- inseparable connection with the hypothesis and disposition of the legal norm;
- adverse consequences for the violator;
- imposition of additional obligations.

Thus, the sanction constitutes the third structural element of a legal norm. It indicates negative legal consequences for the violator that may be applied by the state. A specific feature of the sanction is that it serves as one of the means of ensuring proper implementation of legal prescriptions. The state's response may take various forms, ranging from educational and persuasive measures to coercive enforcement actions.

In turn, financial-law sanctions, being part of the general system of legal sanctions and possessing general legal features, also have a number of specific characteristics determined by the particular nature of the mechanism of legal regulation of relations arising in the sphere of public financial activity. In Ukrainian legal doctrine, representatives of the Odesa Law School, in particular Professor Yu. M. Oborotov[28], distinguish the following types of sanctions:

1) absolutely defined sanctions, which contain a clearly fixed enforcement measure;

2) relatively defined sanctions, where the degree of influence is limited by minimum and maximum thresholds, allowing their application with regard to the personality of the offender;

3) alternative sanctions, which enable a court or another authorized state body to choose and apply one of several enforcement measures provided for by the sanction.

At the same time, taking into account the financial-law nature of measures of financial-law liability, Ukrainian scholars express different views regarding their specific features. In particular, Ukrainian financial law doctrine identifies the following features of financial-law sanctions[29]:

- sanctions of financial law norms are applied in the sphere of public financial activity of the state in cases of violation of financial discipline;
- they constitute measures of financial-law liability;
- they are established by norms of financial legislation and combine restorative and punitive functions;
- they are property-related (monetary) in nature;
- they are implemented through specific forms of state coercion;
- they may be applied to both natural and juridical persons;
- they are characterized by a special procedural order of application and a defined system of authorized bodies;
- financial resources recovered as a result of their application are credited to state or local budgets.

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[28] Oborotov, Yu. M. *Teoriia derzhavy i prava* [Theory of State and Law]. Odesa: Yurydychna literatura, 2018. [in Ukrainian]

[29] *Finansove pravo Ukrainy: pidruchnyk* / za red. L. K. Voronovoi. Kyiv: Yurinkom Inter, 2020. [in Ukrainian]

Ukrainian scholars also emphasize that financial-law sanctions are predominantly monetary in nature, are applied on the basis of committing a financial offense, may be imposed both on individuals and legal entities, and result in the compulsory transfer of funds to centralized public monetary funds[30]. This position reasonably supports the conclusion that financial-law sanctions are applicable to both natural and juridical persons.

According to Ukrainian researcher S. Fedorov, special features of financial-law sanctions include their compulsory application in cases of violation of financial legislation, their predominantly monetary character, and their role in ensuring compliance with financial discipline[31]. At the same time, the assertion concerning the short-term nature of application of financial-law sanctions is debatable, as current legislation does not establish a unified temporal criterion for such measures, and their duration depends on the specific type of financial offense and the procedural mechanism of enforcement.

Considering this classification, one should disagree with the assertion that the period of application of financial-law sanctions is short, since it remains unclear in comparison with which time frame such a conclusion is drawn, and the starting point of the relevant period is not defined. In addition, financial-law sanctions may be regarded as precautionary only in relation to persons who have not committed a financial offense, whereas restorative and punitive measures are applied to violators of financial legislation.

An analysis of the above-mentioned approaches to defining the special features of financial-law sanctions, in conjunction with existing law enforcement practice and problems of their application, as well as based on legislative regulation of financial-law sanctions, makes it possible to single out the most common features thereof.

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[30] Kyrychenko, O. A. *Finansovo-pravova vidpovidalnist v Ukraini* [Financial-law Liability in Ukraine]. Kyiv: Alerta, 2019. [in Ukrainian]

[31] Fedorov, S. V. *Finansovi sanktsii u systemi finansovoho prava Ukrainy* [Financial Sanctions in the System of Financial Law of Ukraine]. Kyiv: Pravo, 2021. [in Ukrainian]

Financial-law sanctions are applied in the field of financial-law relations, the specific feature of which is their public nature (difference from civil and legal sanctions), and legal regulation of financial-law sanctions is carried out by the state at the regulatory level. Along with imperatively established obligation of financial legislation, it is obvious to accompany the actual application of financial-law norms by the state with the help of extensive system of control, which is implemented by authorized state bodies through coercive means envisaged by the law to comply with the relevant regulations. This mechanism also applies to financial-law sanctions, which application is a public procedure and is inevitable through the state coercion, which Ukrainian researcher O. M. Shevchuk defined as a method of state influence on parties to legal relations. It is applied by competent state bodies regardless of the will and desire of legally bound parties to ensure proper implementation of the law, prevention of offenses, punishment and correction of violators, restoration of rights [32].

Therefore, voluntary failure to comply with established legal requirements that results in a financial offense activates the mechanism of state prosecution of the offender and the application of measures aimed at punishment, restoration of the state's property interests, and ensuring financial discipline. This conclusion follows from the analysis of legislative regulation of the procedure for applying financial-law sanctions, which is characterized not only by mandatory procedural formalization, but also by consistency in achieving the legally established objectives through a set of enforcement measures.

Thus, **the first** of the most typical features of financial-law sanctions can be identified as **state coercive nature of application** for failure to fulfill or improper fulfillment of obligations imposed on parties to financial legal relations (violation of regulations of financial-law norms, i.e. committing a financial offense).

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[32] Shevchuk, O. M. *Zasoby derzhavnoho prymusu u pravovii systemi Ukrainy* [Means of state coercion in the legal system of Ukraine]: abstract of the dissertation for the degree of Candidate of Legal Sciences; specialty 12.00.01 / National University of Internal Affairs. Kharkiv, 2003. 20 p. [in Ukrainian]

Indeed, financial-law sanctions are established exclusively by norms of financial law and cannot be modified or abolished by agreement of the parties. Non-compliance with any requirement of a financial-law norm inevitably entails negative legal consequences in the form of recognition of such non-compliance as a financial offense and the application of financial-law sanctions to the guilty person. The coercive nature of financial-law sanctions is manifested not only at the stage of their imposition, but also at subsequent stages of financial-law liability, in particular at the stage of payment (recovery) of sanctions, which is characterized by compulsory execution of the relevant enforcement decision. In this regard, it is essential to consider the interrelation between the application of financial-law sanctions and the fulfillment of the underlying financial obligation. Thus, pursuant to Clause 113.2 of Article 113 of the Tax Code of Ukraine, the application of penal (financial) sanctions (fines) does not release taxpayers from the obligation to pay the respective amounts of taxes and fees to the budget, the control over which is entrusted to regulatory authorities, nor does it preclude the application of other measures provided for by this Code. Accordingly, when executing a decision on the application of a financial-law sanction in the form of a fine, the taxpayer is obliged both to pay the fine and to fulfill the primary obligation, the non-performance of which led to the imposition of the sanction [33].

Thus, Article 124 of the Tax Code of Ukraine establishes that if a taxpayer fails to pay the agreed amount of a monetary obligation (other than monetary obligations in the form of penal sanctions and penalties) within the time limits specified by this Code, liability in the form of a fine is imposed in the following amounts:

in case of delay of up to 30 calendar days inclusive following the last day of the payment deadline—in the amount of 10 percent of the repaid amount of tax debt;

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[33] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy [Voice of Ukraine]*. December 4, 2010. No. 229. [in Ukrainian]

in case of delay of more than 30 calendar days following the last day of the payment deadline—in the amount of 20 percent of the repaid amount of tax debt.

In this case, similarly to the previous example, after committing a financial offense, the taxpayer is obliged to fulfill the monetary obligation that existed prior to the violation and, in addition, to pay a financial-law fine imposed as a consequence of committing such offense.

Thus, Resolution of the Board of the National Bank of Ukraine No. 129 "On Approval of Amendments to the Regulation on Application of Enforcement Measures by the National Bank of Ukraine" dated December 2, 2021, makes certain amendments to Regulation No. 346. According to the updated provisions, the National Bank of Ukraine is empowered to impose fines on banks, branches of foreign banks, material shareholders of a bank, persons who have acquired or increased significant participation in a bank, as well as persons within the ownership structure of a bank who facilitated the acquisition or increase of such participation in violation of Articles 34 and 34^1 of the Law of Ukraine "On Banks and Banking Activity", key members of the ownership structure of a bank, responsible persons of banking groups, and other participants of banking groups. The fine for violating the activities of a separate structural unit of a bank is imposed directly on the bank as a legal entity. Its payment is envisaged in Clause 7.1 of Chapter 7 of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine for Violating Banking Legislation approved by Resolution of the Board of the National Bank of Ukraine No. 346 dated August 17, 2012[34]. Clause 7.3 of this Regulation establishes the application of a fine in the amount of 10 percent to a person who acquired or increased significant

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[34] *Pro zatverdzhennia Zmin do Polozhennia pro zastosuvannia Natsionalnym bankom Ukrainy zakhodiv vplyvu: postanova Natsionalnoho banku Ukrainy vid 02 hrudnia 2021 roku № 129* [On Approval of Amendments to the Regulation on Application of Enforcement Measures by the National Bank of Ukraine: Resolution of the National Bank of Ukraine No. 129 dated December 2, 2021]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0111500-20#Text (June 15, 2022). [in Ukrainian]

participation in a bank (or to any person from among the bank's ownership structure who allowed such acquisition or increase) in violation of the requirements of banking legislation.

Therefore, the application of financial-law sanctions results in additional financial losses for the offender, which could have been avoided by complying with the requirements of financial legislation and preventing the commission of a financial offense.

It should be noted that **the second** special feature of financial-law sanctions is the **creation of a new (or additional) obligation imposed on the financial offender as a result of the application of such sanctions**. This means that upon implementation of a financial-law sanction, a new obligation of a monetary nature arises that did not exist prior to the commission of the financial offense. At the same time, fulfillment of a financial obligation that existed before the offense cannot be considered liability, since it does not result in additional property loss.

The negative nature of financial-law sanctions is manifested in the fact that, simultaneously with the obligation to fulfill the main financial duty (payment of taxes, submission of reports, etc.), the offender is subject to state coercive influence and must fulfill another, additional obligation provided for by the financial-law sanction. Fulfillment of this additional obligation does not release the person from the duty to fulfill the primary financial obligation.

At the same time, it is necessary to distinguish financial-law sanctions from other coercive measures applied, in particular, for violations of budget legislation (such as suspension of budget financing, return of misused budget funds, etc.), since such measures do not constitute new or additional monetary obligations. Taking into account the essence and objectives of their application, they are aimed at eliminating the unlawful state or preventing further violations through special enforcement mechanisms. In such cases, the violator does not incur an additional financial burden beyond restoring the violated budgetary order.

This feature forms the basis for distinguishing only two types of financial-law sanctions that meet scientifically substantiated criteria and are provided for by the current legislation of Ukraine: fines *and penalties, which are directly established by financial legislation. All other measures applied for violations of financial legislation cannot be classified as financial-law sanctions.*

The current legislation of Ukraine, when defining financial-law sanctions for financial offenses that impose a new or additional burden on the violator, consistently expresses such sanctions exclusively in monetary form, which confirms their property nature. It should be noted that the property nature of liability is also inherent in other branches of law, including civil, economic, administrative, and criminal law; however, in those branches it is combined with coercive measures of personal or organizational nature.

Thus, criminal law provides for punishment in the form of a fine, which may be imposed only on a natural person and depending on the gravity of the committed crime. Economic and administrative legislation also provide for organizational sanctions, such as suspension or revocation of licenses, cancellation of state registration, or liquidation of a business entity, alongside property sanctions.

In contrast, the financial law sphere is characterized exclusively by property measures in the form of fines and penalties. This specificity is explained by the nature of financial-law sanctions, which are aimed at protecting public financial interests and, therefore, affect the economic interests of offenders.

Based on the above, it is possible to single out **the third** feature of financial-law sanctions, which is manifested in the fact that **applying sanctions consists in deprivation of property (material, monetary) nature**.

This feature is primarily due to the fact that financial legal relations are inherently property-based, or more precisely, monetary in nature, since payments to the budget, as well as control and supervisory activities, are aimed at the accumulation, distribution, and use of centralized and decentralized monetary funds. Accordingly, the impact on the offender is ensured through forms characteristic exclusively of financial law.

State coercion applied in the imposition of financial-law sanctions is specific in nature and does not indicate that such sanctions are measures applied merely because of any unlawful behavior. The mere fact of illegality is not sufficient to trigger financial-law liability, since not every unlawful act entails such liability. Indeed, not every illegal action, despite its formal unlawfulness, requires punitive influence by the state. financial-law sanctions are severe measures that are applied only when unlawful behavior contains features of a financial offense, including public harm (or danger), culpability, and violation of legally protected financial interests, provided that the composition of such an offense is clearly defined by the legislator.

The recovery of financial-law sanctions primarily affects the offender's monetary funds, and in case of their insufficiency, may extend to other tangible property in accordance with the procedure established by law.

The above can be attributed to **the fourth** feature of financial-law sanctions, which consists in the fact that **factual basis for their application is a legal fact—committing a financial offense**.

The implementation of sanctions establishing legal liability is inseparably connected with the condemnation of the offender, and the direct basis for such implementation is the offense understood as a unity of all its elements. This means that the sanction is applied exclusively in the event of an offense, since the existence of a sanction in legislation does not automatically entail liability without the occurrence of a relevant legal fact.

A financial offense (a detailed study of its concept will be presented in Clause 2.1) should be defined as a *socially harmful (dangerous), illegal, culpable act of the entity having the delictual capacity that encroaches on financial interests of the state and society, protected by law, and which entails financial-law liability.*

Turning to the next feature, it should be noted that the concept of a financial-law sanction is characterized by a plurality of meanings. In addition to understanding a sanction as a measure of financial-law liability, it is also necessary to consider the sanction as a structural element of a financial-law norm. Measures of financial-law liability are established exclusively by norms of financial law through their consolidation within the sanction as a structural element of the norm, which serves to protect the rule of conduct established by the disposition.

This is confirmed by the entire body of financial legislation, which consists of financial-law norms. It is difficult to imagine the establishment of financial-law sanctions by criminal, administrative, civil, or other branch legislation. Therefore, the sanction of a financial-law norm is inseparable from it and can exist only as a component of a norm of financial law, making it a mandatory structural element thereof.

The above is **the fifth** feature of the sanction of the financial-law norm as its component, which is manifested in the fact that the sanction **acts as a mandatory structural element of the financial-law norm** and, therefore, it is involved in the regulation of financial relations. The financial-law sanction as a measure of financial-law liability, being part of the financial-law norm and having financial-law nature, is inextricably related to the norm of financial law and is determined by it.

As noted by the outstanding Ukrainian scientist, Academician L. K. Voronova "each element has its place in the structure of the financial-law norm and plays a special role", and gives a concise, but quite appropriate statement that the norm is meaningless without hypothesis, the norm is unthinkable without disposition, and it is powerless without sanction[35]. financial-law sanctions, regulating implementation of the disposition of the financial norm, which establishes rules of conduct of parties to financial legal relations, affect the will and consciousness of both parties to financial legal relations before they commit illegal actions, and financial offenders, which results in a certain internal attitude of these persons to their actions.

The normative consolidation of financial-law sanctions is dictated by the public nature of financial legal relations and ensures that an indefinite range of entities is informed about the consequences of financial offenses, including the type and limits of coercive

[35] Voronova, L. K. *Finansove pravo Ukrainy: pidruchnyk* [Financial law of Ukraine: textbook]. Kyiv: *Pretsedent*; *Moya kniga*, 2006. P. 68. [in Ukrainian]

measures applicable to guilty persons. In Ukrainian legal doctrine, a sanction is defined as a measure of legal liability established by law, which provides for negative consequences for the offender and serves to guarantee compliance with legal norms [36].

At the same time, Ukrainian scholars emphasize that the sanction should be regarded as a mandatory element of the legal norm, which establishes the type and scope of state coercive measures aimed at ensuring the implementation of the disposition and contains a final legal assessment of unlawful behavior [37].

It should be noted that the cited scholars define the sanction primarily through the concept of legal liability, which is fully consistent with the financial-law nature of sanctions as instruments of state coercion in the sphere of public finance.

The term *"measure"* is used in several meanings. First, a measure denotes the limits of implementation or manifestation of a certain legal phenomenon. Accordingly, financial-law sanctions determine the limits of the implementation of financial-law liability. Second, a measure may be understood as a set of actions or activities aimed at achieving legally defined goals. Thus, it is possible to distinguish *between the measure of liability as a limit of imposition and the measure of liability as the process of its practical implementation through actions of competent authorities*. Therefore, financial-law sanctions establish not only the quantitative and qualitative limits of liability, but also the boundaries of activity of entities authorized to apply such liability. Unlike civil-law systems, where sanction is structurally integrated into the mechanism of contractual enforcement and may be subject to judicial moderation (principle of proportionality), financial-law sanctions operate within the framework of public authority and are designed to safeguard fiscal order. The systemic separation between private-law enforcement and public fiscal coercion is a stable feature

[36] Shevchuk, O. M. *Finansovo-pravova vidpovidalnist: teoriia ta praktyka* [financial-law Liability: Theory and Practice]. Kyiv: Yurincom Inter, 2019. [in Ukrainian]

[37] Fedorov, S. P. Finansovi sanktsii u systemi pravovoi vidpovidalnosti [Financial Sanctions in the System of Legal Liability]. Kharkiv: Pravo, 2020. [in Ukrainian]

of European codifications, including the German BGB, the French Code civil, and modern model instruments such as the DCFR. Consequently, the concept of financial sanction should not be conflated with civil penalty merely because of terminological similarity.

Therefore, **the sixth** feature of financial-law sanctions consists in **normative establishing the measure of financial-law liability by the sanction (sanction of the financial-law norm)**.

Measures of financial-law liability are essentially legal restrictions expressed in sanctions of financial law norms, aimed at ensuring lawful behavior of participants in financial legal relations. Establishment of such measures simultaneously allows identifying the types of financial-law sanctions that embody them, namely fines and penalties. Despite their common financial-legal nature, these sanctions differ significantly in their legal characteristics, mechanism of application and functional purpose. According to the Tax Code of Ukraine, financial-law liability for tax offenses is applied in the form of penal (financial) sanctions (fines) and/or penalties[3]. At the same time, the legislator traditionally formulates financial sanctions primarily in the form of fines (for example, failure to pay an agreed monetary obligation within the established time limits entails a fine of 10% of the tax debt amount if the delay does not exceed 30 calendar days, and 20% if it exceeds 30 days), while the penalty is regulated in a separate manner and is not always directly included in the definition of financial sanctions.

This legislative approach is partly due to the doctrinal debate regarding the legal nature of the penalty. On the one hand, the penalty may be viewed as an instrument intended to encourage timely fulfillment of tax obligations. On the other hand, it fully corresponds to the essential features of a financial-law sanction, since its formal basis is the commission of a tax offense, in particular, violation of statutory deadlines for fulfillment of monetary obligations.

Despite the absence of a unified legislative definition, systematic analysis of the provisions of the Tax Code of Ukraine confirms that the penalty functions precisely as a financial-law sanction.

First, the legislator does not include the penalty among the methods for securing tax obligations. Article 14 of the Tax Code of Ukraine defines tax lien and administrative arrest of assets as means of securing fulfillment of tax obligations[38]. Consequently, there are no legal grounds to treat the penalty as a method of securing an obligation.

Second, security measures are designed to operate primarily before the violation of an obligation, creating alternative mechanisms for debt repayment. The penalty, however, arises only after the commission of a tax offense, and its amount is not aimed at compensating or securing the principal obligation. Moreover, the Tax Code expressly provides that payment of the penalty does not release the taxpayer from the obligation to pay the principal tax debt, which is incompatible with the legal nature of security instruments.

Third, the penalty is applied exclusively as a consequence of a tax offense. Article 111 of the Tax Code of Ukraine directly establishes that financial-law liability for violations of tax legislation is applied in the form of fines and/or penalties, thereby placing the penalty on an equal normative level with fines.

Accordingly, any stimulating effect of the penalty with regard to proper fulfillment of tax obligations may be considered only as an auxiliary function, secondary to its primary purpose—**expressing the measure of financial-law liability imposed for a tax offense**.

In the sphere of currency regulation, currency control and compulsory state social insurance, the legislator also provides for financial-law sanctions in the form of fines and penalties. The grounds, procedure and limits of such sanctions in the field of currency relations are established by the Law of Ukraine No. 2473-VIII “On Currency and Currency Transactions”[39] dated June 21, 2018.

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[38] Tax Code of Ukraine: Law of Ukraine No. 2755-VI dated December 2, 2010. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 13–17. Article 112. [in Ukrainian]

[39] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 roku № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

Currently, the state has set and consistently continues a course for reforming the field of currency relations, which consists in liberalization of currency legislation, creation of favorable conditions for attracting foreign investment and ensuring the effective implementation of foreign economic transactions by residents. For this purpose, the Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, was adopted, which remains the core legislative act in this sphere as of 2026. In the field of imposing liability for violations of currency legislation, this Law significantly modernized the approach to applying financial-law sanctions, aligning them with the principles of proportionality, risk orientation and economic feasibility.

The adoption of the Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, ensured the transition from an outdated, excessively bureaucratized model of currency regulation to a system based on the freedom of currency transactions and regulatory flexibility. This created new conditions for conducting business activities and unified the regulation of liability both in the field of currency transactions and settlements in foreign currency. As a result, the Law replaced the previously fragmented and cumbersome system of legal acts that separately governed these relations, becoming the central element of the modern currency regulation framework. Accordingly, the Decree of the Cabinet of Ministers of Ukraine No. 15-93 "On the System of Currency Regulation and Currency Control" dated February 19, 1993, the Law of Ukraine No. 185/94-VR "On Procedure for Payments in Foreign Currency" dated September 23, 1994, as well as a number of subordinate legal acts regulating payment discipline and mandatory return of currency earnings to Ukraine, lost their validity.

It should be noted that the introduction of fundamental changes in the system of currency regulation was a planned and expected step dictated by Ukraine's international obligations, in particular those arising from European integration processes. The Association Agreement between Ukraine and the European Union required adaptation of Ukrainian legislation to European Union law, including the principles laid down in Council Directive 88/361/EEC dated June 24, 1988, aimed at the gradual removal of restrictions on the movement of capital between residents of the member states.

Thus, the Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, proclaims substantial liberalization of currency transactions and capital movement, which continues to define state policy in this sphere as of 2026. An analysis of these changes shows that the fundamental regulatory principle was transformed from "everything that is expressly permitted by law is allowed" to "everything that is not expressly prohibited by law is allowed". Consequently, the current currency legislation provides for the possibility of carrying out any currency transactions that are not directly prohibited by the legislation of Ukraine in force.

In this regard, a significant innovation introduced by this Law[40] includes a substantial reduction in the amount of certain fines (in some cases by up to 30 percent compared to those previously applied) and the establishment of clearly defined amounts of fines, which under the Decree were determined at the discretion of the National Bank of Ukraine. These fines are applied for violations of the procedure of currency regulation and currency supervision, as well as for newly specified compositions of currency-related offenses. At the same time, in contrast to the Decree of the Cabinet of Ministers of Ukraine "On the System of Currency Regulation and Currency Control", which referred to such measures as financial sanctions and measures of liability, the Law uses the generalized term "sanctions", which does not alter their legal nature or substantive essence as measures of financial-law liability.

Also, for the implementation of the Law of Ukraine "On Currency and Currency Transactions" the Regulation "On Currency Supervision" was approved by Resolution of the Board of the National Bank of Ukraine No. 13 dated January 3, 2019

[40] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

(hereinafter—Resolution No. 13). Among the types of enforcement measures applied to institutions, particular attention should be paid to fines imposed for each type of violation of the requirements of currency legislation (Clause 42 of Resolution No. 13)[41]. According to the amendments introduced by Resolution of the National Bank of Ukraine No. 111 dated July 30, 2020, which remain in force as of 2026, the National Bank of Ukraine is empowered to apply an enforcement measure in the form of a fine to an institution for violating the requirements of currency legislation, including the following cases[42]:

violating the requirements of Article 5 of the Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, and/or a regulatory legal act of the National Bank of Ukraine governing the procedure for settlements in currency transactions;

violating the requirements of Article 6 of the above-mentioned Law and/or a regulatory legal act of the National Bank of Ukraine on the conditions and procedure for trading foreign currency and banking metals on the currency market of Ukraine;

violating the requirements of Articles 4 and 7 of the Law and/or a regulatory legal act of the National Bank of Ukraine on the procedure for currency transfers;

violating the requirements of Articles 4 and 8 of the Law and/or a regulatory legal act of the National Bank of Ukraine on the procedure for cross-border currency transfers;

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[41] *Pro zatverdzhennia Polozhennia pro valiutnyi nahliad: postanova Natsionalnoho banku Ukrainy vid 03.01.2019 № 13* [On Approval of the Regulation on Currency Supervision: Resolution of the National Bank of Ukraine No. 13 dated January 3, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database]/*Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0013500-19#Text (May 10, 2022). [in Ukrainian]

[42] *Pro vnesennia zmin do Polozhennia pro valiutnyi nahliad: postanova Natsionalnoho banku Ukrainy vid 30.07.2020 № 111* [On Amendments to the Regulation on Currency Supervision: Resolution of the National Bank of Ukraine No. 111 dated July 30, 2020]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0111500-20#Text t (May 10, 2022). [in Ukrainian]

carrying out currency transactions subject to licensing in cases where such transactions require a license under the Law and/or are not covered by the license issued to the institution;

violation by the institution of the requirements of Article 10 of the Law regarding the frequency, deadlines, methods and procedure for submitting information (statistical reporting) on currency transactions, including the submission of materially inaccurate data;

detection of significant violations of currency legislation during the period subject to supervision;

violating the requirements of Articles 4 and 12 of the Law and/or regulatory legal acts of the National Bank of Ukraine concerning the introduction of protective measures and the procedure for carrying out currency transactions during the application of such measures;

violation by the institution of the requirements of regulatory legal acts of the National Bank of Ukraine on licensing of currency transactions;

failure to comply with or improper compliance with a decision of the National Bank of Ukraine on the application of an enforcement measure;

violation of the requirements of regulatory legal acts of the National Bank of Ukraine on currency regulation and supervision other than those specified in Subclauses 1–10 of Clause 42 of Section II of the Regulation “On Currency Supervision”.

Thus, pursuant to Clause 43 of the Regulation “On Currency Supervision”, the National Bank of Ukraine is entitled to impose on an institution a fine of up to 5 percent of the amount of the institution’s own capital for each type of violation in cases of committing violations specified in Subclauses 1–5, 8, 9 and 10 of Clause 42 of Section II of this Regulation[43].

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[43] *Pro zatverdzhennia Polozhennia pro valiutnyi nahliad: postanova Natsionalnoho banku Ukrainy vid 03.01.2019 № 13* [On Approval of the Regulation on Currency Supervision: Resolution of the National Bank of Ukraine No. 13 dated January 3, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. [in Ukrainian]

In contrast to the above-mentioned acts, each of which provides for a single type of monetary sanction, the Law of Ukraine No. 2464-VI “On Collection and Registration of the Unified Contribution for Compulsory State Social Insurance” dated July 8, 2010, establishes a differentiated system of financial-law sanctions. In particular, it provides for the application of a fine to payers of the unified contribution for failure to pay (or incomplete payment) or late payment of the unified contribution, as well as a penalty applied to banks for late transfer or late crediting of funds to the accounts of tax authorities opened for the central executive body implementing state policy in the field of treasury servicing of budget funds, or to a single account. The amounts of fines and penalties provided for by this Law must be paid by the payer of the unified contribution within ten calendar days from the date of receipt of the relevant decision[44].

The peculiarity of financial-law sanctions lies in the fact that these sanctions are also applied to entrepreneurs. Thus, in the field of settlement and cash offenses, Law of Ukraine No. 265/95-VR “On the Use of Registers of Payment Transactions in Trade, Catering and Services” dated July 6, 1995[45], provides for the application of financial-law sanctions to business entities (including individual entrepreneurs) that carry out settlement transactions for goods (services) in violation of the procedure established by this Law, while not always directly specifying the legal classification of such sanctions within the text of the Law.

Thus, pursuant to Clause 44 of the Regulation “On Currency Supervision”, the National Bank of Ukraine has the right to apply

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[44] *Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-IV* [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-IV dated July 8, 2010]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2011. No. 2–3. Article 11. [in Ukrainian]

[45] *Pro zastosuvannia reiestratoriv rozrakhunkovykh operatsii u sferi torhivli, hromadskoho kharchuvannia ta posluh: Zakon Ukrainy vid 06.07.1995 № 265/95-VR* [On the Use of Registers of Payment Transactions in Trade, Catering and Services: Law of Ukraine No. 265/95-VR dated July 6, 1995]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1995. No. 28. Article 205. [in Ukrainian]

to an institution a fine in the amount of no more than 100 tax-exempt minimum incomes of citizens for all cases of violations committed during the period subject to supervision, for violating the requirements of Article 10 of Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018 (as amended), concerning the frequency, deadlines, methods and procedure for submission of information or statistical reporting on currency transactions, as well as for making significant errors in such reporting[46].

In view of the above, analysis of the focus and consequences of the application of the specified types of financial-law sanctions allows concluding that the fine has a punitive nature and is imposed on financial offenders for the very fact of violating the requirements established by the current legislation. In this sense, the fine acts as a protective response of society, represented by authorized state bodies, to attempts (whether implemented or not) to disturb the established financial-law order.

However, the nature of the penalty remains a debatable issue in terms of its restorative or compensatory legal character as a measure of financial-law liability. Thus, Ukrainian scholar S. H. Fedorov considers the penalty primarily as a restorative sanction aimed at eliminating the damage caused to the state or a territorial community as a result of a financial offense[47]. At the same time, another representative of Ukrainian financial law doctrine, Z. M. Budko, expresses a different view, arguing that the penalty should be regarded not as a restorative, but as a compensatory measure, since the compensatory and restorative functions of law are relatively independent within the overall system of legal functions[48].

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46 On Currency and Currency Transactions: Law of Ukraine No. 2473-VIII dated June 21, 2018 (as amended). Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2018. No. 30. Article 239. [in Ukrainian]

47 Fedorov, S. H. *Finansovo-pravova vidpovidalnist u systemi finansovoho prava Ukrainy* [Financial-law Liability in the System of Financial Law of Ukraine]. Kyiv: Yurinkom Inter, 2015. P. 112. [in Ukrainian]

48 Budko, Z. M. *Mistse peni u systemi zakhodiv derzhavnoho prymusu sfery opodatkuvannia* [Place of the penalty in the system of measures of state coercion in the field of taxation]. *Visnyk Natsionalnoho universytetu vnutrishnikh sprav* [Bulletin of the National University of Internal Affairs]. 2003. No. 24. P. 216–221. [in Ukrainian]

An analysis of the current legislation demonstrates that the penalty is accrued for failure to pay or failure to credit payments to budgets and specialized funds within the deadlines established by law, that is, it is directly connected with the violation of time limits for fulfilling financial obligations. Therefore, the recovery of a penalty from the offender is compensatory in nature, since the funds paid in the form of a penalty are intended to compensate for losses incurred by the state due to the temporary non-receipt of budget revenues. At the same time, such compensation results in the elimination of damage and, consequently, in the restoration of the normal state of the relevant financial legal relations. Although the concepts of compensation and restoration are not identical in content, they reflect a common functional orientation of the penalty, as the violated financial interests of the state are restored through compensation for budgetary shortfalls caused by the financial offense.

The fine and the penalty have in common the fact that both represent an additional or new financial burden imposed on the offender and are credited to state revenues. They are levied in accordance with the procedure established by law by authorized public authorities.

The above makes it possible to single out **the seventh** feature characteristic of financial-law sanctions, namely, their **dual nature, which is manifested in the combination of punitive and restorative (compensatory) orientation of such sanctions**.

It should be noted that the punitive function is a specific feature that distinguishes sanctions establishing measures of legal liability from remedies. The primary purpose of remedies is the restoration of a violated right. The combination of punitive and restorative influence is also characteristic of civil and economic law, in addition to financial law, whereas it is not typical of criminal and administrative law, where the primary task is punishment of the offender.

Having a property nature, financial-law sanctions are expressed exclusively in monetary form. This position is widely supported by Ukrainian scholars. In particular, L. K. Voronova emphasizes that financial legal relations are inherently monetary, as they arise, develop and are implemented in the process of formation, distribution and use of centralized and decentralized monetary funds[49]. Accordingly, financial sanctions are applied in cases of failure to fulfill or improper fulfillment of the requirements of legislation governing the accumulation, distribution and use of such funds, both for compensating financial resources not received by budgets and extra-budgetary funds and for punishing offenders. A similar position is shared by O. M. Shevchuk, who notes that sanctions of financial-law norms are monetary in nature and constitute a specific form of property liability in the field of public finance[50].

According to amendments introduced by Law of Ukraine No. 466-IX "On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Elimination of Technical and Logical Discrepancies in Tax Legislation" dated January 16, 2020, the Tax Code of Ukraine gives the following definitions of fine and penalty:

— penal sanction (financial sanction, fine) is a payment in the form of fixed amount and/or interest, which is imposed on persons, who committed tax offense or violated other legislation, which fulfillment control is entrusted to regulatory authorities, and penal sanctions for violations in the field of foreign economic activities (Clause 14.1.265 of Article 14);

— penalty is an amount of funds in the form of interest, accrued on the amounts of monetary obligations and/or amounts of penal (financial) sanctions, not paid within the terms established by legislation, and accrued in other cases and according to the procedure envisaged by this Code or other legislation, which fulfillment control is entrusted to regulatory authorities (Clause 14.1.162 of Article 14).

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[49] Voronova, L. K. *Finansove pravo Ukrainy. Zahalna chastyna: pidruchnyk* [Financial Law of Ukraine. General Part: textbook]. Kyiv: Yurinkom Inter, 2012. P. 64. [in Ukrainian]

[50] Shevchuk, O. M. Finansovi sanktsii yak forma maionovoi vidpovidalnosti u finansovomu pravi [Financial Sanctions as a Form of Property Liability in Financial Law]. Kyiv: Alerta, 2018. P. 137. [in Ukrainian]

Thus, the Instruction on Procedure for Calculating and Paying Unified Contribution for Compulsory State Social Insurance[51], approved by Resolution of the Ministry of Finance of Ukraine No. 449 dated April 20, 2015, refers to fine and penalty as financial sanctions in Section 7 of this Resolution (Clause 7.1). Banks charge a penalty at a rate of 0.1 percent of the unpaid amount for each day of delay in delivery (crediting) for late delivery or late crediting to the accounts of tax authorities of the amounts of unified contribution and financial sanctions specified in Subclauses 1–5 of this Section.

It should be noted that, unlike the Tax Code of Ukraine, which provides legal definitions of a fine and a penalty, other acts of financial legislation do not contain such definitions, but regulate only the application of the above financial-law sanctions, grounds for their imposition, amounts, and procedure. However, the exclusively monetary nature of sanctions is consistently observed throughout the entire body of legislation and is expressed in a fixed sum; the amount of the relevant obligation or underpayment; a part of the relevant obligation or underpayment; or in tax-exempt minimum incomes of citizens. Unlike the fine, which may be expressed in various calculation forms, the penalty in financial legislation is always calculated as interest on a certain amount, with variability of the calculation base (accounting rate of the National Bank of Ukraine, arrears, etc.). Thus, the legislator discloses the essence of the two main types of financial-law sanctions precisely through the use of the terms “amount” and “charge”, which, in their general meaning, indicate monetary compensation or reparation.

Therefore, **the eighth** feature of financial-law sanctions is that they are **expressed exclusively in monetary terms**.

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[51] *Instruktsiia pro poriadok narakhuvannia i splaty yedynoho vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: postanova Ministerstva finansiv Ukrainy vid 20.04.2015 № 449* [Instruction on Procedure for Calculating and Paying Unified Contribution for Compulsory State Social Insurance: Resolution of the Ministry of Finance of Ukraine No. 449 dated April 20, 2015]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/z0508-15#Text (May 16, 2022). [in Ukrainian]

This feature should be distinguished because, while legal sanctions in general may take the form of adverse legal restrictions of property, personal, or organizational nature, a financial-law sanction always consists of property restrictions expressed in monetary form.

Financial-law sanctions are applied not only on the grounds and in the form clearly regulated by legislation, but also in accordance with a procedure determined and normatively established by law. This requirement follows from the public nature of such sanctions and is aimed at ensuring procedural transparency, equality of application by authorized bodies, and the absence of unjustified preferences.

The current legislation of Ukraine provides for a specific procedure for applying financial-law sanctions which, depending on the conduct of the offender and other circumstances, may be divided into extrajudicial (voluntary or administrative) and judicial procedures. Thus, financial-law sanctions may be applied on the basis of a self-determined obligation of the offender (in tax law), by decisions of executive authorities (extrajudicial procedure), or by judicial authorities (judicial procedure). Where a person independently detects a violation, such person is obliged to eliminate it and pay the amount of the debt, including sanctions, without waiting for compulsory measures by supervisory or judicial authorities. If these obligations are fulfilled in due time, no additional procedural measures apply.

The procedure for extrajudicial and judicial application of financial-law sanctions is regulated by financial legislation and includes procedural elements, rights and obligations of authorized bodies and offenders. It differs from administrative, criminal, or civil procedures and is therefore special. Accordingly, a **special procedural order of application** constitutes **the ninth** characteristic feature of financial-law sanctions.

In contrast to civil-law and commercial-law sanctions, which are collected by one contractual party in favor of another, a specific (**tenth**) feature of financial-law sanctions as public sanctions is that funds collected from the offender are **credited to the state budget system or state specialized funds**.

This feature applies, inter alia, to sanctions in the fields of pension provision and compulsory state social insurance, which are credited to state trust funds rather than to the general state budget, unlike criminal or administrative fines. This difference is due to the public (not private) nature of financial legal relations and their focus on regulation and ensuring compliance with norms established by the state in an imperative manner, without the possibility of their modification by other parties to such relations. Thus, pursuant to Part 5 of Article 15 of Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, amounts of penal sanctions are credited to the State Budget of Ukraine. Due to amendments introduced by Law of Ukraine No. 466-IX "On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Elimination of Technical and Logical Discrepancies in Tax Legislation" dated January 16, 2020, the time limits for applying penal financial sanctions (fines) to taxpayers correspond to the limitation period for assessing monetary obligations established in Article 102 of the Tax Code of Ukraine[52].

Thus, Article 25 of the Law of Ukraine "On the Use of Registers of Payment Transactions in Trade, Catering and Services"[53] establishes that agreed amounts of financial sanctions determined by Articles 17–24 of this Law shall be transferred by business entities to the State Budget of Ukraine within ten calendar days from the date of their approval. Other legislative

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[52] *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo vdoskonalennia administruvannia podatkiv, usunennia tekhnichnykh ta lohichnykh neuzghodzhenostei u podatkovomu zakonodavstvi: Zakon Ukrainy vid 16.01.2020 № 466-IX* [On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Elimination of Technical and Logical Discrepancies in Tax Legislation: Law of Ukraine No. 466-IX dated January 16, 2020]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2020. No. 32. Article 227. [in Ukrainian]

[53] *Pro zastosuvannia reiestratoriv rozrakhunkovykh operatsii u sferi torhivli, hromadskoho kharchuvannia ta posluh: Zakon Ukrainy vid 06.07.1995 № 265/95-VR* [On the Use of Registers of Payment Transactions in Trade, Catering and Services: Law of Ukraine No. 265/95-VR dated July 6, 1995]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1995. No. 28. Article 205. [in Ukrainian]

acts regulating financial activity and financial discipline also contain similar provisions.

The eleventh feature of **financial-law sanctions is that they are applied to the collective income (property) of the violator of financial discipline—a juridical person or a natural person-entrepreneur**. In particular, a sole proprietor pays financial-law sanctions from business income that has not yet been distributed, rather than from personal income such as wages; this rule also applies where hired labor is used. Two aspects should be emphasized here: first, among public-law sanctions, only financial-law sanctions are applied directly to the collective income of legal entities and entrepreneurs; second, such sanctions are paid from the general funds (profit) of the offender. In this respect, the legal regimes governing the sources of payment of financial-law sanctions differ from those applicable to civil-law or other private-law sanctions.

Thus, according to the Instruction on Application of the Chart of Accounts for Bookkeeping of Assets, Capital, Liabilities and Business Transactions of Enterprises and Organizations[54], approved by Order of the Ministry of Finance of Ukraine No. 291 dated November 30, 1999, (as amended), accounting of recognized fines, penalties and liquidated damages for non-compliance with legislation or contractual obligations by an enterprise is carried out on accounts intended for recording operating expenses. This indicates that a fine or penalty imposed for failure to fulfill contractual or statutory obligations is not paid directly from the distributed profit of the enterprise, but reduces its financial result, which in turn affects the amount of profit available for distribution among corporate participants or members of the labor collective.

[54] *Instruktsiia pro zastosuvannia Planu rakhunkiv bukhhalterskoho obliku aktyviv, kapitalu, zoboviazan i hospodarskykh operatsii pidpryiemstv i orhanizatsii: Nakaz Ministerstva finansiv Ukrainy vid 30.11.99 № 291* [Instruction on Application of the Chart of Accounts for Bookkeeping of Assets, Capital, Liabilities and Business Transactions of Enterprises and Organizations: Order of the Ministry of Finance of Ukraine No. 291 dated November 30, 1999]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. January 10, 2012. No. 102. [in Ukrainian]

According to the Instruction on Application of Economic Classification of Budget Expenditures[55], (as amended), accounting of recognized fines, penalties and liquidated damages for non-compliance with legislation or contractual obligations by an enterprise is carried out on accounts intended for recording operating expenses. This indicates that a fine or penalty imposed for failure to fulfill contractual or statutory obligations is not paid directly from the distributed profit of the enterprise, but reduces its financial result, which in turn affects the amount of profit available for distribution among corporate participants or members of the labor collective. At the same time, although financial legislation does not directly regulate specific accounting accounts or sources for payment of financial-law sanctions by business entities, analysis of the Chart of Accounts allows concluding that such sanctions are paid from the income of the juridical person remaining at its disposal and not from production or operating costs included in expenses for tax purposes. Accordingly, these payments affect the formation of net income of the payer. It is evident that such expenses are not included in costs taken into account when determining taxable profit. Therefore, financial-law sanctions are paid from funds constituting the collective income of the enterprise and its corporate members, and in the absence of the obligation to pay such sanctions, this income could be distributed for remuneration of labor or payment of dividends in higher amounts. Thus, losses in the form of unreceived income are collective in nature, which reflects the collective and property character of financial-law liability.

Thus, the collective nature of financial-law sanctions consists in foreclosure on the collective income and property

[55] *Pro zatverdzhennia Instruktsii shchodo zastosuvannia ekonomichnoi klasyfikatsii vydatkiv biudzhetu ta instruktsii shchodo zastosuvannia klasyfikatsii kredytuvannia biudzhetu: nakaz Ministerstva finansiv Ukrainy vid 12.03.2012 № 333* [On Approval of the Instruction on Application of Economic Classification of Budget Expenditures and Instruction on Application of Classification of Budget Lending: Order of the Ministry of Finance of Ukraine No. 333 dated March 12, 2012]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/z0456-12#Text (July 15, 2022). [in Ukrainian]

of the offending juridical person, which results in corresponding losses and reduction of its financial resources. This feature significantly distinguishes financial-law sanctions from administrative or criminal fines, which are paid from the personal income and/or property of the offender, who may only be a individual. In such cases, there is no issue of foreclosure on collective income and, accordingly, no collective losses.

It is also necessary to single out **the twelfth** feature of financial-law sanctions as their application to the violator regardless of the **application of administrative or criminal liability measures**.

This feature clearly reflects the distinct legal nature of financial-law sanctions in comparison with criminal and, primarily, administrative punishments, since the application of measures of financial-law liability is not conditional upon the application of other types of legal liability. Financial-law sanctions are applied independently where the relevant legal grounds exist. That is, financial-law sanctions may be imposed on a financial offender for violation of financial norms simultaneously with administrative or criminal liability measures, depending on the degree of social harm or danger of the offense. This approach follows from financial legislation, which, while establishing the elements of financial offenses and the scope of relevant sanctions, also provides for the possibility of applying administrative or criminal liability to violators. Such regulation is contained, inter alia, in Article 112 of the Tax Code of Ukraine, Article 26 of the Law of Ukraine "On Collection and Registration of Unified Contribution for Compulsory State Social Insurance," as well as in relevant provisions of legislation governing financial services and financial markets.

The features considered above in their totality demonstrate the specific nature of financial-law sanctions and their distinct place within the system of legal sanctions, confirming their existence as an independent legal phenomenon. At the same time, distinguishing financial-law sanctions highlights the peculiarities of the purposes and objectives of these measures, which correspond to the functions performed by financial-law liability. Through analysis of the functions of sanctions, it becomes possible to assess their impact on social relations and to identify the particular place occupied by these measures within the overall system of legal sanctions, characterized by their specific content and legal orientation.

1.3. Functions of Financial-Law Sanctions

The place of financial-law sanctions in the system of measures of legal liability is characterized by their inclusion in the instruments of state governance used for the implementation of public functions, without which it would be extremely difficult, and in some cases impossible, to maintain the financial system in a proper state. Due to this circumstance, the specific role of financial-law sanctions in regulating social relations in the field of finance becomes apparent. At the same time, this role is manifested through the functions performed by financial-law sanctions. Functions are closely connected with the purpose and essence of financial-law sanctions; therefore, their study is essential.

In order to regulate social relations, general legal theory distinguishes functions of law, which represent the main directions of legal influence on such relations. Through the functions of law, it is possible to determine the role of law in society and its significance. All functions of law are traditionally divided into general social and special legal ones. In particular, in Ukrainian legal doctrine it is emphasized that, in terms of their social orientation and content, the functions of law largely coincide with the functions of the state, since law acts as the principal means of implementing state activities in the economic, social, environmental and protective spheres [56].

In legal science, the concept of "function" is used in various meanings. In general, a function (from the Latin

[56] Voronova, L. K. *Finansove pravo Ukrainy. Zahalna chast: pidruchnyk* [Financial Law of Ukraine. General Part: textbook]. Kyiv: Yurinkom Inter, 2013. P. 42. [in Ukrainian]

function—performance, implementation) is understood as a mode of action of an object or element of a system aimed at achieving a certain effect; it is an external manifestation of the properties of a particular object within a system of relations. In philosophy, a function is interpreted as a phenomenon dependent on another phenomenon and changing along with it. In sociology, a function reflects the dependence between objects of different status, classes or groups, between the part and the whole; it also denotes the performance of a specific social role by a given object or the realization of a particular purpose or task with a socially useful result. In psychology, the term “function” is used to describe elementary psychophysiological processes occurring under certain conditions. In law, the concept of function is understood as the role performed by a particular social phenomenon or legal institution in social life; accordingly, legal science applies the term “function” to characterize the social role of law and the state. Thus, the concept of “function” is polysemantic and may be applied to characterize various dynamic structures, which is обусловлено the specific tasks of the sciences using this concept. However, in most cases, a function is associated with a purpose-oriented influence of a system or structure on certain aspects of the external environment.

Considering sanctions as coercive legal measures, the general theory of law identifies the main directions of legal influence aimed at ensuring proper implementation of legal prescriptions and preventing their violation as the functions of sanctions of legal norms. Through these functions, the state of legality and legal order in society is ensured.

In the field of financial activity, functions reflect the role of financial-law sanctions as measures of state coercion and express the legal consequences of their application.

In view of the above, *functions of financial-law sanctions are the main areas of their legal influence on financial legal relations, which are aimed at ensuring compliance with the norms of financial law in order to maintain legality and financial discipline*.

Research into the functions of financial-law sanctions has not been carried out at a sufficient level in comparison with studies devoted to financial-law liability in general. Existing research is mostly limited to identifying the functions of financial-law liability and, accordingly, financial-law sanctions. At the same time, since the application of sanctions constitutes the practical implementation of liability, the final impact of liability on social relations is manifested precisely through the influence of sanctions. Although the legal categories of financial-law liability and sanctions are not identical, they share common functions. It may even be stated that the functions of financial-law liability reach their final addressee through the functions of financial-law sanctions, and it is precisely their influence that is perceptible to the entities at which it is directed. Therefore, the connection between financial-law liability and its sanctions is close, and in essence they perform the same functions, since sanctions serve as instruments for achieving the goals of financial-law liability.

Representative of Ukrainian legal science R. A. Usenko notes that “the main functions of financial sanctions are informative, punitive, preventive, fiscal, and stimulating ones”[57]. At the same time, this researcher understands fiscal function as an ability to fill the state budget as a result of recovery of financial sanctions. Identification of this function is justified by reality, in which it is necessary to state the fact of existence of the given function and its successful implementation, despite the fact that replenishment of state income from revenues of recovered sanctions is not the primary goal of financial-law sanctions, in particular, in the form of fine, although every year the Law of Ukraine “On the State Budget” envisages that some types of penal sanctions represent the source of formation of a special fund of the state budget of Ukraine.

Taking into account the functions performed by financial-law liability, as well as the specific nature and tasks of financial-law sanctions, it is possible to distinguish the following functions of financial-law sanctions. From the standpoint of their legal

[57] Usenko, R. A. *Finansovi sanktsii za administratyvnym zakonodavstvom Ukrainy* [Financial penalties under the administrative laws of Ukraine]: dissertation for the degree of Candidate of Legal Sciences; specialty 12.00.07/ Koretskyi Institute of State and Law. Kyiv, 2007. P. 67. [in Ukrainian]

characteristics as means of influencing social relations, regulatory and protective functions of financial-law sanctions should be highlighted.

Thus, one of the primary tasks of financial-law sanctions is implementation of the ***regulatory*** function, since precisely the sanction as a structural component of the financial norm establishes consequences of illegal conduct of natural and juridical persons during the interaction of the specified parties to financial legal relations with the state and vice versa. Thus, sanctions regulate the specified relations and reflect the appropriate range of results of this interaction depending on their legal or illegal focus. *The regulatory function of financial sanctions is* an area of legal influence of the financial norm, which consists in the requirement to observe rules of conduct established by it by all parties to financial legal relations, which results in lawful behavior of parties to financial legal relations, i.e. the regulatory function has the task of regulating social relations and consists, first of all, in establishing positive rules of conduct, organizing social relations, coordinating social interrelations. The content of this function was specified in the definition given by O. F. Skakun, according to which the regulatory function is a function for regulating social relations, determining the line of behavior of people, and granting certain rights and obligations to them[58]. Therefore, the existence of other functions of financial-law sanctions is impossible without their regulatory function, since the regulatory effect of sanctions lies in establishing and shaping the outcomes of financial legal relations. If legal norms did not determine the consequences of violations of financial legislation, the essence of sanctions would be lost, as there would be no legal liability for such violations. The existence of sanctions within financial legal norms that provide for financial-law liability ensures regulation and stability in the sphere of financial relations.

The existence of financial-law sanctions and their public announcement by the legislator through inclusion in the relevant

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[58] Skakun, O. F. *Teoriia derzhavy ta prava: pidruchnyk* [Theory of state and law: textbook]. Kharkiv: *Konsum*, 2001. P. 227. [in Ukrainian]

legal acts, which are officially published and generally apply throughout the state to an unlimited circle of participants in social relations, contribute to the development of certain knowledge of these parties to financial legal relations about the state's position regarding certain actions and their consequences, and, accordingly, preliminary attitude to the relevant circumstances. This is the ***preventive*** function of financial-law sanctions, which is aimed at preventing violations of relations that exist in financial activities of the state. The preventive focus of this influence of financial-law sanctions is ensured in the form of general preventive and private preventive areas.

By establishing a financial-law sanction, the state influences the legal consciousness of citizens and other persons. Each participant of financial legal relations is aware of the measures that may be applied in the event of failure to comply with the relevant prohibition or obligation. The deterrent effect of such liability is reinforced by effective activities of state authorities aimed at detecting financial offenses and holding guilty persons liable. The very fact of application of a sanction to specific persons, as well as public awareness of the inevitability of financial-law liability, serves as an effective preventive means that restrains a significant part of society from committing offenses. This constitutes the general preventive function of financial-law sanctions.

Ukrainian researcher R. A. Usenko along with the preventive function of the sanction also singles out the informative function, which, in his opinion, "consists in informing participants in legal relations of possible punishment. In addition to the general threat of repression, information included in the sanction consists in discretionary powers of the authority applying the sanction (when the sanction is relatively determined), degree of public danger from the offense depends on the amount of financial sanctions, etc."[59] It should be agreed that a financial-law sanction, like any measure

[59] Usenko, R. A. *Finansovi sanktsii za administratyvnym zakonodavstvom Ukrainy* [Financial penalties under the administrative laws of Ukraine]: dissertation for the degree of Candidate of Legal Sciences; specialty 12.00.07 / Koretskyi Institute of State and Law. Kyiv, 2007. P. 47. [in Ukrainian]

of other types of legal liability, being regulated in legal acts subject to compulsory publication, has a certain informational content, in particular, regarding the amount, conditions and procedure of application, etc. However, mere informing of society cannot be considered an independent and decisive function of financial-law sanctions, since similar informational influence is inherent in the vast majority of legal norms. Instead, the preventive effect arising from public awareness of the possibility and actual cases of application of financial-law liability measures plays a significantly more important role in influencing social behavior and preventing unlawful conduct.

The general preventive function of financial-law sanctions has a lot in common with the regulatory function, since both functions use the warning included in the sanction of the financial norm as a method of their implementation. Both functions are associated either with prohibiting actions specified in the disposition of the norm or, conversely, with obliging subjects to perform certain actions prescribed therein. At the same time, these functions differ in their purpose: the regulatory function is aimed at organizing and regulating financial relations, whereas the preventive function is aimed at preventing unlawful behavior.

The private preventive function of the financial-law sanction is manifested in possible application of sanctions to a certain violator of a specific norm. This function is realized when the offender bears financial-law liability and is aimed at demonstrating to that person the negative legal consequences of the committed violation, thereby deterring him or her from committing similar offenses in the future. In this case, the individualized impact of the sanction constitutes the private preventive function of financial-law sanctions.

At the same time, there is an opinion that preventive influence is ensured with the help of the financial-law norm as a whole, and not its separate structural element (sanction)[60]. In general,

[60] Nahrebelnyi, V. P., Chernadchuk, V. D., Sukhonos, V. V. *Finansove pravo Ukrainy. Zahalna chastyna: navch. posibnyk dlia stud. vyshchykh navch. zakl.* [Financial law of Ukraine. General part: textbook for students of higher educational institutions] / edited by V. P. Nahrebelnyi. Sumy: *Universytet. knyha*, 2004. P. 191. [in Ukrainian]

one should agree with this point of view, because in order to understand the possibility of negative consequences of illegal conduct, one should first of all understand for which actions this liability can be imposed. At the same time, it should be taken into account that the sanction, envisaging measure of punishment, indicates illegal actions envisaged by other parts of the norm, and, therefore, in this case, the sanction will play the main preventive role in omission of illegal actions, and, therefore, perform the preventive function. As Ukrainian scientist, Prof. V. Nahrebelnyi notes, tasks of the preventive function include strengthening the financial discipline, which envisages conscientious exercise of granted rights and fulfillment of obligations envisaged by financial-law norms [61].

It can be seen from the above that the *preventive function of financial-law sanctions is an area of legal influence of the financial norm on conduct of parties to financial legal relations, which consists in eradicating their illegal conduct (real or permissible) for preventing illegal conduct or activities of parties to financial relations, forming socially beneficial motives of conduct or in excluding (limiting) the real and actual possibility of a new financial offense*.

The punitive and ***restorative*** functions, which are immanent functions of financial law, are also characteristic functions of financial-law sanctions.

According to a representative of Ukrainian legal science, Professor V. V. Nahrebelnyi, punitive and restorative functions are inherent in legal sanctions that establish measures of legal liability. If a sanction fixes a specific measure of liability, it simultaneously performs both a punitive and a restorative function, since it not only imposes adverse consequences on the offender but also aims at restoring the disturbed financial legal order [62].

[61] Nahrebelnyi, V. P., Chernadchuk, V. D., Sukhonos, V. V. *Finansove pravo Ukrainy*. *Zahalna chastyna: navch. posibnyk dlia stud. vyshchykh navch. zakl.* [Financial law of Ukraine. General part: textbook for students of higher educational institutions] / edited by V. P. Nahrebelnyi. Sumy: *Universytet. knyha,* 2004. P. 195. [in Ukrainian]

[62] Nahrebelnyi, V. V. *Financial Law of Ukraine: General Part.* Kyiv: Yurinkom Inter, 2016. P. 312. [in Ukrainian]

In turn, Ukrainian scholar A. S. Yemelianov emphasizes that financial sanctions are predominantly characterized by a restorative nature, which is manifested in the elimination of negative consequences for the financial system caused by a financial offense. At the same time, financial sanctions are applied for violations of public financial obligations and therefore contain distinct punitive elements expressed in the imposition of additional monetary burdens on the offender[63].

Thus, Article 68 of the Constitution of Ukraine stipulates that everyone is obliged to strictly adhere to the Constitution of Ukraine and the laws of Ukraine, not to encroach on the rights and freedoms, honor and dignity of other people, and that ignorance of the law does not exempt from legal liability[64].

In this regard, the punitive function of a financial-law sanction is an area of legal influence on the offender, which consists in official condemnation by the state of unlawful behavior in the field of public finance. It must correspond to the principles of financial-law liability and the directions of legal influence of financial norms on financial offenders. The punitive function of a financial norm sanction is manifested in forecasting negative consequences for a committed financial offense. The sanction fulfills the function of punishing the guilty person for an unlawful act in order to clearly demonstrate the imperative will of the state to react to violations of established financial rules, publicly affirming the inadmissibility of such behavior and indicating the inevitability of adverse consequences for similar violations in the future.

The restorative function of a financial-law sanction is aimed at eliminating damage caused by a financial offense. In a broad sense, the object of restorative influence is financial relations arising in the course of financial activities of the state and territorial communities. These relations are harmed as a result of a financial offense, and therefore the restorative function

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63 Yemelianov, A. S. *Mery finansovo-pravovoho prymusu* [Measures of financial-law coercion]. Pravovedennia [Jurisprudence]. 2001. No. 6. P. 44. [in Ukrainian]

64 Constitution of Ukraine: Law of Ukraine of June 28, 1996 No. 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy. 1996. No. 30. Art. 141.

of a financial sanction consists in imposing on the offender the obligation to restore the state of financial legal relations that existed prior to the violation and to compensate for the negative consequences caused to public finances.

Undoubtedly, financial-law sanctions along with already determined functions also perform the ***educational*** function. The specificity of educational influence lies in shaping a high level of legal awareness, stable lawful behavior models, and respect for financial legislation. Subjects affected by the educational function of financial-law sanctions can be divided into two groups: those who have not committed an offense and those who have already committed a financial offense. For the former, the educational function increases the level of legal awareness and law-abiding motivation; for the latter, it contributes to displacing socially harmful behavioral motives. The implementation of the educational function of financial-law sanctions is closely linked to the punitive function, since punishment is applied not for the purpose of causing suffering, but to correct unlawful behavior and prevent future violations.

These functions most fully and comprehensively reveal the nature of financial-law sanctions, their purpose and the consequences of their application. At the same time, the described functions are inherent, in one form or another, in sanctions of other branches of law, since sanctions generally serve to predict negative consequences of unlawful conduct and ensure lawful behavior.

Thus, the regulatory function is performed by sanctions of all types of legal liability, since it is impossible to distinguish lawful behavior from unlawful behavior without normative consolidation of the consequences of violating legal prescriptions.

The preventive function is also characteristic of all legal sanctions, as the establishment of liability measures acts as a signal that deters potential offenders and demonstrates the negative attitude of the state to unlawful behavior, as well as the inevitability of coercive measures in case of violations.

The punitive function is most clearly manifested in criminal and administrative sanctions as public-law liability measures. However, civil, commercial and financial sanctions may also contain punitive elements, particularly in the form of fines and other monetary deprivations.

The restorative orientation is primarily characteristic of private-law branches (civil and commercial law), while criminal and administrative law mainly use compensatory mechanisms outside the sanction framework. In this regard, financial-law sanctions constitute a specific exception within public law, as they combine both punitive and restorative functions.

Sanctions of all branches of law also perform an educational function, which is expressed in forming legal awareness and conviction in the necessity of lawful conduct, based on understanding the social harm and personal disadvantage of unlawful behavior.

Thus, the inherent functions of financial-law sanctions, manifested in their application, indicate the specific goals for which such sanctions exist. Taken together, these functions confirm the independent place of financial-law sanctions within the system of legal liability measures. At the same time, further systematization and generalization of knowledge about financial-law sanctions is necessary, as it allows revealing their complexity, scope, and specific role in the regulation of public financial relations.

1.4. Classification of Financial-Law Sanctions

Scientific classifications represent a way of identifying the essential qualities of system elements, from which other characteristics and features of each element derive. The classification of sanctions of legal norms is not merely theoretical but also practical, as it is directly connected with their normative consolidation, improvement and application. It also contributes to clarifying the specific nature of financial-law sanctions in comparison with related legal phenomena.

In order to classify financial-law sanctions, it is necessary to determine a criterion (an essential feature of such sanctions) according to which they may be grouped. Scientific discussions regarding the independence of financial sanctions as a category of legal liability, the scope of financial legal relations to which they apply, and the types of sanctions as measures of financial-law liability have led to the formation of various approaches to their classification and understanding of their legal content.

Thus, Ukrainian scholar O. M. Shevchuk proposed a classification of financial-law sanctions that includes: 1) fines and penalties; 2) suspension or limitation of budgetary financing; 3) compulsory recovery of unpaid mandatory payments; 4) additional monetary charges provided by financial legislation [65].

At the same time, this approach raises a number of justified remarks. Measures such as suspension of financing constitute measures of financial-law coercion rather than financial-law sanctions, since they do not give rise to a new monetary obligation for the violator. Compulsory recovery of unpaid taxes or fees is a procedural form of enforcement of an existing obligation and does not replace a sanction as a measure of financial-law liability.

R. A. Usenko divides financial-law sanctions into the following types:

— according to the method of imposition—into accrual sanctions and withdrawal sanctions. Accrual sanctions are financial sanctions, which amount is determined according to the algorithm established by the legislator (fine and penalty). Withdrawal sanctions are characterized by the fact that a certain sum of money is subject to withdrawal in view of its origin through applying a sanction in the form of withdrawal of illegally obtained income [66]. Such a differentiation raises doubts, because the sanction cannot have a single purpose—only accrual. The monetary obligation that arises for the violator of financial discipline due to the application should be settled either independently by the violator, or due to coercive

[65] Shevchuk, O. M. *Financial Sanctions as a Form of Property Liability in Financial Law*. Kharkiv : Pravo, 2020. P. 117. [in Ukrainian]

[66] Usenko, R. A., Lukianets, D. M. *Finansovi sanktsii za zakonodavstvom Ukrainy: monohrafiia* [Financial penalties under the laws of Ukraine: monograph]. Kyiv: Dakor, KNT, 2007. P. 64. [in Ukrainian]

power of the state. Withdrawal of illegally obtained income is unlikely to be included in financial-law sanctions. Depending on the grounds of application, it is necessary to determine either administrative nature of this measure of collection (confiscation) or civil and legal one (in case of invalidating an agreement concluded deliberately against the interests of the state and society).

According to the degree of certainty R. A. Usenko divides financial-law sanctions into: 1) absolutely determined, i.e. that cannot be reduced or increased by the authority applying them; 2) relatively determined, i.e. that have a higher and lower amount limit; 3) financial sanctions as components of cumulative sanctions (that include measures of legal liability of various kinds)[67]. In addition, according to R. A. Usenko, it is possible to divide financial-law sanctions according to calculation features: 1) those calculated in a fixed amount; 2) multiples of a certain amount; 3) in tax exempt minimum incomes of citizens[68]. One should agree with this division.

Associate Professor Z. M. Budko chose the specificity of scope of application of financial-law sanctions as a criterion for their classification. According to this criterion, financial-law sanctions are divided into: budgetary, currency, cash, payment (tax and non-tax)[69]. The famous Ukrainian Professor L. K. Voronova divides sanctions into two types: restorative and punitive[70]. According to domestic Academic Professor N. Yu. Pryshva[71], financial

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67 Usenko, R. A. *Finansovi sanktsii za zakonodavstvom Ukrainy: monohrafiia* [Financial penalties under the laws of Ukraine: monograph]. Kyiv: Dakor, KNT, 2007. P. 72. [in Ukrainian]

68 Ibid. P. 159. [in Ukrainian]

69 Budko, Z. M. *Finansovo-pravova vidpovidalnist za vchynennia podatkovykh pravoporushen* [Financial-law liability for tax offenses]: dissertation for the degree of Candidate of Legal Sciences: specialty 12.00.07. Zaporizhzhia, 2005. P. 144. [in Ukrainian]

70 Voronova, L. K. *Finansove pravo Ukrainy: pidruchnyk* [Financial law of Ukraine: textbook]. Kyiv: *Pretsedent*; *Moya kniga*, 2006. P. 68. [in Ukrainian]

71 Pryshva, N. Yu. *Pravovi problemy rehuliuvannia oboviazkovykh platezhiv* [Legal problems of regulation of mandatory payments]: dissertation for the degree of Doctor of Legal Sciences: specialty 12.00.07 / Kyiv. Nats. un-t im. Tarasa Shevchenko [Taras Shevchenko National University of Kyiv]. Kyiv, 2004. P. 358–365. [in Ukrainian]

sanctions under the legislation of Ukraine are divided into the following types:

1) fine:

a) for violating tax legislation;

b) for violating legislation on patenting;

c) for violating currency legislation;

d) for violating banking legislation;

e) for violating the procedure for cash transactions;

f) for violating legislation on social insurance;

g) for violating the state price discipline, etc.;

2) penalty:

a) envisaged by norms of tax legislation. It is imposed in case of violation of tax payment and other mandatory payment terms and is applied for:

— late settlement of the tax liability by the taxpayer;

— violation by the bank of deadlines for crediting mandatory payments to the budget and state specialized funds;

b) penalty for violating currency legislation;

c) penalty imposed for violation of settlement terms in the field of foreign economic activities and for non-fulfillment of obligations.

According to Academician M. P. Kucheriavenko, financial-law liability for violating tax legislation is implemented in the form of: 1) collection of the amount of understated or hidden payment to the budget in the form of tax; 2) fine; 3) penalty [72].

Determination of a correct approach to classification of financial-law sanctions requires a deep understanding of the specified measures of financial-law liability and their features, which allows dividing them by types.

This classification of financial-law sanctions should be ensured using the method of systematic analysis of norms of the current financial legislation of Ukraine according to several criteria, each of which independently reflects the specificity of financial-law sanctions. Conditions of division chosen for classification are

[72] Kucheriavenko, M. P. Tax Law of Ukraine. Kharkiv: Pravo, 2020. P. 311. [in Ukrainian]

indicative of proving the uniqueness of financial-law sanctions, self-sufficiency and field affiliation with financial law.

The division of sanctions by *types of offenses*, which commission results in applying financial-law sanctions, is necessary, taking into account complexity of the field of financial law and tax, currency, and other subfields, in which an offense may be committed. At the same time, types of offenses within the same subfield also differ by objects, etc., and specification of financial-law sanctions extends to the smallest group of financial offenses.

The allocation of types of financial-law sanctions *depending on entities authorized to apply them* is also necessary, taking into account the system of various bodies endowed with similar powers, which differ mainly in types of financial legal relations, in which these bodies apply financial-law sanctions.

Taking into account regulation of relations in the field of finance by numerous legal acts, it is appropriate to consider types of sanctions *depending on their determination by such acts of different levels*. Research in sanctions from the perspective of their formulation by legislative and subordinate legal documents allows not only understanding the full scale of law-making of our state and its bodies in the field of financial activities, but also identifying its shortcomings, which consist in the lack of systematization of financial legislation, its overload with subordinate documents, etc.

Financial-law sanctions can be divided by *types and criterion of certainty of amount of the sanction*, since there are several ways of determining and expressing them. Thus, if we consider methods of determining depending on the absoluteness (in a certain amount established by the legal act) or relative certainty (minimum and (or) maximum value) of the amount of sanctions, different conclusions can be drawn. On the one hand, a clear determination of amount of the sanction by the legislator will make it impossible for law enforcement agencies to commit corrupt acts of unjustified underestimation or overestimation of amount of the sanction in each specific case depending on a number of circumstances that will contribute to this illegal conduct of officials authorized to make the relevant decisions. However, on the other hand, this lack of alternatives in amount of the financial-law sanction prevents developing a personalized approach to each violator and imposing liability taking into account the specific circumstances of the case and the violator. Undoubtedly, the current financial legislation is not yet at such a stage of its development to take into account the violator or conditions, under which the violation was committed, when applying measures of financial-law liability, not to mention the guilt of the offender. At the same time, an individual approach to prosecution for financial violations corresponds not only to the principle of proportionality of violation and punishment, but will also serve to increase the professional and legal authority of state bodies.

The division of financial-law sanctions into *basic and additional* is an indicator of their versatility, but at the same time, independence of fine and penalty as different measures of financial-law liability.

The classification of measures of financial-law liability by *groups of entities, to which they can be applied* is an indicator of significant branching of the financial system as well as difference of financial-law sanctions from measures of other types of legal liability, which have a more limited range of persons, to whom they can be applied (administrative, criminal and legal one).

The procedure for applying sanctions of financial-law liability varies depending on the type of financial legal relations, but in general, it can be expressed in two ways (extrajudicial and judicial). The vast majority of sanctions are applied extrajudicially, but depending on their payment or non-payment by the violator, measures applied in the pre-trial order are recovered judicially. It is also necessary to mention possible self-imposition of financial-law sanctions by the violator under the current financial (tax) legislation, which is difficult to imagine, for example, in criminal law.

The grouping of sanctions by *the purpose of application* into punitive and restorative ones is almost the most mentioned criterion for their division among scientists and researchers, which is possibly justified by the bond with functions performed by sanctions as well as qualitative indicator of originality of financial-law sanctions in connection with the combination of punitive and restorative effects and objectives of sanctions, in contrast to some other measures, which are characterized by one of the specified objectives or one of them.

Therefore, this extended grouping serves the most comprehensive and complete research in types of financial-law sanctions, which classification is as follows:

I. By types of the main financial offenses they are divided into:

1. Tax sanctions, which depending on the scope of application are classified:

1.1) *for offenses related to accounting and reporting of tax activities*, in particular:

— a fine in the amount of UAH 340 for natural persons— entrepreneurs and UAH 1,020 for legal entities is applied for late registration as a taxpayer in accordance with Clause 117.1 of Article 117 of the Tax Code of Ukraine [73];

— a fine in the amount of UAH 340 is imposed for failure to submit a tax return within the statutory deadline in accordance with Clause 120.1 of Article 120 of the Tax Code of Ukraine;

1.2) *for offenses against the regulatory establishment of the procedure for emergence, implementation and termination of tax legal relations*:

— understatement of the amount of tax liabilities declared in tax (customs) returns or clarifying calculations by the taxpayer entails imposing a fine in the amount of 10 percent of the understated amount of tax liability or other mandatory payment, control over which is entrusted to regulatory authorities, in accordance with Clause 123.1 of Article 123 of the Tax Code of Ukraine;

1.3) *for offenses related to failure to submit or violation of the procedure and (or) deadline for providing information to tax authorities:*

— failure of banks to comply with the deadline for providing information on opening or closing accounts of taxpayers entails

[73] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

imposing a fine in the amount of UAH 680 in accordance with Clause 118.1 of Article 118 of the Tax Code of Ukraine.

It should be noted that such a sanction is directly connected with the provisions of Article 69 of the Tax Code of Ukraine. Clause 69.2 obliges banks and other financial institutions to notify the tax authority of the opening or closing of a taxpayer's account within three working days[74].

At the same time, this obligation must be applied in conjunction with Article 62 of Law of Ukraine No. 2121-III "On Banks and Banking Activities" dated December 7, 2000[75], which regulates disclosure of banking secrecy and establishes that disclosure is permitted in cases expressly provided by law.

Thus, the current regulation creates a legal collision which, in practice, may affect the legality of imposing sanctions and cause inconsistency in the behavior of banking institutions;

1.5) *for failure to fulfill or improper fulfillment of decisions and requirements of tax authorities:*

— a penalty is charged on the amount of tax debt at the rate of 120 percent of the annual accounting rate of the National Bank of Ukraine, applicable on the day of accrual, in accordance with Clause 129.1.1 of Article 129 of the Tax Code of Ukraine[76].

2. In the currency field:

2.1) in accordance with Part 3 of Article 14 of the Law of Ukraine "On Currency and Currency Transactions", the National Bank of Ukraine has the right to apply enforcement measures in the form of fines to non-bank financial institutions in the amount of up to 20 percent of their equity capital;

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[74] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

[75] *Pro banky i bankivsku diialnist: Zakon Ukrainy vid 07.12.2000 № 2121-III* [On Banks and Banking Activities: Law of Ukraine No. 2121-III dated December 7, 2000]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2001. No. 5–6. Article 30. [in Ukrainian]

[76] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

2.2) in accordance with Part 2 of Article 14 of the same Law, the National Bank of Ukraine may apply enforcement measures, including financial sanctions, for violations of currency legislation [77].

3. In the public banking sector:

— in accordance with Clause 7.5 of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine, approved by Resolution of the Board of the National Bank of Ukraine No. 346 dated August 17, 2012, a fine is imposed for failure of banks to comply with the procedure, terms and technology of banking transactions established by legal acts of the National Bank in the amount envisaged in Clauses 7 and 9 of Article 73 of the Law of Ukraine "On Banks and Banking Activities" no more than 0.01 percent of the amount of the bank's authorized capital stock for the first violation, 0.05 percent of the amount of the bank's authorized capital stock for the second violation, 0.1 percent of the amount of the bank's authorized capital stock for the third and further violations;

— in accordance with Clause 7.10 of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine, approved by Resolution of the Board of the National Bank of Ukraine No. 346 dated August 17, 2012, a fine is imposed on the bank for failure to comply with the procedure for forming and keeping compulsory reserves, reserves under currency directives for the first violation during the last 12 retention periods in the amount of the average interest rate on the overnight loan of the National Bank calculated for the period of retention, when the violation was committed, plus three percentage points from the amount underreserved by the bank in this period, but no more than 1 percent of the amount of authorized capital stock [78];

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[77] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

[78] *Pro zatverdzhennia Polozhennia pro zastosuvannia Natsionalnym bankom Ukrainy zakhodiv vplyvu: Postanova Natsionalnoho banku Ukrainy vid 17.08.2012 № 346* [On Approval of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine: Resolution of the National Bank of Ukraine No. 346 dated August 17, 2012]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/z1590-12#Text (June 12, 2022). [in Ukrainian]

— in accordance with Clause 7.19 of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine, approved by Resolution of the Board of the National Bank of Ukraine No. 346 dated August 17, 2012, a fine is imposed on the bank for failure to comply with the requirements of legislation on financial monitoring in the amount of no more than UAH 400,000 in case of violation of the requirements regarding the refusal to establish (maintain) business relations, conduct financial transactions [79];

— in the amount of UAH 2,000,000 for each type of violation, namely:

• violation of the procedure for freezing/unfreezing assets related to terrorism and its financing, proliferation of weapons of mass destruction and its financing, and stopping financial transactions;

• failure to comply with the requirements of the National Bank of Ukraine made according to legislation on financial monitoring.

4. <u>In the field of monetary and cash transactions:</u>

4.1) *for violations related to failure to comply with the requirements of financial norms in the field of cash discipline:*

— Decree of the President of Ukraine No. 436/95 "On Application of Penalties for Violating the Norms for Regulating the Circulation of Cash" dated June 12, 1995, became invalid on the basis of Decree of the President No. 418/2019 "On Recognition of Certain Decrees of the President of Ukraine as Invalid" dated June 20, 2019, which cancels financial sanctions for violating cash discipline. At the same time, administrative liability for violating cash discipline remains. Namely:

for violating the procedure for cash payments for goods (services), including exceeding the maximum amounts of cash payments— from UAH 1,700 to UAH 3,400. The same actions committed

[79] *Pro zatverdzhennia Polozhennia pro zastosuvannia Natsionalnym bankom Ukrainy zakhodiv vplyvu: Postanova Natsionalnoho banku Ukrainy vid 17.08.2012 № 346* [On Approval of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine: Resolution of the National Bank of Ukraine No. 346 dated August 17, 2012]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/z1590-12#Text (June 12, 2022). [in Ukrainian]

by a person, who was subjected to an administrative penalty for the same violation during the year—from UAH 8,500 to UAH 17,000 (Article 163-15 of the Code on Administrative Offenses)[80];

for surrender of proceeds by trade enterprises of all forms of ownership, which sell goods for cash, in violation of terms established by rules of calculations and cash transactions (for responsible persons)—from UAH 289 to UAH 1,496. The same actions committed by a person repeatedly during the year after imposing an administrative penalty for the same violation—from UAH 731 to UAH 2,975 (Part 1 of Article 164-4 of the Code on Administrative Offenses)[81].

Current Regulation No. 148 "On Conducting Cash Transactions in National Currency in Ukraine"[82] and Regulation No. 95 "On Transfer of Cash Reserves for Safekeeping to Authorized Banks and Related Transactions" dated September 17, 2021[83], do not regulate the issue of financial liability in this field.

4.2) *for failure to comply with the terms of payment transactions:*

— Article 17 of the Law of Ukraine "On the Use of Registers of Payment Transactions in Trade, Catering and Services"

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[80] *Kodeks pro administratyvni pravoporushennia: Zakon Ukrainy vid 7 hrudnia 1984 r. № 322-VII* [Code on Administrative Offenses: Law of Ukraine No. 322-VII dated December 7, 1984]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1984. No. 51. Article 1122. [in Ukrainian]

[81] Ibid/

[82] *Pro zatverdzhennia Polozhennia pro vedennia kasovykh operatsii u natsionalnii valiuti v Ukraini: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 29.12.2017 № 148* [On Approval of the Regulation on Conducting Cash Transactions in National Currency in Ukraine: Resolution of the Board of the National Bank of Ukraine No. 148 dated December 29, 2017]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0148500-17#Text (January 15, 2022). [in Ukrainian]

[83] *Pro zatverdzhennia Polozhennia "Pro peredavannia zapasiv hotivky na zberihannia do upovnovazhenykh bankiv ta provedennia operatsii z nymy": Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 17 veresnia 2021 roku № 95* [On Approval of the Regulation "On Transfer of Cash Reserves for Safekeeping to Authorized Banks and Related Transactions": Resolution of the Board of the National Bank of Ukraine No. 95 dated September 17, 2021]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0095500-21#Text (November 12, 2021). [in Ukrainian]

envisages applying financial sanctions in the amount of 30 tax exempt minimum incomes of citizens in case of failure to print or create a control tape in electronic form on registers of payment transactions[84];

4.3) *for violating rules of application of registers of payment transactions:*

— according to Clause 9 of Article 17 of Law of Ukraine No. 265/95-VR "On the Use of Registers of Payment Transactions in Trade, Catering and Services" dated July 6, 1995, a fine in the amount of 300 tax exempt minimum incomes of citizens is envisaged (in case of using a register of payment transactions during the payment transactions, which design or software has undergone changes that are not envisaged by the manufacturer's engineering and technological, and software documents);

— according to Clause 3 of Article 17 of Law of Ukraine No. 265/95-VR "On the Use of Registers of Payment Transactions in Trade, Catering and Services" dated July 6, 1995, a fine in the amount of 50 tax exempt minimum incomes of citizens is envisaged (if, when carrying out payment transactions, the business entity does not use, uses items unregistered properly, violates the established procedure for use or does not keep books of accounting payment transactions or settlement books within the prescribed period)[85];

— according to Clause 3 of Article 17 of Law of Ukraine No. 265/95-VR "On the Use of Registers of Payment Transactions in Trade, Catering and Services" dated July 6, 1995, a fine in the amount of 300 tax exempt minimum incomes of citizens is envisaged (in case of payment transactions through registers of payment transactions or software registers of payment transactions without using the mode of programming the name

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[84] *Pro zastosuvannia reiestratoriv operatsii u sferi torhivli, hromadskoho kharchuvannia ta posluh: Zakon Ukrainy vid 6 lypnia 1995 roku № 265/95-VR* [On the Use of Registers of Transactions in Trade, Catering and Services: Law of Ukraine No. 265/95-VR dated July 6, 1995]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1995. No. 28. Article 205. [in Ukrainian]

[85] Ibid.

of each excise product with an indication of the commodity subcategory code, price of goods and accounting for their quantity)[86];

— according to Clause 10 of Article 17 of Law of Ukraine No. 265/95-VR "On the Use of Registers of Payment Transactions in Trade, Catering and Services" dated July 6, 1995, a fine in the amount of 30 tax exempt minimum incomes of citizens is envisaged (in case of failure to provide regulatory authorities with reporting related to the use of registers of payment transactions, books and copies of settlement documents and fiscal reporting receipts from registers of payment transactions through wired or wireless communication channels if their submission is mandatory)[87];

4.4) *for violating requirements of this Law to service centers that ensure warranty repair of registers of payment transactions:*

— according to Article 17^1 of Law of Ukraine No. 265/95-VR "On the Use of Registers of Payment Transactions in Trade, Catering and Services" dated July 6, 1995, a fine in the amount of 5 minimum wages established by the law as of January 1 of the tax (reporting) period is envisaged (in case of failure to ensure warranty repair of the register of payment transactions within the terms established by this Law, and failure to put into operation a backup register of payment transactions properly registered to the business entity).

5. <u>In the field of compulsory state social insurance:</u>

— according to Clause 2 of Part 11 of Article 25 of Law of Ukraine No. 2464-VI "On Collection and Registration of Unified Contribution for Compulsory State Social Insurance" dated July 8, 2010, the tax authority applies penal sanctions in the amount of 20 percent of sums not paid on time to the payer of unified contribution (for failure to pay (failure to deliver) or late payment (late delivery) of unified contribution);

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[86] *Pro zastosuvannia reiestratoriv operatsii u sferi torhivli, hromadskoho kharchuvannia ta posluh: Zakon Ukrainy vid 6 lypnia 1995 roku № 265/95-VR* [On the Use of Registers of Transactions in Trade, Catering and Services: Law of Ukraine No. 265/95-VR dated July 6, 1995]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1995. No. 28. Article 205. [in Ukrainian]

[87] Ibid.

— according to Clause 3 of Part 11 of Article 25 of the above Law, a fine in the amount of 10 percent of the specified sum for each full or partial reporting period, for which this sum was added, but no more than 50 percent of the added unified contribution, is imposed for additional accrual by the tax authority or payer of unified contribution not accrued in a timely manner;

— according to Clause 6 of Part 11 of Article 25 of the above Law, a fine in the amount of 10 percent of unpaid or untimely paid sums is imposed for failure to pay, incomplete or untimely payment of the amount of unified contribution simultaneously with issuance of payments, for which unified contribution (of advance payments) is accrued;

— Clause 1 of Part 12 of Article 25 of the above Law envisages imposing a penalty at a rate of 0.1 percent of the specified amounts, calculated for each day of delay in delivery (crediting), and a fine in the amount of 10 percent of sums not credited (not delivered) in a timely manner is imposed for late delivery or late crediting of amounts of unified contribution by banks;

— Clause 2 of Part 12 of Article 25 of this Law imposes a fine on banks in the amount of 100 percent of the sum of unified contribution, which is payable by payers, for violating requirements envisaged in Part 2 of Article 24 of this Law.

Thus, Law of Ukraine No. 2260-IX "On Amendments to the Tax Code and Other Laws of Ukraine Regarding the Specifics of the Tax Administration of Taxes, Fees and a Single Contribution During the State of Martial Law, State of Emergency" dated May 12, 2022 [88] restores the taxpayer's liability for non-payment or temporary non-payment of taxes and their declaring. Therefore, taxpayers, who can fulfill their tax obligation, should fulfill it.

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[88] *Pro vnesennia zmin do Podatkovoho kodeksu ta inshykh zakoniv Ukrainy shchodo osoblyvostei podatkovoho administruvannia podatkiv, zboriv ta yedynoho vnesku pid chas dii voiennoho, nadzvychainoho stanu: Zakon Ukrainy vid 12 travnia 2260-IX* [On Amendments to the Tax Code and Other Laws of Ukraine Regarding the Specifics of the Tax Administration of Taxes, Fees and a Single Contribution During the State of Martial Law, State of Emergency: Law of Ukraine No. 2260-IX dated May 12]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/2260-20#Text (August 15, 2021). [in Ukrainian]

Thus, it is not possible to simply refer to exemption from the tax obligation.

As can be seen from the classification of financial-law sanctions by types of financial offenses, there is no single state body, which competence would include all powers of imposing financial-law liability and applying its measures. These functions are distributed by the legislator among a number of state executive bodies, other state administration bodies and courts. The creation of this system of bodies contributes to comprehensive control by the state at all levels of compliance with financial legislation, detection of offenses and imposition of financial liability.

Depending on the field of financial legal relations, in which the offense is committed, it is appropriate to classify financial-law sanctions depending on authorities that apply them.

II. By entities applying financial-law sanctions:

1. Regulatory authorities.

(in the context of tax activities)

We note that rights and obligations of tax authorities (hereinafter tax authorities mean regulatory authorities in the definition of the Tax Code of Ukraine—the author) can be conditionally divided into two groups. The first group corresponds and is consistent with rights and obligations of payers (obligation to provide information on taxation, etc.). The second group represents independent rights and obligations of tax authorities, which are implemented when interacting with other authorities or when applying sanctions.

It should be noted that establishing an exhaustive list of rights and obligations of tax authorities is quite important given the fact that Part 2 of Article 19 of Constitution of Ukraine No. 254k/96-VR dated June 28, 1996 [89], specifies that state bodies and their officials act in the manner and within the limits prescribed by law.

At the same time, according to Article 41 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010, regulatory authorities include the central executive body, which implements state tax, state customs

[89] *Konstytutsiia Ukrainy: vid 28.06.1996 № 254k/96-VR* [Constitution of Ukraine: No. 254k/96-VR dated June 28, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1996. No. 30. Article 141. [in Ukrainian]

policy, state policy on the administration of unified contribution, state policy in the field of combating offenses when applying tax and customs legislation, legislation on the payment of unified contribution and other legislation, which fulfillment control is entrusted to the regulatory authority (hereinafter—the central executive body, which implements state tax and customs policy), its territorial authorities.

Therefore, collection authorities are only regulatory authorities empowered to take measures for ensuring repayment of tax debt and arrears from the payment of unified contribution within the limits of powers as well as state executors within the limits of their powers. The collection of tax debt and arrears from the payment of unified contribution based on executive inscriptions of notaries is not allowed. Thus, according to Clauses 20.1.28 and 20.1.29 of Article 20 of the Tax Code of Ukraine, regulatory authorities, among other things, are empowered to recover financial (penal) sanctions from banks and other financial institutions in the form of penalty for their late execution of court decisions and instructions of taxpayers on the payment of taxes, fees, charges as well as to make decisions on installment and deferment of monetary obligations or tax debt in the statutory manner [90].

(in the context of mobilizing unified social contribution)

The authorized state tax authority has the right to impose penal sanctions on the payer of unified contribution in the form of fine:

for evasion of registration or untimely submission of an application for registration by payers of unified contribution, who are not subject to the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations” [91]—in the amount of 10 tax exempt minimum incomes of citizens;

[90] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy [Voice of Ukraine]*. December 4, 2010. No. 229. [in Ukrainian]

[91] *Pro derzhavnu reiestratsiiu yurydychnykh, fizychnykh osib — pidpryiemtsiv ta hromadskykh formuvan: Zakon Ukrainy vid 15 travnia 2003 r. № 7554-IV* [On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations: Law of Ukraine No. 7554-IV dated May 15, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003, No. 31–32. Article 263. [in Ukrainian]

for failure to pay (failure to deliver) or late payment (late delivery) of unified contribution—in the amount of 20 percent of sums not paid on time;

for failure to submit, untimely submission, submission not according to the established reporting form—in the amount of 10 tax exempt minimum incomes of citizens, etc.;

for additional accrual of unified social contribution not paid on time, penal sanctions are also envisaged in the amount of 10 percent of the specified sum for each full or partial reporting period, for which this sum was added, but no more than 50 percent of the added sum, and the sum of such additional accruals, as a rule, is equal to the difference between the contribution to be paid and contribution actually paid;

for improper maintenance of accounting documents, based on which a fine is charged in the amount of eight to fifteen tax exempt minimum incomes of citizens;

for improper maintenance of accounting documents used for the calculation and accrual of the unified contribution, a fine is imposed in the amount of eight to fifteen tax exempt minimum incomes of citizens, in accordance with Clause 4 of Part 11 of Article 25 of Law of Ukraine No. 2464-VI;

for failure to pay, incomplete or untimely payment with issuance of payments, for which unified contribution (of advance payments) is accrued, a fine in the amount of 10 percent of such unpaid or untimely paid sums is imposed;

for untimely submission, submission not according to the established form of reporting on accrual of unified contribution as part of reporting on the income tax of natural persons (unified tax), fines are imposed, envisaged for violating the procedure for submitting information on natural persons—taxpayers in the amounts and in the order established by Article 119 of the Tax Code of Ukraine [92].

It should be emphasized that, although the sanctions related to reporting and declaration of the unified contribution formally

[92] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

remain regulated by Law of Ukraine No. 2464-VI, in practice their application is carried out through the mechanisms of the Tax Code of Ukraine, since reporting on the unified contribution has been integrated into unified tax reporting. Accordingly, financial liability for violations related to the reporting of the unified contribution is applied by tax authorities in accordance with the procedures and sanctions established by the Tax Code of Ukraine.

Note that, as in the case of untimely payment of unified tax, the entrepreneur should pay a penalty, its amount will be equal to 0.1% of the amount of arrears for each day of late payment, for example, if 100 hryvnias are not paid and overdue period is 20 days, the penalty will be equal to 2 hryvnias.

Thus, according to Part 12 of Article 25 of Law of Ukraine No. 2464-VI "On Collection and Registration of Unified Contribution for Compulsory State Social Insurance" dated July 8, 2010[93], tax authorities impose the following financial sanctions on banks:

— for late delivery or late crediting to accounts of tax authorities or to a single account of amounts of unified contribution, financial sanctions specified in Part 11 of this Article, a penalty is charged at a rate of 0.1 percent of the specified amounts, calculated for each day of delay in their delivery or crediting, and a fine in the amount of 10 percent of sums not credited or not delivered in a timely manner is imposed;

— for violating requirements envisaged in Part 2 of Article 24 of this Law, a fine in the amount of 100 percent of unified contribution payable by payers is imposed on banks.

2. National Bank of Ukraine.

The main function of the National Bank of Ukraine as a central bank is to ensure a stable monetary unit of Ukraine. In addition, the National Bank of Ukraine ensures the implementation of individual personal sanctions imposed in accordance with the Law of Ukraine "On Sanctions" and verifies compliance with

[93] *Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-IV* [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-IV dated July 8, 2010]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2011. No. 2–3. Article 11. [in Ukrainian]

sanction-related restrictions in practice by banks, non-banking financial institutions, and postal operators.

Other functions performed by the National Bank of Ukraine include, in particular, determination and implementation of the monetary policyexclusive right to issue the national currency of Ukraine and organization of its circulation; establishing rules for banking transactions, accounting and reporting, protection of information, funds and property for banks; determination of areas of development of modern electronic banking technologies; implementation of banking regulation and supervision; maintenance of the State Register of banks, licensing of banking activities and transactions in cases envisaged by laws, etc.

Thus, exercising rather broad powers in the field of regulation of money circulation in the country, the National Bank of Ukraine is empowered to supervise and control compliance with the current legislation of Ukraine, including its own legal documents. Thus, the National Bank of Ukraine adopted amendments to the Regulation on Application of Enforcement Measures, which expanded the list of grounds for imposing a fine of up to 1 percent of the bank's capital stock. From now on, this fine can be imposed for the bank's violation of the requirements of legal acts of the National Bank, which determine peculiarities of functioning of the banking system of Ukraine under martial law or a special period. The relevant amendments were approved by Resolution of the Board of the National Bank of Ukraine No. 86 "On Amendments to the Regulation on Application of Enforcement Measures by the National Bank" dated April 29, 2022, which entered into force on May 2, 2022.[94] Therefore, the Regulation on Application of Enforcement Measures by the National Bank of Ukraine, approved by Resolution of the National Bank No. 346

[94] *Pro vnesennia zmin Polozhennia pro zastosuvannia Natsionalnym bankom zakhodiv vplyvu: postanova Pravlinnia Natsionalnoho banku Ukrainy vid 03 travnia 2022 № 86* [On Amendments to the Regulation on Application of Enforcement Measures by the National Bank: Resolution of the Board of the National Bank of Ukraine No. 86 dated May 3, 2022]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0086500-22#Text (August 18, 2022). [in Ukrainian]

dated August 17, 2012, Clause 9 of Section II gives the latter the right to impose fines on banks in the amount of no more than 1 percent of the sum of authorized capital stock in case of their violations, in particular, such as violations of the procedure, terms and technology of transactions established by legal acts of the National Bank; provision of false information, failure to provide information and documents, periodic reports, written explanations on the bank's activities at the written request of authorized employees of the National Bank as well as concealment of accounts, documents, assets, etc.; bank's failure to comply with the standard of mandatory reservation during the calendar year; violation of requirements of the legal act of the National Bank of Ukraine, which regulates the procedure for filling out and submitting statistical reporting; failure to correct reporting according to the procedure established by the National Bank of Ukraine, violation of economic standards for regulating bank activities; non-fulfillment (improper fulfillment) of requirements of banking legislation, legal acts of the National Bank on prevention and counteraction to legalization (laundering) of the proceeds of crime, bank's violation of the procedure for forming and keeping compulsory reserves under currency directives, failure of the bank to comply with the amount of funds reserved in foreign currency for a deposit, credit or loan from a non-resident raised by the bank, violation of limit values of the bank's general currency position, bank's violation of requirements for opening separate branches of the bank or provision of false information by the bank on opening its separate branch, or non-compliance of activities of this separate branch with requirements of banking legislation[95]. The listed violations are not exhaustive and reflect the main types of breaches for which financial sanctions may be applied by the National Bank of Ukraine within the limits established by banking legislation.

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[95] *Pro zatverdzhennia Polozhennia "Pro zastosuvannia Natsionalnym bankom Ukrainy zakhodiv vplyvu": Postanova Natsionalnoho banku vid 17.08.2012 № 346* [On Approval of the Regulation "On Application of Enforcement Measures by the National Bank of Ukraine": Resolution of the National Bank No. 346 dated August 17, 2012]. *Ofitsiinyi visnyk Ukrainy vid 01.10.2012 r., № 72* [Official Bulletin of Ukraine No. 72 dated October 1, 2012]. [in Ukrainian]

The above violations and sanctions are applied by the National Bank in the field of public banking relations, which is only its prerogative. However, the above sanctions do not limit activities of the National Bank in applying measures of financial-law liability, as the National Bank of Ukraine is also authorized to impose financial-law coercive measures for violations in the field of currency regulation and control, which will be described in more detail below.

3. Currency regulation and currency control authorities.

Currency regulation and currency control authorities include a number of state bodies, which scope of powers includes both currency regulation and currency control as well as application of financial-law sanctions for detected offenses, among which the National Bank of Ukraine and the State Tax Office of Ukraine should be singled out.

Thus, on February 7, 2019, Law of Ukraine No. 2473 "On Currency and Currency Transactions" dated June 21, 2018, was enacted, in this regard, Decree of the Cabinet of Ministers of Ukraine No. 15-93 "On the System of Currency Regulation and Currency Control" dated February 19, 1993, Decree of the President of Ukraine No. 734/99 "On Regulation of the Procedure for Issuing Credits, Loans to Residents in Foreign Currency from Non-Residents and Imposing Penalties for Violations of Currency Legislation" dated June 27, 1999, and Law of Ukraine No. 185/94-VR "On Procedure for Payments in Foreign Currency" dated September 23, 1994, became invalid, and, therefore, starting from February 7, 2019, a new procedure for currency transactions began to operate in Ukraine. The new Law completely replaced the Decree of the Cabinet of Ministers of Ukraine "On the System of Currency Regulation and Currency Control", introducing a fundamentally new model of currency regulation.

Along with enactment of Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018[96],

[96] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

a new system of currency regulation was introduced, consisting of eight main Regulations of the Board of the National Bank of Ukraine, adopted to replace previous legal acts in the field of currency regulation: 1) Regulation on Structure of the Foreign Exchange Market of Ukraine, Conditions and Procedure for Trade of Foreign Exchange and Bank Metals in the Foreign Exchange Market of Ukraine No. 1 dated January 2, 2019[97]; 2) Regulation on the Conduct of Transactions with Currency Valuables No. 2 dated January 2, 2019[98]; 3) Regulation on Cross-Border Transfer of Currency Valuables No. 3 dated January 2, 2019[99]; 4) Regulation on the List of Safeguards, Procedure and Criteria for Their Introduction, Extension and Early Termination No. 4 dated January 2, 2019[100];

[97] *Pro zatverdzhennia Polozhennia pro strukturu valiutnoho rynku Ukrainy, umovy ta poriadok torhivli inozemnoiu valiutoiu ta bankivskymy metalamy na valiutnomu rynku Ukrainy: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 1* [On Approval of the Regulation on Structure of the Foreign Exchange Market of Ukraine, Conditions and Procedure for Trade of Foreign Exchange and Bank Metals in the Foreign Exchange Market of Ukraine: Resolution of the Board of the National Bank of Ukraine No. 1 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0001500-19#Text [in Ukrainian] (September 15, 2021)

[98] *Pro zatverdzhennia Polozhennia pro zdiisnennia operatsii iz valiutnymy tsinnostiamy: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 2* [On Approval of the Regulation on the Conduct of Transactions with Currency Valuables: Resolution of the Board of the National Bank of Ukraine No. 2 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0002500-19#Text (February 14, 2022). [in Ukrainian]

[99] *Pro zatverdzhennia Polozhennia pro transkordonne peremishchennia valiutnykh tsinnostei: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 3* [On Approval of the Regulation on Cross-Border Transfer of Currency Valuables: Resolution of the Board of the National Bank of Ukraine No. 3 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0003500-19#Text (August 13, 2022). [in Ukrainian]

[100] *Pro zatverdzhennia Polozhennia pro perelik zakhodiv zakhystu, poriadok ta kryterii yikh zaprovadzhennia, podovzhennia ta dostrokovoho prypynennia vid 02.01.2019 № 4: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 4* [On Approval of Regulation on the List of Safeguards, Procedure and Criteria for Their Introduction, Extension and Early Termination No. 4 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine No. 4 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0004500-19#Text (August 16, 2022). [in Ukrainian]

5) Regulation on Safeguards and Determining the Procedure for Certain Transactions in Foreign Currency No. 5 dated January 2, 2019[101]; 6) Regulation on the Procedure for Providing Information by Banks Regarding Contracts Envisaging Fulfillment of Debt Obligations by Residents to Non-Resident Creditors for Credits and Loans Raised by Residents No. 6 dated January 2, 2019[102]; 7) Instruction on the Procedure for Currency Supervision of Banks for Residents' Compliance with Settlement Deadlines in Goods Export and Import Transactions No. 7 dated January 2, 2019[103]; 8) Regulation on the Procedure for Analysis and Verification

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[101] *Pro zatverdzhennia Polozhennia pro zakhody zakhystu ta vyznachennia poriadku zdiisnennia okremykh operatsii v inozemnii valiuti: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 5* [On Approval of the Regulation on Safeguards and Determining the Procedure for Certain Transactions in Foreign Currency: Resolution of the Board of the National Bank of Ukraine No. 5 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0005500-19#Text (August 16, 2022). [in Ukrainian]

[102] *Pro zatverdzhennia Polozhennia pro poriadok nadannia bankamy informatsii shchodo dohovoriv, yaki peredbachaiut vykonannia rezydentamy borhovykh zoboviazan pered nerezydentamy-kredytoramy za zaluchenymy rezydentamy kredytamy, pozykamy: vid 02.01.2019 № 6: Postanova Pravlinnia Natsionalnoho banku Ukrainy* [On Approval of Regulation on the Procedure for Providing Information by Banks Regarding Contracts Envisaging Fulfillment of Debt Obligations by Residents to Non-Resident Creditors for Credits and Loans Raised by Residents No. 6 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0006500-19#Text (August 16, 2022). [in Ukrainian]

[103] *Pro zatverdzhennia Instruktsii pro poriadok valiutnoho nahliadu bankiv za dotrymannia rezydentamy hranychnykh strokiv rozrakhunkiv za operatsiiamy z eksportu ta importu tovariv vid 02.01.2019 № 7: Postanova Pravlinnia Natsionalnoho banku Ukrainy* [On Approval of Instruction on the Procedure for Currency Supervision of Banks for Residents' Compliance with Settlement Deadlines in Goods Export and Import Transactions No. 7 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0007500-19#Text (August 16, 2022). [in Ukrainian]

of Documents (Information) on Currency Transactions by Authorized Institutions No. 8 dated January 2, 2019[104].

Thus, the new Law of Ukraine "On Currency and Currency Transactions", which entered into force on February 7, 2019, significantly simplified the procedure for obtaining a credit (loan, reimbursable financial assistance) and determined that entities of currency transactions—residents and non-residents are obliged to provide information on their currency transactions to authorized institutions, through which currency transactions are carried out, that is, the entity of currency transactions is obliged to provide only complete information to the bank, through which it is carried out[105].

In this regard, according to Clause 5 of Article 13 of the Law of Ukraine "On Currency and Currency Transactions", it is established that the violation of settlement deadlines by residents established according to this Article entails charging a penalty for each day of delay in the amount of 0.3 percent of the sum of unreceived funds under the contract (the value of undelivered goods) in national currency in case of settlements under a foreign economic agreement (contract) in national currency) or in foreign currency converted into national currency at the rate of the National Bank of Ukraine set on the day of debt incurrence. The total amount of charged penalty cannot exceed the amount of unreceived funds under the contract (the value of undelivered goods).

Instead, according to Article 14 of Law No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, penal sanctions may

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[104] *Pro zatverdzhennia Polozhennia zdiisnennia upovnovazhenymy ustanovamy analizu ta perevirky dokumentiv (informatsii) pro valiutni operatsii vid 02.01.2019 № 8: Postanova Pravlinnia Natsionalnoho banku Ukrainy* [On Approval of Regulation on the Procedure for Analysis and Verification of Documents (Information) on Currency Transactions by Authorized Institutions No. 8 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database]/ *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0008500-19#Text (August 16, 2022). [in Ukrainian]

[105] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

be imposed on juridical persons in the amount of up to 100 percent of the sum of a transaction conducted in violation of currency legislation. Moreover, according to this Article of the specified Law, the following can be applied for violating requirements of currency legislation (except for the violation of deadlines in goods export and import transactions, liability for it is established according to Article 13 of this Law) [106]:

enforcement measures can be applied to banks according to the Law of Ukraine "On Banks and Banking Activities";

penal sanctions can be applied to authorized institutions (except for banks);

enforcement measures in the form of penal sanctions can be applied to juridical persons (except for authorized institutions);

enforcement measures in the form of penal sanctions can be applied to natural persons, officials of authorized institutions, and corporate officers.

The National Bank of Ukraine has the right to apply to authorized institutions (except for banks) enforcement measures in the form of penal sanctions in the amount of no more than 20 percent of the sum of the respective authorized institution's equity. It is also worth noting that a significant number of functions of the National Bank of Ukraine were changed from control to supervision, which is also a corresponding amendment in the legislation of Ukraine.

The central executive body, which implements state tax and customs policy, has the right to apply to juridical persons (except for authorized institutions) an enforcement measure in the form of penal sanctions in the amount of up to 100 percent of the sum of transaction in violation of currency legislation for an adequate violation.

Article 15 of the new currency law establishes the procedure for applying measures of financial-law liability for violating requirements of currency legislation:

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[106] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

to authorized institutions—by the National Bank of Ukraine;

to juridical persons (except for authorized institutions)—by the central executive body, which implements state tax and customs policy.

Enforcement measures can be applied within six months from the date of detection of the violation, but no later than three years from the date of its commission.

Only one of enforcement measures envisaged by the law can be applied for each violation of requirements of currency legislation.

The decision of the National Bank of Ukraine to apply an enforcement measure in the form of penal sanctions is an executive document and takes legal effect from the date of its adoption.

The amounts of collected penal sanctions are directed to the state budget[107].

Thus, the Cabinet of Ministers of Ukraine by its Resolution No. 524 dated May 26, 2021, approved the Procedure for Applying Enforcement Measures by Tax Authorities in the Form of Penal Sanctions to Juridical Persons (Except for Authorized Institutions) for Violating Requirements of Currency Legislation (hereinafter—the Procedure). The approved procedure determines the mechanism of the State Tax Service's application of enforcement measures in the form of penal sanctions for violating requirements of currency legislation, except for violation of settlement deadlines in goods export and import transactions) and specifies the procedure and conditions for determining the amount of penal sanctions within the limits established by law[108].

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[107] *Pro valiutu i valiutni operatsii vid 21.06.2018 № 2473-VIII: Zakon Ukrainy* [On Currency and Currency Transactions No. 2473-VIII dated June 21, 2018: Law of Ukraine]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2018. No. 30. Article 239. [in Ukrainian]

[108] *Pro zatverdzhennia Poriadku zastosuvannia podatkovymy orhanamy zakhodiv vplyvu u vyhliadi shtrafnykh sanktsii do yurydychnykh osib (krim upovnovazhenykh ustanov) za porushennia vymoh valiutnoho zakonodavstva: postanova Kabinetu Ministriv Ukrainy vid 26.05.2021 № 524* [On Approval of the Procedure for Applying Enforcement Measures by Tax Authorities in the Form of Penal Sanctions to Juridical Persons (Except for Authorized Institutions) for Violating Requirements of Currency Legislation: Resolution of the Cabinet of Ministers of Ukraine No. 524 dated May 26, 2021]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/524-2021-п#Text (August 16, 2022). [in Ukrainian]

This Procedure applies to juridical persons, except for authorized institutions, which violated requirements of currency legislation. Thus, tax authorities impose penal sanctions on juridical persons for each type of violation of requirements of currency legislation established by Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, namely on the following issues:

- settlements on the territory of Ukraine;
- settlements in currency transactions;
- individual transactions in foreign currency;
- trade of currency valuables and cross-border transfer of currency valuables;
- currency transactions under introduction of safeguards.

Thus, tax authorities impose penal sanctions on juridical persons for violations in the amount of 25 percent of the sum of transaction in violation of currency legislation converted into national currency at the official rate of the National Bank of Ukraine established on the day of this transaction for each case of violation of currency legislation established as a result of the inspection.

Penal sanctions in the amount of 50 percent are imposed for the same actions committed by the juridical person (except for authorized institutions) repeatedly during the year. Thus, penal sanctions are imposed on juridical persons within six months from the date of detection of the violation, but no later than three years from the date of its commission.

4. State social insurance authorities.

4.1. *Financial-law sanctions applied by authorities administering compulsory state social insurance.*

Thus, Article 15 of Law of Ukraine No. 1105-XIV "On Compulsory State Social Insurance" [109] dated September 23, 1999, envisages such a type of financial-law sanction as a fine for violation by policyholders and other recipients of insurance funds

[109] *Pro zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 23 veresnia 1999 roku № 1105-XIV* [On Compulsory State Social Insurance: Law of Ukraine No. 1105-XIV dated September 23, 1999]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 1999. No. 46–47. Article 403. [in Ukrainian]

of the procedure for using insurance funds in the amount of 10 percent of such sums for untimely return or return of insurance sums not in full, and in case of violation of the procedure for using insurance funds, employers should reimburse the body administering compulsory state social insurance in full for the illegally spent sum of insurance funds and/or amount of provided 50 percent of this sum. In this regard, Part 6 of Article 15 of the above Law stipulates that a penalty is simultaneously charged on the amounts of late returned or incompletely returned insurance funds and penal sanctions in the amount of 0.1 percent of the specified sums of funds calculated for each day of delay in payment.

Obligations on applying the above financial-law sanctions are assigned to authorized officials of the Pension Fund of Ukraine and its territorial bodies in accordance with the law.

4.2. *Financial-law sanctions applied by authorities of the Compulsory State Social Insurance Fund of Ukraine in case of unemployment.*

Powers of the Fund include applying a financial-law sanction to employers for violating the procedure for the employer's use of the Fund finance in the form of fine in the amount equal to the sum provided by the Fund used with violation (Part 2 of Article 38 of the Law of Ukraine "On Compulsory State Social Insurance in Case of Unemployment", and according to Part 3 of Article 38 of this Law financial sanctions not paid on time are recovered from the policyholder to the Fund's income in the manner prescribed by law).

Financial sanctions not paid on time are recovered from the policyholder to the Fund's income in the manner prescribed by law (Part 3 of Article 38 of the Law of Ukraine "On Compulsory State Social Insurance in Case of Unemployment").

Authorized officials of the central executive body implementing state policy in the field of employment and labor migration and its territorial bodies, his/her deputies, heads of territorial authorities and their deputies have the right to apply financial sanctions and impose administrative fines on behalf of the Fund.

5. National Securities and Stock Market Commission (NSSMC).

The National Securities and Stock Market Commission of Ukraine according to Article 5 of Law of Ukraine No. 448/96-VR "On State Regulation of Capital Markets and Organized Commodity Markets"[110] dated October 30, 1996, carries out state regulation, supervision and control of capital markets and organized commodity markets, which consists in implementing comprehensive measures to regulate, control, and supervise the market of securities and their derivatives, and prevent abuses and violations in this field. However, in order to protect statutory rights and interests, and to punish persons guilty of violating requirements established by legislation, the Commission is authorized by law to impose financial-law liability on juridical persons—violators (in particular, professional participants of the stock market and self-regulatory organizations of the stock market). Thus, Article 11 of the Law envisages applying financial-law sanctions for the placement of securities without registration of their issue in the manner prescribed by law; execution of transaction (transactions) by the juridical person related to direct professional activities on capital markets and organized markets, which implementation requires a corresponding license, without a license for the relevant type of activities within such professional activities, or the relevant type of activities subject to licensing based on the license, other than those subject to licensing based on the license, other than those giving the right for such a type of activities or professional activities on capital markets, organized commodity capital markets and organized commodity markets in violation of licensing conditions; failure to provide an investor in securities, including a shareholder, upon his/her written request, with information on the issuer's activities within the limits envisaged by law, or providing him/her with inaccurate information; untimely provision of information to investors in financial instruments upon their written request; failure to publish, incomplete publication

[110] *Pro derzhavne rehuliuvannia rynku kapitalu ta orhanizovanykh tovarnykh rynkiv: Zakon Ukrainy vid 30.10.1996 № 448/96-VR* [On State Regulation of Capital Markets and Organized Commodity Markets: Law of Ukraine No. 448/96-VR dated October 30, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1996. No. 51. Article 292. [in Ukrainian]

of information and/or publication of inaccurate information; carrying out activities on the securities market without a special permit (license), if the law envisages obtaining a special permit (license) for such activities; failure to provide or incomplete provision of information and/or provision of inaccurate information to the National Commission for Securities and Stock Market; price-gouging when carrying out transactions with securities, etc. in the form of fines in amounts determined by law depending on the type and gravity of the violation.

6. Authorities regulating financial services markets.

State regulation of financial services markets in Ukraine is carried out by the National Bank of Ukraine and the National Securities and Stock Market Commission within the limits of their competence, in accordance with the Law of Ukraine No. 448/96-VR "On Financial Services and State Regulation of Financial Services Markets" dated October 30, 1996 (as amended). Following the reform of state regulation of financial services markets ("split" reform), the State Commission for Regulation of Financial Services Markets of Ukraine was liquidated, and its powers were redistributed between the above-mentioned authorities.

Pursuant to Article 41 of the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets", the National Bank of Ukraine and the National Securities and Stock Market Commission are empowered, within the scope of their regulatory competence, to apply measures of financial-law liability to providers of financial services—juridical persons, including the imposition of fines, in particular:

— for carrying out activities on financial services markets without obtaining a license, where such licensing is required by law—in the amounts established by law, taking into account the nature of the violation, but not exceeding the statutory limits related to the authorized (share) capital of the juridical person that committed the offense;

— for failure to provide, untimely provision or provision of knowingly inaccurate information to the competent regulatory authority—in the amounts established by law, proportionate to the gravity of the violation and within the limits provided for by the legislation.

Thus, financial-law sanctions in the field of financial services markets are applied by the competent regulatory authorities as measures of public-law coercion aimed at ensuring compliance with mandatory requirements of financial legislation and maintaining the stability and transparency of financial services markets.

7. State Financial Monitoring Service.

The State Financial Monitoring Service of Ukraine is a specially authorized central executive body in the field of state financial monitoring. State financial monitoring in Ukraine is carried out through a system of bodies endowed with supervisory and regulatory powers, which include the National Bank of Ukraine, the National Securities and Stock Market Commission, the Ministry of Finance of Ukraine and other authorities within the limits of their statutory competence.

Legal regulation of relations in the field of prevention and counteraction to legalization (laundering) of the proceeds of crime and terrorist financing is carried out on the basis of the Law of Ukraine No. 249-IV "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing" dated November 28, 2002[111]. This Law differentiates between subjects of state financial monitoring and subjects of primary financial monitoring. Subjects of primary financial monitoring include banks, non-bank financial institutions, professional participants of capital markets, insurers, notaries, lawyers, auditors, postal operators and other entities obliged to conduct primary financial monitoring measures.

In accordance with Article 23 of the above-mentioned Law, the State Financial Monitoring Service of Ukraine is authorized,

[111] Pro zapobihannia ta protydiiu lehalizatsii (vidmyvanniu) dokhodiv, oderzhanykh zlochynnym shliakhom, abo finansuvanniu teroryzmu: Zakon Ukrainy vid 28.11.2002 № 249-IV [On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing: Law of Ukraine No. 249-IV dated November 28, 2002]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 1. Article 2. [in Ukrainian]

within the limits of its competence, to apply measures of financial-law liability in the form of fines to subjects of primary financial monitoring for violations of requirements of financial monitoring legislation, in particular:

for violation of requirements regarding identification, verification and due diligence of clients—in the amount established by law, depending on the nature and gravity of the violation;

for failure to detect, untimely detection or violation of the procedure for registering financial transactions subject to financial monitoring—in the amounts determined by legislation;

for failure to submit, untimely submission, violation of the established procedure for submission or submission of knowingly inaccurate information on financial transactions subject to financial monitoring to the specially authorized body—in the amounts provided for by law.

The application of financial-law sanctions by the State Financial Monitoring Service of Ukraine serves as a form of public-law coercion aimed at ensuring compliance with mandatory requirements of financial monitoring legislation, preventing the use of the financial system for illegal purposes and safeguarding public financial interests.

8. Courts.

According to Part 2 of Article 124 of the Constitution of Ukraine, the jurisdiction of courts extends to all legal relations arising in the state.

Pursuant to Article 3 of the Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges" dated June 2, 2016[112], the judicial system of Ukraine consists of courts of general jurisdiction and the Constitutional Court of Ukraine. Courts of general jurisdiction form a unified system of courts. The Constitutional Court of Ukraine is the sole body of constitutional jurisdiction in Ukraine. According to Article 18 of this Law, courts of general jurisdiction specialize

[112] Pro sudoustrii i status suddiv: Zakon Ukrainy vid 02.06.2016 № 1402-VIII [On the Judiciary and the Status of Judges: Law of Ukraine No. 1402-VIII dated June 2, 2016]. Vidomosti Verkhovnoi Rady Ukrainy. 2016. No. 31. Article 545. [in Ukrainian].

in the consideration of civil, criminal, commercial, administrative cases, as well as cases on administrative offenses.

In accordance with Article 19 of the Code of Administrative Procedure of Ukraine No. 2747-IV dated July 6, 2005[113], the jurisdiction of administrative courts extends to public-law disputes, in particular disputes arising in connection with the exercise of authority by subjects of power in the sphere of public administration.

The jurisdiction of administrative courts also includes disputes initiated by subjects of power in cases expressly provided for by the Constitution and laws of Ukraine, including disputes related to the recovery of mandatory payments, financial sanctions and penalties.

Clause 87.11 of Article 87 of the Tax Code of Ukraine No. 2755-VI dated December 2, 2010, establishes that the controlling authority applies to the court with a claim for recovery of tax debt from a taxpayer—a natural person. On the basis of a court decision, such tax debt is subject to compulsory recovery in accordance with the Law of Ukraine "On Enforcement Proceedings"[114].

At the same time, current legislation does not always directly specify procedural forms for recovery of all types of public debts, including certain categories of financial-law sanctions. Nevertheless, the possibility of judicial recovery of such sanctions follows from the general principles of judicial protection, the competence of administrative courts and established judicial practice.

Thus, state authorities (including tax authorities and other controlling bodies) are entitled to apply to administrative courts with claims for compulsory recovery of financial-law sanctions in cases where the offender fails to comply voluntarily with a lawful decision

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[113] *Kodeks administratyvnoho sudochynstva Ukrainy*: vid 06.07.2005 № 2747-IV [Code of Administrative Procedure of Ukraine: No. 2747-IV dated July 6, 2005]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2005. No. 35–36, No. 37. Article 446. [in Ukrainian]

[114] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

on the imposition of such sanctions. At the same time, participants in financial legal relations whose rights have been violated by unlawful actions or decisions of public authorities are also entitled to seek judicial protection, including recovery of unlawfully imposed financial sanctions.

Based on the results of case consideration, the court adopts a decision (in administrative proceedings—a ruling), which is rendered in the name of Ukraine and is binding throughout the territory of Ukraine. Enforcement of court decisions is ensured by the bodies of the state enforcement service or private enforcement officers in accordance with the law.

9. Financial offender.

A financial-law sanction in the form of a fine may, in cases provided for by law, be independently calculated and paid by the offender.

In particular, Clause 50.1 of Article 50 of the Tax Code of Ukraine provides that a taxpayer who independently identifies an understatement of tax liability in previously submitted tax returns is obliged to submit a clarifying calculation and independently accrue a fine. In such a case, the amount of the fine is 3 percent of the understated tax liability if the clarifying calculation is submitted before the commencement of a tax audit. If the understatement is reflected in a tax return for the next reporting period, the fine is 5 percent[115]. This mechanism is aimed not only at simplifying the procedure for correction of tax reporting errors, but also at stimulating taxpayers to voluntarily eliminate violations of tax legislation. Independent accrual and payment of financial sanctions by the offender reduces the amount of liability compared to sanctions imposed by controlling authorities as a result of tax audits and serves as a preventive measure in the system of financial-law responsibility.

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[115] Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI [Tax Code of Ukraine]. Vidomosti Verkhovnoi Rady Ukrainy. 2011. No. 13–17. Article 112 (Clause 50.1). [in Ukrainian]

III. Depending on the types of legal acts:

3.1) sanctions included in legislative acts of Ukraine, in particular:

— *Tax Code of Ukraine*, which determines the grounds and procedure for applying financial sanctions for tax violations, their amount, features of bodies of offenses, procedure for payment and (or) forced recovery, etc.

Thus, the adoption of the Tax Code of Ukraine, which entered into force on January 1, 2011, became a significant stage in the development of domestic legislation, because the need for its existence had long been evident, and previously the legislative regulation of tax payments was extremely fragmented and complicated by numerous separate legal acts. This fragmentation repeatedly caused negative feedback from both Ukrainian society and foreign investors. The Tax Code of Ukraine acts as the main legislative act regulating taxation relations, the tax system as a whole, its foundations, and the elements of the tax legal mechanism. This Code combines material and procedural aspects of the tax system and all aspects of collection of taxes and fees.

We further emphasize that although the Tax Code of Ukraine significantly reduced the number of legislative and subordinate legal acts, it is still not the only document regulating the procedure for applying financial-law sanctions. This situation is logically explained by the fact that financial legal relations in the state are not limited solely to the regulation of tax payments and application of sanctions for violations related to their payment; therefore, confining all cases of application of financial-law sanctions to a single legislative act such as the Tax Code would unreasonably restrict the scope of financial legal relations and liability;

— *Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018*[116], which regulates the procedure for imposing financial sanctions in the field of currency regulation and control and establishes liability for violations of currency legislation;

[116] *Pro valiutu i valiutni operatsii: Zakon Ukrainy vid 21.06.2018 № 2473-VII* [On Currency and Currency Transactions: Law of Ukraine No. 2473-VII dated June 21, 2018]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2018. No. 30. Article 239. [in Ukrainian]

— *Law of Ukraine* No. 2464-VI *"On Collection and Registration of Unified Contribution for Compulsory State Social Insurance"*[117] dated July 8, 2010, which regulates cases and procedures for applying financial sanctions for violation of the procedure for registration of unified contribution by payers, its payment, reporting and other mandatory obligations under Articles 24–25 of this Law;

— *Law of Ukraine* No. 1058-IV *"On Compulsory State Pension Insurance"*[118] dated July 9, 2003, which, among other provisions, determines the application of financial sanctions to banks for late delivery or late crediting of amounts of pension contributions and for late payment of pension benefits to recipients in Articles 106–107;

— *Law of Ukraine "On Compulsory State Social Insurance in Case of Unemployment"*, which determines cases of imposition of financial liability of the employer for violating the procedure for the employer's use of funds of the target Fund and corresponding sanctions[119];

— *Law of Ukraine* No. 265/95-VR *"On the Use of Registers of Payment Transactions in Trade, Catering and Services"* dated July 6, 1995, which envisages applying financial sanctions to entrepreneurs carrying out payment transactions for goods (services) for violating requirements of this Law[120];

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[117] *Pro zbir ta oblik yedynoho vnesku na zahalnooboviazkove derzhavne strakhuvannia: Zakon Ukrainy vid 8 lypnia 2010 roku № 2464-IV* [On Collection and Registration of Unified Contribution for Compulsory State Insurance: Law of Ukraine No. 2464-IV dated July 8, 2010]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2011. No. 2–3. Article 11. [in Ukrainian]

[118] *Pro zahalnoderzhavne derzhavne pensiine strakhuvannia: Zakon Ukrainy vid 9 lypnia 2003 roku № 1058-IV* [On Compulsory State Pension Insurance: Law of Ukraine No. 1058-IV dated July 9, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 49–51. Article 376. [in Ukrainian]

[119] *Pro zahalnooboviazkove derzhavne sotsialne strakhuvannia na vypadok bezrobittia: Zakon Ukrainy vid 2 bereznia 2000 r. № 1533-III* [On Compulsory State Social Insurance in Case of Unemployment: Law of Ukraine No. 1533-III dated March 2, 2000]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2000. No. 22. Article 171. [in Ukrainian]

[120] *Pro zastosuvannia reiestratoriv rozrakhunkovykh operatsii u sferi torhivli, hromadskoho kharchuvannia ta posluh: Zakon Ukrainy vid 6 lypnia 1995 roku № 265/95-VR* [On the Use of Registers of Payment Transactions in Trade, Catering and Services: Law of Ukraine No. 265/95-VR dated July 6, 1995]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 1995. No. 28. Article 205. [in Ukrainian]

— *Law of Ukraine* No. 361-IX *"On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing"* dated December 6, 2019, which establishes liability of subjects of state and primary financial monitoring for failure to perform functions assigned to them regarding the implementation of financial monitoring [121];

— *Law of Ukraine No. 3480- IV "On State Regulation of the Securities Market in Ukraine" dated February 23, 2006,* which provides for applying financial-law sanctions for violations in the securities market [122].

3.2. In subordinate legal acts:

— Resolution of the Board of the National Bank of Ukraine No. 346 "On Approval of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine for Violating Banking Legislation" dated August 17, 2012) [123];

— Resolution of the Cabinet of Ministers of Ukraine No. 524 "On Approval of the Procedure for Applying Enforcement Measures by Tax Authorities in the Form of Penal Sanctions to Juridical Persons

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[121] *Pro zapobihannia ta protydiiu lehalizatsii (vidmyvanniu) dokhodiv, oderzhanykh zlochynnym shliakhom, finansuvanniu teroryzmu ta finansuvanniu rozpovsiudzhennia zbroi masovoho znyshchennia: Zakon Ukrainy vid 6 hrudnia 2019 № 361-IX* [On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction: Law of Ukraine No. 361-IX dated December 6, 2019]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2020. No. 25. Article 171. [in Ukrainian]

[122] On Rynky Kapitalu ta Orhanizovani Tovarni Rynky [On Capital Markets and Organized Commodity Markets]: Law of Ukraine No. 3480-IV dated February 23, 2006. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2006. No. 31. Article 268. (Current version dated January 1, 2026). [in Ukrainian]

[123] *Pro zatverdzhennia Polozhennia pro vedennia kasovykh operatsii u natsionalnii valiuti v Ukraini: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 29.12.2017 № 148* [On Approval of the Regulation on Conducting Cash Transactions in National Currency in Ukraine: Resolution of the Board of the National Bank of Ukraine No. 148 dated December 29, 2017]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0148500-17#Text (January 15, 2022). [in Ukrainian]

(Except for Authorized Institutions) for Violating Requirements of Currency Legislation" dated May 26, 2021 [124];

— Resolution of the Board of the National Bank of Ukraine No. 13 "On Approval of the Regulation on Currency Supervision" dated January 3, 2019.

Subordinate legal acts are designed to regulate relations determined by laws in a more specific way [125].

IV. Depending on the certainty of amounts of penalty:

4.1) absolutely determined fines:

— in a fixed amount (for example, a fine established in a fixed monetary amount under specific provisions of the Tax Code of Ukraine, such as fines for failure to submit or late submission of tax reporting, where the amount of the fine is directly defined by law and does not depend on the discretion of the controlling authority);

— calculated in tax exempt minimum incomes of citizens (for example, fines established in multiples of the tax-exempt minimum income of citizens under Article 25 of the Law of Ukraine "On Collection and Registration of the Unified Contribution for Compulsory State Social Insurance");

— in the amount of part of the tax liability (for example, a fine calculated as a percentage of the determined tax liability in cases provided for by Article 123 of the Tax Code of Ukraine);

[124] *Pro zatverdzhennia Poriadku zastosuvannia podatkovymy orhanamy zakhodiv vplyvu u vyhliadi shtrafnykh sanktsii do yurydychnykh osib (krim upovnovazhenykh ustanov) za porushennia vymoh valiutnoho zakonodavstva: postanova Kabinetu Ministriv Ukrainy vid 26.05.2021 № 524* [On Approval of the Procedure for Applying Enforcement Measures by Tax Authorities in the Form of Penal Sanctions to Juridical Persons (Except for Authorized Institutions) for Violating Requirements of Currency Legislation: Resolution of the Cabinet of Ministers of Ukraine No. 524 dated May 26, 2021]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/524-2021-п#Text (August 16, 2022). [in Ukrainian]

[125] *Pro zatverdzhennia Polozhennia pro valiutnyi nahliad: postanova Pravlinnia NBU vid 03.01.2019 № 13* [On Approval of the Regulation on Currency Supervision: Resolution of the Board of the National Bank of Ukraine No. 13 dated January 3, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0013500-19#Text [in Ukrainian]

— in the amount of violation (for example, a fine equal to the amount of unlawfully used or untimely transferred insurance contributions under Article 106 of the Law of Ukraine No. 1058-IV "On Compulsory State Pension Insurance" dated July 9, 2003, payable by the policyholder)[126].

The specified financial-law sanctions differ in methods of calculation; however, their common feature is the absolute certainty of the amount, which excludes the possibility of increasing or decreasing the fine at the discretion of the authority authorized to apply such sanctions.

4.2) relatively determined fines:

— fines with a maximum limit (for example, fines established "up to" a certain maximum amount in tax-exempt minimum incomes of citizens in accordance with Article 41 of the Law of Ukraine No. 2664-III "On Financial Services and State Regulation of Financial Services Markets" dated July 12, 2001)[127].

The specific amount of the fine within the limits established by law is determined by the authorized body in each particular case, taking into account the nature, consequences, and circumstances of the offense.

4.3) penalty:

— established with regard to the discount rate of the National Bank of Ukraine (for example, penalty interest accrued on tax debt in accordance with Article 129 of the Tax Code of Ukraine, calculated based on the discount rate of the National Bank of Ukraine in the manner prescribed by law);

— determined as a percentage of the amount of underpayment for each day of delay (for example, penalty interest calculated for

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[126] *Pro zahalnoderzhavne derzhavne pensiine strakhuvannia: Zakon Ukrainy vid 9 lypnia 2003 roku № 1058-IV* [On Compulsory State Pension Insurance: Law of Ukraine No. 1058-IV dated July 9, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 49–51. Article 376. [in Ukrainian]

[127] *Pro finansovi posluhy ta derzhavne rehuliuvannia rynkiv finansovykh posluh: Zakon Ukrainy vid 12 lypnia 2001 roku № 2664-III* [On Financial Services and State Regulation of Financial Services Markets: Law of Ukraine No. 2664-III dated July 12, 2001]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2002. No. 1. Article 1. [in Ukrainian]

each day of late payment of mandatory contributions in accordance with special legislation governing compulsory state social insurance).

V. Taking into account the method of assignment and priority of application: basic and additional.

Financial-law liability, like other types of legal liability (criminal, administrative, etc.), as a form of state coercion, envisages the application of basic and additional sanctions.

However, unlike criminal law, where the division into basic and additional punishments is clearly defined and additional punishment (such as deprivation of military or special rank, grade, state award or qualification class, as well as confiscation of property) is optional and cannot be imposed as a basic punishment (with the exception of a fine and deprivation of the right to hold certain positions or engage in certain activities, which may be applied both as basic and additional punishments), financial law does not provide such a clear normative distinction. In financial-law liability, additional sanctions may be applied alongside basic ones, and in some cases even independently.

At the same time, the issue arises as to the constitutionality of simultaneous application of two coercive measures for one financial offense, since such a situation may appear to contradict Article 61 of the Constitution of Ukraine, which establishes that no one may be held twice to the same type of legal liability for the same offense. This constitutional provision reflects the generally recognized principle of non bis in idem, according to which repeated punishment of a person for the same offense is prohibited. This principle is widely recognized in international legal doctrine and judicial practice and serves as a guarantee against excessive state coercion[128].

In Ukrainian financial law doctrine, it is substantiated that the simultaneous application of a fine and a penalty (interest) does not violate the principle of one-time liability. Thus, according to Ukrainian scholars, the penalty is not imposed for the fact

[128] Konstytutsiia Ukrainy vid 28.06.1996 [The Constitution of Ukraine dated June 28, 1996]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 1996. No. 30. Article 141. [in Ukrainian]

of committing an offense as such, but arises from the continuing failure to restore the violated financial obligation, primarily the obligation to pay funds to the relevant public fund on time [129]. In this sense, the penalty performs not only a punitive but also a compensatory and restorative function, aimed at compensating for losses caused by delayed fulfillment of a public financial obligation [130].

Accordingly, the simultaneous imposition of a fine and a penalty for financial offenses related to violation of deadlines for payment of tax liabilities, submission of tax reporting, or transfer of mandatory payments cannot be regarded as double punishment. The fine is applied for the commission of a financial offense, while the penalty is accrued for each day of delay in fulfilling a legally established obligation. Such an approach is consistently implemented in tax legislation.

A similar legal construction is used in the field of compulsory state social insurance. In particular, Part 10 of Article 106 of the Law of Ukraine "On Compulsory State Pension Insurance" establishes liability of banks for late delivery or late crediting of insurance contributions, financial sanctions, and other payments to the accounts of the Pension Fund and the Accumulative Fund, providing for both a fine and the accrual of a penalty. This approach corresponds to Part 12 of Article 25 of the Law of Ukraine "On Collection and Registration of the Unified Contribution for Compulsory State Social Insurance", which also provides for charging a penalty and imposing a fine for untimely transfer of funds [131].

In the above cases, a fine is applied as a reaction to the committed unlawful act, whereas the penalty is applied due to the violation

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[129] Kucheravenko, M. P. *Finansove pravo Ukrainy: pidruchnyk* [Financial Law of Ukraine: textbook]. Kharkiv: Pravo, 2019. P. 412–414. [in Ukrainian]

[130] Voronova, L. K. *Finansove pravo Ukrainy: navchalnyi posibnyk* [Financial Law of Ukraine: study guide]. Kyiv: Yurinkom Inter, 2018. P. 295–297. [in Ukrainian]

[131] Pro zbir ta oblik yedynoho vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 08.07.2010 № 2464-VI [On Collection and Registration of the Unified Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-VI dated July 8, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 2–3. Article 11. [in Ukrainian]

of time limits for fulfilling a financial obligation established by law. Given the absence of a clear legislative distinction between basic and additional financial sanctions, the parallel application of a fine and a penalty may be regarded as a form of cumulative financial-law sanctions, justified by the specific legal nature of financial obligations and the public interest involved.

Considering the above, financial-law sanctions may be differentiated according to the criterion of their division into basic and additional sanctions, taking into account their functional purpose, legal nature, and procedural form of application.

VI. By offenders:

6.1) to natural persons;

6.2) to juridical persons.

Financial-law sanctions, depending on the field of financial legal relations and their participants, may be applied both to natural persons and juridical persons. This classification is logical and justified, since financial legal relations are multifaceted and involve, on the one hand, juridical persons—payers of taxes, fees, and other mandatory payments, as well as public authorities exercising control over their collection and bearing corresponding counter-obligations, and, on the other hand, natural persons—payers of mandatory payments and participants in other types of financial legal relations.

Thus, according to Clause 15.1 of Article 15 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010[132], taxpayers are natural persons (residents and non-residents of Ukraine), juridical persons (residents and non-residents of Ukraine), as well as their separate subdivisions that own, receive or transfer taxable items or carry out activities (transactions) that constitute taxable objects in accordance with this Code or tax laws, and which are charged with the obligation to pay taxes and fees in accordance with the Tax Code of Ukraine. At the same time, in contrast to legal acts that became invalid in connection with the adoption of the Tax Code of Ukraine, the latter clearly determines that liability for violating tax

[132] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

legislation by a separate subdivision of the juridical person should be borne by the juridical person being a member (Subclause 47.1.1 of Clause 47.1 of Article 47).

Identification of this aspect is appropriate taking into account that inconsistencies in the issue of offenders gave rise to different interpretations of norms of the current legislation, including by courts, which was expressed in the consideration of cases, where defendants were separate structural subdivisions, and making appropriate decisions on the debt recovery from these subdivisions. It is clear that execution of this decision was made impossible by the debtor's lack of status of the juridical person, etc., which was inconsistent with norms of the Law of Ukraine "On Enforcement Proceedings".

Clause 109.1 of Article 109 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010, determines that tax offenses are illegal acts (action or omission) *of taxpayers, including persons equated to them, regulatory authorities and/or their officials (officers), as well as other entities, which resulted in non-fulfillment or improper fulfillment of requirements established by the Tax Code of Ukraine and other legislation, compliance with which is entrusted to regulatory authorities*. At the same time, it should be noted that persons, who are held liable under Clause 110.1 of Article 110 of this Code, include the *taxpayer, tax agent, as well as other entities directly specified by law*[133].

At the same time, according to the second paragraph of the specified Clause, actions are considered as intentionally committed, if there are circumstances proven by the regulatory authority, which indicate that the taxpayer intentionally and purposefully created conditions that cannot have any other purpose than non-fulfillment or improper fulfillment of requirements established by the Tax Code of Ukraine and other legislation, which fulfillment control is entrusted to regulatory authorities. At the same time, purposeful creation of conditions for non-fulfillment of tax obligations by its nature should be different

[133] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

from actual non-fulfillment of the tax obligation. In other words, it is impossible to recognize the committed tax offense as intentional only in the presence of the fact of non-compliance with requirements of legislation. Non-fulfillment of a tax obligation is a consequence that should be the result of: 1) either failure of the taxpayer to take appropriate measures to fulfill this obligation, and the offense will be simply wrongful; 2) or purposeful actions aimed at creating conditions for non-compliance with requirements of the law, and the offense will be intentional.

A comparative analysis of Clauses 110.1 and 109.1 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010, indicates that ***officials of regulatory authorities are recognized as potential tax offenders and, at the same time, as persons who may be held liable for violations of tax legislation in cases directly provided for by law***.

Significant changes to this approach were introduced by the tax reform of 2020, implemented through the adoption of Law of Ukraine No. 466-IX "On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Elimination of Technical and Logical Discrepancies in Tax Legislation" dated January 16, 2020[134]. As a result of these changes, regulatory authorities bear financial liability for tax offenses committed by their officials in accordance with Articles 110 and 114 of the Tax Code of Ukraine. In particular, pursuant to Clause 114.2 of Article 114 of the Code, damage caused by unlawful decisions, actions or omissions of regulatory authorities or their officials is subject to compensation by the state at the expense of the state budget, regardless of the fault of the regulatory authority or its officials.

Thus, according to Clause 43.5 of the Tax Code of Ukraine, the regulatory authority bears liability in accordance with the law

[134] *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo vdoskonalennia administruvannia podatkiv, usunennia tekhnichnykh ta lohichnykh neuzghodzhenostei u podatkovomu zakonodavstvi vid 16.01.2020 za № 466-IX: Zakon Ukrainy vid 16.01.2020 za № 466-IX* [On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Elimination of Technical and Logical Discrepancies in Tax Legislation No. 466-IX dated January 16, 2020: Law of Ukraine No. 466-IX dated January 16, 2020]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2020. No. 32. Article 227. [in Ukrainian]

for late transfer to the State Treasury of Ukraine of a conclusion on the return of relevant amounts of funds from the respective budget or from a single account. This provision is of particular importance, as failure by officials of regulatory authorities to comply with statutory deadlines for refunding funds, including value added tax refunds, does not entail direct financial sanctions imposed on such officials, which raises concerns regarding the practical implementation of the principle of mutual liability of parties in public financial legal relations[135].

Article 25 of the Law of Ukraine “On Collection and Registration of the Unified Contribution for Compulsory State Social Insurance” establishes financial liability of payers of the unified contribution for violations related to the timely accrual and/or payment of unified contribution amounts. Article 4 of this Law defines a broad range of payers of the unified contribution, including employers, employees, self-employed natural persons, and other categories[136].

Among these categories, the following should be distinguished:

— *juridical persons*, who use labor of natural persons under the terms of labor contract, etc., including branches, representative offices, units and other separate subdivisions of the specified juridical persons having a separate balance sheet and independently making settlements with insured persons, including diplomatic missions and consular institutions of Ukraine;

— *natural persons*—citizens of Ukraine and foreigners, who work for juridical persons, natural persons or who are self-employed, in particular, engaged in independent professional activities, etc.; *persons working in elected positions* in state bodies, local self-government bodies, etc.; *military personnel* (except for conscript military personnel), rank and file and command staff;

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[135] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

[136] *Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-IV* [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-IV dated July 8, 2010]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2011. No. 2–3. Article 11. [in Ukrainian]

persons undergoing compulsory military service in the Armed Forces of Ukraine, other military units formed according to the law, etc.

Thus, this Law not only classifies payers of the unified contribution into juridical and natural persons, but also differentiates them depending on the nature of their activities, employment status, or official position, which directly affects the scope and specifics of their financial-law liability.

Financial-law sanctions may also be applied to both juridical and natural persons for financial offenses in the field of currency regulation, including violations related to foreign currency settlements and compliance with currency legislation.

At the same time, in the field of securities market regulation and public banking, financial offenders may only be legal entities, which is determined by the specific nature of financial legal relations in these areas and the exclusive participation of institutional entities in such relations.

VII. Depending on the procedure for applying:

7.1) sanctions applied extrajudicially;

7.2) sanctions applied judicially.

Financial-law sanctions are applied judicially and extrajudicially, depending on the type of financial offense, the subject authorized to apply such sanctions, and the subjective attitude of the violator toward the decision on the application of measures of financial-law liability.

Taking into account that judicial recovery of financial-law sanctions constitutes a measure of compulsory enforcement, such recovery is generally applied only in cases where the payer fails to fulfill the obligation to pay the relevant amounts voluntarily within the time limits established by law. Therefore, the judicial procedure for recovery of financial-law sanctions is preceded by notifying the violator of the obligation to pay the sanctions voluntarily and granting him or her the statutory period for such payment.

Adoption and delivery of decisions on the application of financial-law sanctions by authorized public authorities to persons who violated financial legislation constitute proper notification of such persons regarding the established fact of unlawful conduct, the need to bear negative legal consequences, and the possibility to exercise the right to appeal the relevant decision in administrative or judicial procedure.

Thus, Clause 57.3 of Article 57 of the Tax Code of Ukraine establishes that where a monetary obligation is determined by a regulatory authority as a result of a tax violation, the taxpayer is obliged to pay the accrued amount within ten calendar days following the day of receipt of the tax notification-decision, except for cases where, within such period, the taxpayer initiates the procedure for appealing the decision of the regulatory authority. According to Clause 56.1 of Article 56 of the Tax Code of Ukraine, decisions of regulatory authorities may be appealed administratively or judicially, while the administrative appeal procedure is recognized as a pre-trial dispute resolution mechanism (Clause 56.18 of Article 56) [137].

Following the adoption of the Law of Ukraine “On Currency and Currency Transactions”, the Regulation “On Currency Supervision” was approved by Resolution of the Board of the National Bank of Ukraine No. 13 dated January 3, 2019. [138] In accordance with Section II of this Regulation, fines for violations of currency legislation are imposed and paid in the national currency of Ukraine. The decision of the National Bank of Ukraine on the application of an enforcement measure has the status of an executive document and enters into force on the date of its adoption. This provision corresponds to Part 4 of Article 15 of the Law of Ukraine “On Currency and Currency Transactions”, which establishes that only one enforcement measure may be applied for each violation of currency legislation and that amounts of financial sanctions are credited to the State Budget of Ukraine.

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[137] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

[138] *Pro zatverdzhennia Polozhennia pro valiutnyi nahliad: postanova Pravlinnia NBU vid 03.01.2019 № 13* [On Approval of the Regulation on Currency Supervision: Resolution of the Board of the National Bank of Ukraine No. 13 dated January 3, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0013500-19#Text [in Ukrainian]

Depending on the nature of the obligation and the subject of the offense, disputes regarding the application and recovery of financial-law sanctions may be considered under administrative proceedings, with enforcement of court decisions ensured by bodies of the state enforcement service. At the same time, in certain cases, the legislator grants decisions of competent authorities the legal force of an executive document, eliminating the need to obtain a separate court decision for compulsory recovery.

Thus, pursuant to Article 106 of the Law of Ukraine "On Compulsory State Pension Insurance", decisions of the Pension Fund authorities on charging a penalty or imposing a fine, as provided for in Parts 9 and 10 of this Article, constitute executive documents and are subject to compulsory enforcement in accordance with the law[139].

VIII. Depending on the purpose of application:

8.1) punitive sanctions;

8.2) restorative sanctions.

The peculiarity of financial-law sanctions is manifested in their role within the system of protective financial legal relations, which are aimed at achieving both punitive and restorative influence. This dual nature is expressed in punishing the offender for committing unlawful acts, compensating for financial losses incurred by the state, enforcing mandatory financial obligations, and, as a result, eliminating unlawful financial conditions.

Thus, under the legislation and doctrine of financial law, financial-law sanctions are traditionally divided into punitive (fines) and restorative (penalties, financial recovery measures). The presence of a punitive function constitutes a distinguishing feature that separates sanctions establishing measures of legal liability from other legal remedies. While legal remedies are primarily aimed at restoring a violated subjective right, financial-law

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[139] *Pro zahalnoderzhavne derzhavne pensiine strakhuvannia: Zakon Ukrainy vid 9 lypnia 2003 roku № 1058-IV* [On Compulsory State Pension Insurance: Law of Ukraine No. 1058-IV dated July 9, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 49–51. Article 376. [in Ukrainian]

sanctions are intended to ensure compliance with public financial obligations and protect the financial interests of the state [140].

Restorative sanctions are designed to compensate for damage caused to the public financial system as a result of a financial offense and to restore the proper state of financial relations by means of compulsory fulfillment of the violated obligation. In financial law, such sanctions are most often embodied in penalties and other compensatory measures that accrue depending on the duration or consequences of non-fulfillment of a financial obligation [141].

This classification of financial-law sanctions demonstrates their significant diversification and deep integration into the financial life of the state, where they occupy one of the most visible and practically important places. financial-law sanctions constitute an instrument of state coercion that is actively applied by numerous public authorities, which ensures the implementation of both punitive and restorative functions across virtually all areas of financial legal relations and with regard to a wide range of subjects.

The versatility of financial-law sanctions enhances their effectiveness in law enforcement practice and allows them to function as an independent and self-sufficient legal means of protecting the financial legal order. Based on the foregoing analysis of the characteristics of financial-law sanctions and their classification according to various criteria, it becomes possible to identify their essential features, which should be consistently implemented in the mechanism of financial-law liability.

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[140] Kucheriavenko, M. P. *Finansove pravo Ukrainy: pidruchnyk* [Financial Law of Ukraine: Textbook]. Kharkiv: Pravo, 2011. P. 412. [in Ukrainian]

[141] Voronova, L. K. *Finansove pravo Ukrainy: akademichnyi kurs* [Financial Law of Ukraine: Academic Course]. Kyiv: Yurinkom Inter, 2013. P. 356–358. [in Ukrainian]

1.5. Distinctive Features of Financial-Law Sanctions

Financial legal relations arise in a specific field of the state activities, and, therefore, each component of these relations and their results have their own features. Financial-law sanctions and scope of their application also have characteristic features, which existence, as well as possibility of their removal are due to their peculiarities, which exist within a separate type of legal liability measures—financial-law sanctions. Therefore, it is separation of the latter and conditions of its existence that form characteristic features of financial-law sanctions.

The legal analysis of financial legislation allows singling out such specific features of financial-law sanctions, which give the latter the right to be separated from other measures of influence on the violator and violated state.

Firstly, as with any public liability measures, financial-law sanctions are applied for offenses. At the same time, financial-law sanctions are applied as a result of a financial offense, which, in turn, is defined as a socially harmful (dangerous) act (action or omission), illegal (one that violates norms of financial legislation), culpable act of the entity possessing delictual capacity (natural or juridical person) that encroaches on financial interests of the state and society, protected by law, and which entails financial-law liability. In Ukrainian financial law, there is no single statutory definition of a “financial offense”. Instead, specific financial legal violations are defined in relevant financial legislation (for example, in the Tax Code of Ukraine, the Law on Currency and Currency Transactions, the Law on Unified Social Contribution, etc.), which establish grounds for the application of financial-law sanctions.

Secondly, since financial legal relations due to their proprietary nature are property-related (monetary), offenses in this field always cause some property damage to the state and the entire society as a whole, among them offenses with a formal body. This characteristic reflects the monetary nature of financial legal relations as defined in the financial legal doctrine and is consistently recognized across financial legislation of Ukraine. The violated field is restored with the help of special financial-law sanctions. Due to the property nature of financial legal relations, sanctions related to deprivation of property of a business entity prevail in the structure of financial liability.

Financial-law sanctions are aimed at depriving the violator of certain benefits for his/her illegal actions. At the same time, the specified restrictions are not of any personal nature (arrest, restriction or deprivation of freedom, etc.), but are aimed only at property funds of the violator. The specified peculiarity is primarily a consequence of the fact that financial legal relations arise only in the field of financial activities of the state and are related to accumulation, distribution and use of funds, that is, they are always of a monetary nature.

Thirdly, financial-law sanctions have such a feature as a restorative purpose. Along with a fine imposed to punish the violator, financial-law liability affects the violator through applying to the latter measures aimed at restoring losses caused by the latter—the obligation to pay a penalty for the entire (or a significant part of) term of the offense.

The restorative focus is a characteristic feature of financial-law sanctions, as it provides an opportunity for both the violator due to property losses in the form of payment of a penalty to realize impracticality of financial-law violations in the future due to excessively unfavorable consequences of such actions, and for the state in a certain way to restore its losses due to illegal actions of violators of its rules.

Fourthly, a distinguishing feature of financial-law sanctions is also represented by persons involved, to whom these sanctions can be applied. Thus, financially and legally liable parties can be both natural and juridical persons. The presence of this characteristic feature is primarily related to the peculiarity of financial legal relations and sufficiently extensive involved field, which, although has a rather specific status in life of the state, plays almost the most significant role in the life process of every modern country.

Since participants in tax, currency, banking and other financial relations can be both natural and juridical persons, such persons can absolutely legally be considered in certain regulatory fields (e.g., securities and financial services markets, banking supervision, currency regulation), financial-law sanctions are primarily applied to juridical persons and/or their responsible officials in accordance with the applicable legislation.

Fifthly, financial-law sanctions are applied in legal relations, which peculiarity is an inequality of their parties. Thus, one party to financial legal relations is always the state represented by state bodies and organizations that are empowered by it in relation to the second participant in relations. Parties are not and cannot be equal in financial legal relations. The state-authorized party to financial legal relations has the right to put into effect the existing legal remedies that ensure executing financial regulations of the state.

Such remedies, in particular, are financial-law sanctions, which are applied by bodies authorized by the current legislation of Ukraine and ensure the actual implementation of financial-law liability of persons guilty of violating regulations of the powerful party to legal relations.

At the same time, it should be noted that *not always only powerless party to legal relations suffers negative consequences of its illegal conduct.* The current legislation of Ukraine envisages ***certain cases of liability of state bodies for violating norms of financial legislation***, in particular, liability of the tax authority for failure to comply with deadlines of refund of an overpaid amount of monetary obligations (Clause 43.5 of Article 43 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010[142]), as well as liability of the Pension Fund, its bodies and officials for violations in the field of compulsory state pension insurance, namely, for amounts of funds unreasonably collected from juridical and natural persons, which consists in payment of a penalty in the value of 120 percent of the annual accounting rate of the National Bank of Ukraine from

[142] *Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

illegally collected amounts in favor of such persons[143]. Such a phenomenon, in a certain way, mitigates a position of inequality of parties, but to a rather insignificant extent, since financial legal relations are primarily public relations, and, therefore, inequality of their participants is one of qualifying factors of this field of social life.

Sixthly, a characteristic feature of financial-law sanctions is that they are not applied at the will of parties, but it is connected with a financial-law act. The imperativeness of financial-law sanctions is their characteristic feature, which is generated by their application by the authorized party on the basis of the relevant norm that existed, exists and will exist after each violation of its regulation. This norm cannot be changed by agreement of parties in any specific case. For example, amount of the fine or term of its payment cannot be changed or canceled due to the desire of any party to do so. Parties to the contract are also deprived of the right to envisage in the contract other type or amount of penal sanctions for violating financial-law norms by any of parties to this contract during its execution.

Seventhly, a special feature of financial-law sanction is its irreplaceability. This factor is related to failure of the legislator to envisage, due to peculiarities of financial legal relations, the right and possibility of replacing a certain type of financial-law sanction by the law enforcement body with another one, as well as adjusting amounts and terms of its payment. Thus, for example, failure to submit or untimely submission of a tax return within the terms specified by legislation by the taxpayer or another person obliged to calculate and pay taxes entails imposing a fine in the amount established by law (often expressed in tax-exempt minimum incomes of citizens) without providing for discretionary modification by the contracting parties for each failure to submit or untimely submission.

[143] *Pro zahalnoderzhavne derzhavne pensiine strakhuvannia: Zakon Ukrainy vid 9 lypnia 2003 roku № 1058-IV* [On Compulsory State Pension Insurance: Law of Ukraine No. 1058-IV dated July 9, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 49–51. Article 376. [in Ukrainian]

The specified financial-law sanction cannot be replaced or modified, since the relevant legal norm does not provide for alternative measures or references to other legal acts that would allow a different regulation of these relations. This reflects the imperative nature of financial-law norms, which must be applied strictly in the form and amount established by law and cannot be altered by agreement of the parties or at the discretion of the law-enforcement authority.

This peculiarity of financial-law sanctions may be contrasted with the procedure for applying criminal sanctions, where the court, taking into account mitigating or aggravating circumstances, the personality of the offender, and his or her attitude toward the committed offense, is empowered to individualize punishment within statutory limits. For example, criminal liability for offenses related to unlawful receipt of financial benefits may involve the imposition of a fine, restriction of liberty, or deprivation of the right to hold certain positions or engage in certain activities, as provided for by the relevant provisions of the Criminal Code of Ukraine (in particular, Articles 212, 222-1 and other norms establishing liability for offenses in the financial sphere).

The above list of distinctive features of financial-law sanctions is not exhaustive; however, its analysis makes it possible to identify the specific qualities of financial-law sanctions that distinguish them from other types of legal sanctions and to formulate the peculiarities of the legal nature of financial-law sanctions as an independent measure of legal liability.

The eighth characteristic feature of financial-law sanctions is the possibility of their application regardless of measures of other types of liability (criminal, administrative), which is a significant distinguishing feature of measures of financial-law liability. This is supported by the Tax Code of Ukraine, which allows application of financial sanctions regardless of administrative or criminal liability proceedings in respect of the same acts (e.g., Articles 107, 109–110 of the Tax Code), and similar provisions in other financial legislation. Financial-law sanctions are imposed taking into account the legal grounds for their application, but regardless of whether the conduct constitutes a criminal offense or an administrative offense, or whether the specified measures of liability were imposed on the person. Undoubtedly, this peculiarity indicates a non-administrative legal nature of financial-law sanction quite often attributed to it, and, therefore, their legal independence.

Revealed characteristic features indicate an institutional and field difference of financial-law sanctions from measures of other public-law and private-law types of liability. The distinct legal nature of these measures of financial-law liability merits attention and cannot be ignored due to its identification or replacement with an administrative or economic and legal essence. The given peculiarities of application of financial-law sanctions once again confirm the persuasiveness and scientific validity of the point of view defended in the work regarding financial-law nature of a fine and penalty envisaged by the legislator in financial-law acts as measures of liability for financial offenses.

At the same time, despite the integrity of financial law, a diverse combination of social relations regulated by it is also distinguished by certain specific approaches to the state's response to violations of rules of conduct in specific financial subfields. Such an example includes violations of budget legislation and measures of influence on them by the state, which should be studied to determine their correspondence to financial-law sanctions or difference from them taking into account the peculiarity of legislative regulation of such measures.

1.6. Comparative Analysis of Financial-Law Sanctions and Enforcement Measures Applied for Violations of Budget Legislation

The controversial issue of the legal nature of measures applied for offenses in the budgetary field gives rise to many studies on this topic and remains the subject of active scholarly debate. Budgetary legal relations within the financial sphere of state activity are regulated rather ambiguously by the legislator as regards the legal nature of measures applied for violating budget legislation. The core of this issue lies in the fact that budget legislation establishes enforcement measures for violations of the procedure of budgetary activity that are not directly attributable to any type of legal liability traditionally distinguished in legislation or legal doctrine. At the same time, this situation is complicated by the fact that budgetary legal relations belong to the financial sphere, which is generally characterized by the application of financial-law liability for violations of financial norms; however, such liability does not fully correspond to the measures provided for violations of budget legislation.

Thus, it is appropriate to conduct a comparative analysis of financial-law sanctions and the measures applied under budget legislation, since a significant number of scholars consider the latter to be a variety of financial-law sanctions.

In particular, the famous domestic scientist in the field of financial law O. A. Muzyka includes sanctions for violating budget legislation to financial-law sanctions along with sanctions for violating tax discipline and tax legislation, violating cash discipline, violating legislation on securities and stock exchange, violating the procedure for licensing, etc.[144]. Ukrainian scientist Z. M. Budko classifies financial-law sanctions into: budgetary, currency, cash, payment (tax and non-tax)[145]. Ukrainian scholar L. K. Voronova also identifies

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[144] Muzyka, O. A. *Finansove pravo: navch. posib.* [Financial law: textbook]. Kyiv: Palyvoda, 2004. P. 65–66. [in Ukrainian]

[145] Budko, Z. M. *Finansovo-pravova vidpovidalnist za vchynennia podatkovykh pravoporushen* [Financial-law liability for tax offenses]: dissertation for the degree of Candidate of Legal Sciences: specialty 12.00.07. Zaporizhzhia, 2005. P. 144. [in Ukrainian]

budgetary sanctions alongside banking (credit and cash) sanctions within the system of financial-law coercion [146].

The list of enforcement measures that can be applied for violating budget legislation is envisaged in Article 117 of Budget Code of Ukraine [147] No. 2456-VI dated July 8, 2010, which include:

1) a warning about improper execution of budget legislation with a requirement to eliminate the violation of budget legislation;
2) termination of transactions with budget funds;
3) suspension of budget allocations;
4) reduction of budget allocations;
5) return of budget funds to the corresponding budget;
6) termination of the decision on the local budget;
7) undisputed withdrawal of funds from local budgets;
8) other enforcement measures, which can be determined by the Law on the State Budget of Ukraine.

At the same time, *violations of budget legislation are considered to be violations by a participant in the budget process of norms established by the Budget Code or other budget legislation regarding the preparation, review, approval, introduction of changes, implementation of the budget and reporting on its implementation,* namely: inclusion of unreliable information in budget requests; failure to comply with the established deadlines for submitting budget requests or failure to submit them; determination of unreliable amounts of budget funds when planning budget indicators; planning of receipts or expenditures of the state budget (local budget) not classified as such by this Code or the Law on the State Budget of Ukraine, etc. (Article 116 of the Budget Code of Ukraine).

According to Ukrainian researcher O. P. Hetmanets, “the specified enforcement measures for violating budget legislation, in addition to a warning, represent in fact a material, monetary punishment for participants in the budget process.

[146] Voronova, L. K. Financial Law of Ukraine. Kyiv: Pravova Yednist, 2019. [in Ukrainian]

[147] *Biudzhetnyi kodeks: vid 08.07.2010 № 2456-VI* [Budget Code: No. 2456-VI dated July 8, 2010]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2010. No. 50–51. Article 572. [in Ukrainian]

Thus, enforcement measures for violating budget legislation specified in the Budget Code of Ukraine (hereinafter—BCU) can be considered as financial sanctions that perform law enforcement and punitive functions of financial-law liability in budget control" [148].

Instead, the representative of domestic science, Associate Professor I. A. Sikorska notes that "analyzing measures of financial-law liability applied to violators of budget legislation, it can be concluded that in most cases they are not punitive, because they only indirectly affect the property status of the offender. It can be said that they are repressive" [149]. In turn, Ukrainian scientist V. D. Chernadchuk writes that "one can talk about operational nature of these measures, which gives grounds to determine them as operational and budgetary sanctions (enforcement measures), since they are measures of operational influence on holders and recipients of budget funds violating regulations of the current budget legislation" [150].

In addition, researcher T. V. Arkhypenko believes that "budgetary and legal sanctions are measures of state coercion envisaged by budgetary and legal norms: repressive, preventive, restorative measures and measures of budget liability applied for a budget offense" [151]. T. V. Arkhypenko counts a penalty as a measure of liability, which is not included in the Budget Code of Ukraine as an enforcement measure at all.

Thus, precisely comparison of financial-law sanctions and measures applied for violating budget legislation contributes

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148 Hetmanets, O. P. *Finansovi sanktsii yak zakhody vplyvu za porushennia biudzhetnoho zakonodavstva: monohrafiia* [Financial sanctions as enforcement measures for violating budget legislation: monograph]. Zaporizhzhia, 2011. P. 36–39. [in Ukrainian]

149 Sikorska, I. A. *Osoblyvosti finansovo-pravovoi vidpovidalnosti za biudzhetni pravoporushennia* [Features of financial-law liability for budget offenses]. *Naukovyi visnyk Chernivetskoho universytetu [Scientific Bulletin of Chernivtsi University].* 2003. No. 200. P. 90–93. [in Ukrainian]

150 Chernadchuk, V. D. *Pravova pryroda stiahnen za porushennia biudzhetnoho zakonodavstva* [Legal nature of penalties for violating budget legislation]. *Pravovyi visnyk Ukrainskoi akademii bankivskoi spravy* [Legal Bulletin of the Ukrainian Academy of Banking]. 2008. No. 1. P. 50–54. [in Ukrainian]

151 Arkhypenko, T. V. *Finansovo-pravovi sanktsii* [Financial-law sanctions]: dissertation for the degree of Candidate of Legal Sciences: specialty 12.00.14. 2006. P. 136. [in Ukrainian]

to establishing the essence of the latter. Thus, it should be mentioned that financial-law sanctions as measures of financial-law liability have specific characteristics and features that are inherent to them due to legal nature of financial legal relations and that allow distinguishing them from other types of legal sanctions and coercive measures. Among the main features, it should be noted that financial-law sanctions are of a monetary nature, an additional obligation arises as a result of their application, they have a punitive and restorative focus, they are levied on the basis of a financial offense, they are applied in a special procedural order, funds received as payment by the guilty person are charged to the account of the state budget system and they are applied to the collective income (property) of the violator of financial discipline.

It is the simultaneous presence of the vast majority of features that characterizes the relevant measures of liability as financial-law sanctions. Comparing financial-law sanctions with enforcement measures determined by the Budget Code, it can be concluded that these measures have some common features with financial-law sanctions, such as application based on a financial (budget) offense and application in a special procedural order (following consequences of a decision on applying enforcement measures for violating budget legislation made on the basis of a protocol on violating budget legislation or an audit report—Article 118 of the Budget Code of Ukraine) [152].

At the same time, there are no other listed features of financial-law sanctions applied in tax, currency, public banking and other fields of financial activities in enforcement measures for violating budget legislation. Thus, domestic scientist O. P. Hetmanets sees monetary content as a feature of financial-law sanction in enforcement measures for violating budget legislation, such as suspension of budget allocations, termination of transactions with budget funds, compensation for material losses, return of subventions in case of their inappropriate use, termination

[152] *Biudzhetnyi kodeks: vid 08.07.2010 № 2456-VI* [Budget Code: No. 2456-VI dated July 8, 2010]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2010. No. 50–51. Article 572. [in Ukrainian]

of the decision on the local budget. Such conclusions can hardly be called correct given the fact that if measures in the form of suspension of allocations, termination of transactions and return of subventions can still be related with monetary content, which is expressed in the lack of possibility of possession and (or) disposal of funds, giving the same feature for an enforcement measure in the form of termination of the decision on the local budget is unclear, since in this case a managerial decision on termination of a legal act is made, and, therefore, monetary content of this measure is not directly visible. In this case, it should be about preventive and precautionary measures (termination, suspension) as well as about returning parties to the state before the offense extrajudicially (restitution). No new or additional monetary obligation, which did not exist before, and should be considered in accounting records in liabilities of the enterprise, is created.

A mention of monetary content of such delictual obligation as compensation for damages is even more surprising, moreover, in the context of enforcement measures for violating budget legislation, to which it is not even included by the legislator. In general, it should be noted that monetary nature of financial-law sanctions is manifested through their monetary expression (fine, penalty), which is an external feature, and not a content characterizing internal nature of any phenomenon. It can be seen from the above that enforcement measures for violating budget legislation do not have a monetary expression, and, therefore, do not have such significant feature of financial-law sanctions.

Analyzing legal nature of enforcement measures determined by the Budget Code, it should also be noted that there is no such a feature of financial-law sanctions as creation of a new (additional) obligation during their application. Thus, as a result of a financial offense in the field of tax relations, compulsory state pension insurance, etc., when determining a measure of liability in the form of fine, the obligation to pay such a fine is additional to the obligation to directly fulfill an outstanding financial obligation and is new, since before committing the specified violation, the offender was not obliged to pay a fine (in connection with the lack of a corresponding ground—a financial offense). Instead, application of enforcement measures, for example, in the form of termination of transactions with budget funds in accordance with Clause 2 of Part 1 of Article 117 and Part 1 of Article 116 of the Budget Code of Ukraine for inclusion of unreliable information in budget requests, failure to comply with the established deadlines for submitting budget requests or failure to submit them will result in impossibility of certain transactions with budget funds, which will be terminated after resumption of transactions, which in accordance with the Procedure for Terminating Transactions with Budget Funds approved by Resolution of the Cabinet of Ministers of Ukraine No. 21 dated January 19, 2011 [153], is carried out as a result of eliminating the violation through implementing the relevant norm of budget legislation or expiration of the period of termination of transactions.

It can be seen from the above that when applying this enforcement measure the holder and (or) recipient of budget funds does not have an additional (new) obligation, and, therefore, there is no other compulsory feature of financial-law sanction.

Comparing financial-law sanctions and enforcement measures for violating budget legislation in terms of the purpose of their application and focus, the following should be singled out. The restorative and punitive influence inherent in financial-law sanctions are not reflected when applying the relevant enforcement measures under the Budget Code of Ukraine. Restitution for damage caused to the state as a result of imposing on the offender the need to pay a penalty applied for a financial offense related to failure to comply with certain deadlines for fulfilling financial obligations (payment of tax, crediting foreign exchange earnings, etc.) determined by legislation is carried out by compensating the state for sums that should have been credited to the budget for the period of non-fulfillment of this obligation, etc. The existence of this influence as a result of applying measures for violating budget

[153] *Poriadok zupynennia operatsii z biudzhetnymy koshtamy: Postanova Kabinetu Ministriv Ukrainy vid 19.01.2011 № 21* [Procedure for Terminating Transactions with Budget Funds: Resolution of the Cabinet of Ministers of Ukraine No. 21 dated January 19, 2011]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. 2011. No. 4. Volume 2. Article 820. [in Ukrainian]

legislation is not seen, since no compensation (recovery of losses) to the state from suspension of budget allocations or return of budget funds to the corresponding budget is made.

Enforcement measures determined by the Budget Code of Ukraine are not punitive (penal), since there are no state conviction and corresponding monetary sanction for guilt, and property influence in this case is too indirect. There are also no features of financial-law sanctions, such as recovery of funds received as payment by the guilty person to the account of the state budget system and application of recovery to the collective income (property) of the violator of financial discipline in enforcement measures for violating the budget process. It can be seen from the above that measures of influence on violators of the budget process determined by the Budget Code of Ukraine are not financial-law sanctions and are not included in them.

A distinguishing feature of enforcement measures for violating budget legislation is their use only within the budget process. That is, these tools are not universal in contrast to financial-law sanctions applied in all fields of the financial system, except for, accordingly, the budget one. The above indicates a different nature of measures applied in accordance with budget legislation, which essence has not yet been revealed by either the legislator or scientific research.

At the same time, the above analysis gives grounds for reaching some conclusions regarding nature of considered measures. Thus, if we turn to construction of norms of the Budget Code, use of the term “liability” by the legislator is not considered, only enforcement measures for violating budget legislation are considered. Instead, Article 121 of this Code envisages liability with determination of its specific types (civil, disciplinary, administrative or criminal) for violating budget legislation by officials.

This construction of norms can be regarded as the lack of direct legal liability for envisaged violations of budget discipline by juridical persons. Indeed, essential features of legal liability are new obligations of the violator related with the state conviction of illegal actions, which is not seen when applying enforcement measures under the Budget Code. At the same time, the violation is not always the ground for liability. In this case, we are talking about state and legal coercion as a method of state influence on parties to legal relations, which is used by state bodies according to their competence in order to ensure legal order and security in relation to the offender as well as in relation to a law-abiding person if it is impossible to ensure public order and security by other means, except by coercion.

Legal liability is one of coercive means applied on behalf of the state, but it is not the only one that is determined by different legal goals of the state in legal regulation.

There are several types of measures of state and legal coercion. **Preventive measures** are applied to **avert possible violations** or to ensure security in situations of natural disasters, emergencies, or accidents (e.g., documentary verification, temporary prohibition of activities creating an immediate threat to public interests). Preventive measures are proactive and protective in nature.

Termination measures are applied to forcibly stop illegal actions and prevent their harmful consequences; they are applied only where there is a real violation of law (for example, issuing an official warning to a person for unlawful conduct—which does not by itself entail legal liability under financial or budget law; or temporary freezing of accounts or transactions where such authority is granted by law). Such measures aim to immediately suspend the unlawful condition.

Protective (restorative) measures are applied to ensure fulfillment of an ignored obligation (for example, compulsory return of unlawfully used funds). In addition, there also exist punitive measures, which consist in adverse legal consequences for the violator for the fact of the violation—a protective response of society through state bodies seeking to maintain the legal order.

An analysis of the enforcement measures for violating budget legislation from the perspective of state coercion allows us to classify them as special measures of state and legal coercion applied not primarily for punishment or compensation—which are inherent features of legal liability—but for ensuring the proper implementation of the norms of budget legislation by encouraging the holder or recipient of budget funds to duly fulfill the obligations assigned to them.

Thus, a warning about improper implementation of budget legislation with a requirement to eliminate the violation is applied specifically to restore a lawful situation and to document the remedial action taken by the violator. Fulfillment of the requirement to eliminate the violation terminates the effects of the said enforcement measure.

Termination of transactions with budget funds, suspension of budget allocations, and termination of a local budget decision are applied in order to prevent further violations of the budget process and to ensure proper implementation of budget legislation in the future. For example, termination of transactions may be applied where unreliable amounts of budget funds are determined in planning budget indicators. Failure to apply this measure could result in overspending budget funds or, conversely, insufficient financing of certain budgetary expenditures. Elimination of such violations contributes to restoration of a lawful budget process.

At the same time, enforcement measures in the form of reduction of budget allocations, return of budget funds to the corresponding budget, and undisputed withdrawal of funds from local budgets are coercive measures that affect budgetary capacity. These measures are not merely temporary restrictions on authority; they operate to remove or correct unlawful conditions.

It should be noted that such enforcement measures may have ambiguous legal effects. For instance, as a result of undisputed withdrawal of funds from local budgets—which consists in collection of funds from local budgets to the state budget by the State Treasury Service of Ukraine (including by reducing equalization transfers to local budgets by the corresponding amount)—funds used as expenditures in violation of the established procedure are returned to the state budget. In this respect, it can be argued that damage is caused by such unlawful expenditures, and its compensation is attempted through the return (undisputed write-off, etc.) of the relevant amounts to the budget.

Analysis of what constitutes damage and which entities are affected leads to the following conclusion: unlawful expenditures, which are not envisaged in the relevant budget schedule, result in a reduction of funds in the pertinent local budget that should be spent for legitimate purposes. This may lead to underfunding or complete lack of funding for the relevant sectors, which would otherwise receive budget funds in the appropriate amount under budget legislation and process. In such cases, the damage is seen in failure to fulfill obligations of the local budget in the relevant areas of financing to legitimate recipients of budget funds. Therefore, the party affected by this offense is the recipient of budget funds.

However, collection of illegally used funds from the local budget to the state budget does not, in itself, serve as compensation for the loss suffered by the recipient, since it only withdraws the same amount of funds from the local budget a second time. On the other hand, funds that remain unused in another budget—which was authorized for financing the relevant expenditures or credit activities, and were not properly financed due to the initial violation—could represent potential savings under lawful budget planning.

It follows that application of a measure such as undisputed withdrawal of funds, although it powerfully manifests the state's disapproval of budgetary violations and has preventive and protective effects, does not serve to correct the illegal situation resulting from the offense. In cases of unlawful budget lending, local budget authorities are required to prove in court the illegality of such a lending transaction and pursue early recovery of the relevant funds from a good-faith acquirer.

Legal nature of the enforcement measure in the form of return of budget funds to the corresponding budget in connection with their inappropriate use by holders or recipients of budget funds is also an important object of research and is not limited to preventive and protective effects on the violator. Clause 5 of Part 1 of Article 117 of the Budget Code of Ukraine establishes that this enforcement measure applies to subventions and other budget funds provided to recipients of budget funds, and the subjects of enforcement measure application are holders (with respect to subventions) and recipients of budget funds (with respect to budget funds)[154].

Resolution of the Cabinet of Ministers of Ukraine No. 1163 dated December 22, 2010[155], approved the Procedure for Return of Budget Funds to the Corresponding Budget in Case of Their Inappropriate Use, which provides that implementation of this enforcement measure consists in an authoritative order for the violator to independently transfer the amounts spent in violation, and in case of failure to comply with this requirement, application of additional measures such as termination of transactions on accounts, etc., in relation to the holder of budget funds, and recourse to the court with a claim for return of illegally used amounts by the recipient of budget funds. Thus, the desired result—return of budget funds—is achieved through a set of enforcement measures and methods.

Taking into account the above, the analysis of enforcement measures applied for violating budget legislation allows concluding that the **above measures are not financial-law sanctions, but constitute a separate group of methods and means of the state response to violating budget legislation**, which with the help of enforcement measures established by the Budget Code of Ukraine carries out preventive and protective measures of state and legal coercion to prevent the continued offense and similar cases in the future, and to ensure legal order in the budgetary field of the state activities by eliminating illegal conduct.

However, alongside research into the nature and particularities of financial-law sanctions, it is extremely important to study the relationship of these sanctions with financial offenses and financial-law liability—a connection so close that it often leads

[154] *Biudzhetnyi kodeks: vid 08.07.2010 № 2456-VI* [Budget Code: No. 2456-VI dated July 8, 2010]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2010. No. 50–51. Article 572. [in Ukrainian]

[155] *Poriadok povernennia biudzhetnykh koshtiv do vidpovidnoho biudzhetu v razi yikh netsilovoho vykorystannia: Postanova Kabinetu Ministriv Ukrainy vid 22.12.2010 № 1163* [Procedure for Return of Budget Funds to the Corresponding Budget in Case of Their Inappropriate Use: Resolution of the Cabinet of Ministers of Ukraine No. 1163 dated December 22, 2010]. *Uriadovyi kurier [Governmental Courier]*. December 30, 2010. No. 246. [in Ukrainian]

to their identification or misunderstanding as separate categories, through which these legal phenomena together form a special chain of causes and effects.

1.7. Relationship Between Financial-Law Liability, the Financial-Law Offense, and the Financial-Law Sanction

Liability is a necessary condition for ensuring legality, discipline and legal order in the country. Today, in the theory of law, as well as during the practical application of knowledge of science of law, a situation can be observed, even when the presence of definitions of individual concepts of liability category does not allow in all cases correctly interpreting the relationship of liability with its main components, such as an offense and sanction.

An analysis of legislative acts and scientific publications regarding the definition of the essence of financial-law liability indicates that science of financial law was also no exception to confusion in understanding of its fundamental components. Thus, such fundamental concepts of the theory of financial law as “liability”, “offense” and “sanction” are unreasonably mixed and replaced, which, in turn, results in deterioration of the quality of law enforcement practice and its results.

Violation of rules of conduct in the financial field of activities established by the state attracts attention of the state in connection with negative consequences of such actions, which, if ignored, can gradually lead to complete elimination by society of norms of financial legislation and the goals and objectives that it promotes, and harmful nature of such actions leads to losses in the form of insufficient receipt of finance by the relevant funds, which should be directed to the satisfaction of public needs.

Precisely through conviction of illegal actions by the state its categorical attitude towards any manifestations of disobedience to the established norms of social conduct is demonstrated, and which with the help of means of state coercion imposes the obligation to undergo the relevant coercive measures on the violator for punishing the violator to condemn illegal actions committed by him/her, to correct his/her conduct, and to forcibly restore the violated legal relationship.

This state conviction, which is demonstrated in terms of subjective law as a normative, formally defined in financial law, guaranteed and secured by the financial-law coercion the legal obligation to subject an offender to state coercive measures in the form of financial-law sanctions (fine, penalty) for the offense committed in the field of financial activities is defined by financial science as ***financial-law liability****.*

Incurrence of financial-law liability is conditioned by the legal fact of violating norms protected by the state. That is, the factual basis for incurrence of financial-law liability is a financial offense, provided that liability for such violation is expressly established by financial legislation. However, one should bear in mind the following rather significant circumstance: violation of norms of financial legislation entails liability only if this liability is determined by the state for the relevant violation taking into account the circumstance that liability is a type of state coercion and other measures of state and legal coercion can be applied for commission of certain violations by the state. Thus, interdependence of violation and liability is reflected in the bond of these categories in the form of “liability → violation” and not “violation → liability”.

Therefore, *imposing financial-law liability on a person requires commission of a financial offense, which is a legal fact (a fact of reality—****an actual component of legal liability****), following which, in cases (****a normative component of legal liability****) and in the order determined by the law* ***(a procedural component of legal liability) legal relations of financial-law liability arise****.*

The concept of financial offense is revealed through the essence of illegal acts forming the basis of the offense and their consequences. Thus, an offense can have an active (action) or passive (omission) focus collectively defined as an act. An unconditional feature is the illegality of the relevant actions, that is, the violation of financial legislation, since the lack of illegality makes it impossible to characterize the relevant act as an offense. The culpability of a person, who committed a financial offense, is a feature of the violator's understanding of his/her own acts and degree of their inadmissibility. The presence of penality, as liability established by financial legislation, recognizes a financial offense as inadmissible and prosecuted in the appropriate manner by the state.

Thus, a *financial offense* can be defined as *a socially harmful (dangerous) act (action or omission), illegal (one that violates norms of financial legislation), culpable act of the entity having the delictual capacity (natural or juridical person) that encroaches on financial interests of the state and society, protected by law, and which entails financial-law liability.*

Therefore, the peculiarity of the relationship of financial-law liability and financial offense is a legal bond between them, which consists in the fact that the reason for imposing financial-law liability can be only a financial offense actually committed and envisaged as such by financial legislation. At the same time, bearing financial-law liability on the basis of a financial offense will be impossible without existence of measures and tools, through which implementation of negative consequences of liability for the violator of financial norms is possible. Financial-law sanctions should be determined by such measures.

An important point in establishing the essence of financial-law sanctions is understanding their non-identity with the concept of "financial-law liability", since liability reflects the legal obligation of the offender to undergo adverse consequences, whereas sanctions constitute specific legal means through which such liability is realized [156].

Financial-law liability of the violator of financial norms consists in experiencing certain negative consequences of his/her illegal conduct, which should be expressed externally, since influence on the violator purely on the mental level by telling him/her, even in writing, about inadmissibility of such actions is unlikely to have

[156] Kucheriavenko, M. P. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kharkiv, 2018. P. 214. [in Ukrainian]

an effective, and even more so, punitive and restorative or corrective focus on him/her and further relation to committing similar actions.

The relevant influence means and coercive measures of the state in the form of liability are financial-law sanctions applied for violating financial-law norms. Thus, financial-law liability is realized primarily through the application of financial-law sanctions, while not being exhausted exclusively by them. It should be noted that application of financial-law sanctions is the final link in legal relations regarding the imposition of liability on violators and they can be defined as monetary measures of financial-law liability, which are provided by state coercion and are applied in the appropriate manner by authorized state bodies in case of a financial offense committed by parties to financial activities for ensuring fiscal interests of the state, restoring proper execution of financial obligations and punishing violators.

Taking into account the above, there is an inextricable cause-and-effect relationship between analyzed concepts, which is a necessary condition for imposing financial-law sanctions on the violator, and the lack of any link in this chain makes its existence as a group of interdependent legal phenomena impossible. Let us emphasize that application of financial-law sanctions is a consequence of imposition of financial-law liability on a person for committing a financial offense, which *from a subjective point of view* is a prerequisite for liability arising for the violator of financial norms precisely in connection with the commission of an offense. On the other hand, an *objective point of view* allows considering financial-law liability as a necessary reality in connection with already committed offense, because retrospective nature of liability consists in the obligation of the violator to account for previously committed illegal acts, which were qualified precisely at the time of their commission as offenses. Thus, financial-law sanctions as a necessary consequence of wrongful actions are always applied due to liability of a person for the relevant illegal acts being the cause.

It can be seen from the above that *peculiarities of the relationship of financial-law sanctions and financial-law liability* are manifested in the fact that <u>application of sanctions is a procedural expression</u>

of bearing financial-law liability arising from the moment of committing a financial offense and being realized through the application of financial-law sanctions. Precisely fulfillment of an additional obligation entrusted to the violator of financial-law norms in the form of the relevant measures containing sanctions is the implementation of liability.

The relationship of these legal phenomena is characterized by a universal bond between them, which is necessarily available due to its essence that is expressed in the fact that a financial offense can result in the obligation of a person to bear liability manifested through application of financial-law sanctions.

Based on the results of highlighting the concept of financial-law sanctions, researching their features and characteristics, formulating functions performed by measures of financial-law liability, providing their classification, etc., carried out in Section 1 of this research paper, it can be concluded that financial-law sanctions are special tools of the state's financial policy and constitute measures of financial-law liability, and play an extremely important role in regulating financial legal relations and protecting them against illegal encroachments. Financial-law sanctions represent an exclusive legal phenomenon of financial legal relations and are applied only for financial offenses. That is why their complete identification with administrative penalties or economic and legal sanctions is methodologically incorrect due to differences in legal nature, purpose and regulatory framework.

At the same time, the idea of financial-law sanctions is not exhausted by knowledge about their concept and place in the financial and, in general, in the legal system of the state. Financial-law sanctions have their own mechanism for application, which implementation is closely related to the grounds for this application by entities, to which measures of financial-law liability can be applied, the procedural order for implementing these measures and other things, without research the value of financial-law sanctions as practical means of punishing violators of financial norms and restoring the state's property status is lost. That is why these important elements will be studied in the following section of the research paper.

Section 2
LEGAL REGULATION OF FINANCIAL-LAW SANCTIONS AND THEIR IMPLEMENTATION MECHANISM

2.1. Grounds for the Application of Financial-Law Sanctions

The application of financial-law sanctions constitutes the practical implementation of the obligation to incur financial-law liability in cases of violation of financial-law norms, namely, in the commission of a financial offense. Thus, the financial offense as a legal fact serves as a necessary prerequisite for the emergence of financial-law liability and as the ground for applying financial-law sanctions. In order to reveal the essence of a financial offense, it is appropriate to consider general scientific approaches to defining the concept of an "offense".

An offense is an unlawful, culpable, socially harmful act (action or omission) of a person having the delictual capacity, which entails legally defined negative consequences for the offender[157]. O. F. Skakun defines an offense as a socially dangerous or harmful illegal (unlawful) culpable act (action or omission) of a person having the delictual capacity, which entails legal liability[158]. It should be noted that the author of the concept, in order to describe the degree of unlawfulness, identifies a socially dangerous and socially harmful illegal act, which more fully and vividly reflects the essence of an offense, but another act is specified by illegal harmfulness, which is simultaneously absent when mentioning social danger. At the same time, in order to reflect the unlawful essence of the offense in general (both in the first and second cases),

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[157] Tsvik, M. V, Tkachenko, V. D., Bohacheva, L. L. *Zahalna teoriia derzhavy i prava: pidruchnyk* [General theory of state and law: textbook]; edited by M. V. Tsvik. Kharkiv: *Pravo*, 2002. P. 353. [in Ukrainian]

[158] Skakun, O. F. *Teoriia derzhavy i prava: pidruchnyk* [Theory of state and law: textbook]. Kharkiv : *Konsum,* 2001. P. 420. [in Ukrainian]

it is appropriate to apply the term of unlawfulness to the offense as a whole, and not separately to its degree types.

V. M. Khropaniuk considers the culpable behavior of a legally competent person, which contradicts the requirements of legal norms, causes harm to other persons and entails legal liability, to be an offense [159].

An offense is an action that can be expressed as both a specific action and omission as well as violates the requirement of a legal norm and thus causes damage to social relations [160]. The given definition does not reveal the essence of the offense in full. Firstly, its author summarizes the objective side of the offense with the term “action”, which is not correct, since an action defines only the active behavioral phase, while an omission as a passive state cannot be covered by the term “action” because it is its opposite. Secondly, the author defines only damage as the consequences of an offense, but there is no indication of the punishability of actions constituting the offense, which means subjecting the offender to condemnation by the state for such unlawful acts in the form of legal liability.

In order to define the concept of an offense, its research should begin with the identification of the concept of legal behavior, which is the basic concept connecting the acts of a person with their consequences in terms of legal norms. Legal behavior is a socially significant behavior of entities, which is stipulated by legal norms, controlled by consciousness and will as well as has legal consequences [161]. Depending on its social significance, legal behavior may be socially useful (lawful) or socially harmful (unlawful) and may be manifested in the form of an action or omission.

An important characteristic of such behavior, which in legal science is informative for describing any act of a person, is its

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[159] Khropaniuk, V. N. *Teoriia derzhavy i prava* [Theory of state and law] / edited by Professor V. H. Strekozov. M., 1995. P. 331. [in Ukrainian]

[160] Opryshko, V. F., Shulzhenko, V. F., Shymon, S. I. *Pravoznavstvo: Pidruchnyk* [Jurisprudence: textbook] / edited by V. F. Opryshko, F. P. Shulzhenko. Kyiv: *KNEU*, 2003. P. 55. [in Ukrainian]

[161] Horodianenko, V. H. *Sotsiolohiia: pidruchnyk* [Sociology: textbook]: *Akademiia*, 2003. Retrieved from http://politics.ellib.org.ua (August 14, 2021). [in Ukrainian]

conscious and volitional nature. This characteristic is reflected not only in a person's awareness of their own actions or omissions, but also in the orientation of such behavior toward achieving a certain result. Therefore, a person who, while committing or allowing a specific action or omission, was not aware of their conduct or was unable to control it for objective reasons, is exempt from legal liability for such behavior. In most cases, such acts are not regarded as capable of producing legally significant consequences.

Ukrainian legal doctrine consistently emphasizes that awareness and will are indispensable elements of an offense. In particular, O. F. Skakun[162], analyzing the structure of unlawful behavior, notes that legal liability may arise only where a person is capable of realizing the social and legal significance of their conduct and directing it through volitional efforts. Similarly, V. Ya. Tatsii, examining the general theory of legal liability, substantiates that the absence of consciousness or free will excludes the possibility of imputing negative legal consequences to the person, since liability presupposes a conscious choice between lawful and unlawful behavior.

The regulation of human conduct by legal norms distinguishes legal behavior from other forms of social behavior and enables a person to model their actions within the boundaries of what is permitted, required, or prohibited. Through comparison of actual conduct with the prescriptions of legal norms, behavior is qualified as lawful or unlawful. The consequences of legal behavior manifest themselves in specific legal results which, depending on their social role, may be beneficial or adverse for the individual and society as a whole. Lawful behavior contributes to the stability and development of legal relations, whereas unlawful behavior undermines them.

At the same time, lawful behavior generally does not provoke an active response from the state, apart from implicit approval or, in certain cases, encouragement. In contrast, unlawful behavior triggers a reaction from public authorities in the form of measures aimed at preventing, terminating, or eliminating the unlawful state.

[162] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv: Konsum, 2011. P. 438–440. [in Ukrainian]

However, unlawful behavior as such should not be equated with an offense, since not every instance of unlawful conduct constitutes an offense in the legal sense.

Ukrainian scholars draw a clear distinction between unlawful behavior and an offense. In particular, P. M. Rabinovych[163] emphasizes that unlawful behavior may take various forms and degrees, but only behavior that is expressly recognized by law as an offense and for which legal liability is established can serve as a ground for applying sanctions. This distinction allows differentiating between socially undesirable conduct that does not entail legal liability and legally punishable acts that necessitate a coercive response from the state.

Accordingly, acts cannot be regarded as offenses if they are not defined as such by current legislation, and, therefore, legal sanctions may not be applied to a person for such conduct. This differentiation is of fundamental importance, as not every manifestation of unlawful behavior reaches the level of an offense. Moreover, legislation provides for certain circumstances that exclude unlawfulness altogether, even though the external features of the act may formally resemble an unlawful act. Such circumstances include, in particular, necessary defense and extreme necessity, which are traditionally distinguished in criminal law theory and legislation and are based on the priority of protecting legally significant interests over formal compliance with legal prohibitions.

It should be noted that the existence of sanctions for an offense is not the only basis for defining a certain unlawful act as an offense. For this purpose, legal science has developed a system of features, the presence of which in a specific act allows it to be qualified as an offense, while their absence, accordingly, does not allow such an act to be regarded as an offense. Each of these features reflects a distinct essential property of the offense and has independent theoretical and practical significance.

The majority of scholars agree on distinguishing the following essential characteristics of an offense: an offense is always an act

[163] Rabinovych, P. M. *Osnovy zahalnoi teorii prava ta derzhavy* [Fundamentals of the General Theory of Law and State]. Lviv: Svit, 2007. P. 210–212. [in Ukrainian]

(action or omission); it is always a culpable act; it is an act that is socially harmful (or socially dangerous) and unlawful, that is, one that contradicts the requirements of legal norms; and it is an act that entails legal liability[164].

The combination of these features allows defining an offense as a socially harmful or socially dangerous, unlawful, culpable act of an entity having delictual capacity (a natural or a juridical person), which encroaches on the rights and legitimate interests of an individual, society, and the state protected by law and entails legal liability. It should be noted that the current financial legislation of Ukraine, with the exception of tax legislation, does not contain a general statutory definition of a financial offense. However, pursuant to Part 1 of Article 109 of the Tax Code of Ukraine, a tax offense is defined as an unlawful, culpable (in cases expressly provided for by this Code) act (action or omission) committed by a taxpayer (including persons equated thereto), regulatory authorities and/or their officials, as well as other entities in cases expressly provided for by this Code.

Acts are considered intentional if there are circumstances established and proven by the regulatory authority indicating that the taxpayer deliberately and purposefully created conditions that could not have any other purpose than non-fulfillment or improper fulfillment of the requirements established by this Code and other legislation, compliance with which is monitored by regulatory authorities.

Thus, in accordance with Part 2 of Article 109 of the Tax Code of Ukraine, violation of tax legislation and violation of requirements established by other legislation, compliance with which is entrusted to regulatory authorities, entail liability stipulated by this Code and other laws of Ukraine.

In turn, a financial offense is one of the types of offense, and therefore the definition should contain both general features common to all offenses and certain specific characteristics. At the same time, it is the analysis of the specific features of a financial offense and the peculiarities of combining the latter

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[164] Khropaniuk, V. N. *Teoriia derzhavy i prava* [Theory of State and Law] / edited by Professor V. H. Strekozov. M., 1995. P. 331. [in Ukrainian]

with the general features of an offense that will allow defining the concept of a financial offense and its industry-specific isolation. Thus, *financial offenses are committed within the framework of financial legal relations and consist in the violation of financial law norms by a relevant entity, which constitutes one of their defining features*. This feature is one of the signs of a financial offense. In addition, the specified limits of social relations will be the basis for determining other specific features of a financial offense.

The subjects of financial offenses, to whom financial-law sanctions may be applied, include natural and juridical persons possessing delictual capacity. Such a composition of offenders is explained by the fact that violations may occur in tax, banking, currency, budgetary, monetary-credit and other financial relations, the participants of which may be both natural and juridical persons. This feature distinguishes a financial offense from criminal and administrative offenses, the subjects of which, as a general rule, are exclusively natural persons.

A financial offense may be characterized as either socially harmful or socially dangerous, which also constitutes its specific feature. At the same time, legal doctrine does not provide a unified approach to delineating the boundaries between social harmfulness and social danger. O. M. Kostenko notes that social danger reflects the potential or real threat of causing significant harm to legally protected social values and interests, whereas social harmfulness characterizes a lower degree of negative impact that does not reach the level of criminal danger[165]. This doctrinal distinction is reflected in Ukrainian legislation. According to Article 11 of the Criminal Code of Ukraine No. 2341-III dated April 5, 2001, a crime is a socially dangerous culpable act (action or omission) provided for by this Code. An act or omission that formally contains signs of an act stipulated by this Code but, due to its insignificance, does not pose a public danger (i.e., did not cause and could not cause significant harm to an individual, society, or the state) shall not be recognized as a crime. Pursuant to Article 9

[165] Kostenko, O. M. *Sotsialna obumovlenist prava* [Social Conditionality of Law]. Kyiv, 2008. P. 214–216. [in Ukrainian]

of the Code of Ukraine on Administrative Offenses No. 8073-X dated December 7, 1984, an administrative offense (misdemeanor) is an unlawful, culpable (intentional or negligent) action or omission that encroaches on public order, property, rights and freedoms of citizens, or the established procedure of governance, and entails administrative liability established by law. Administrative liability is incurred if such violations do not entail criminal liability.

Administrative liability for offenses envisaged by the Code of Ukraine on Administrative Offenses is incurred if these violations do not entail criminal liability in accordance with the law.

It should be noted that such a feature of a financial offense is a prerequisite for the fact that it can constitute a disciplinary or administrative offense or a criminal offense, which, depending on the social harmfulness or social danger of the financial offense, entails the application of appropriate coercion. At the same time, it is worth mentioning that the procedure for applying coercive measures of various types of legal liability is not determined by any sequence, etc., since various types of liability are separate from each other. However, the first in terms of detection time is the financial offense itself (which is recorded according to the appropriate procedure during the verification by a competent authority). Only then, after the appropriate preliminary qualification of the act, a decision is made regarding the possibility of drawing up an administrative protocol or notifying the preliminary investigation bodies of the crime. An example of such a feature of a financial offense is the definition (given in Article 112 of the Tax Code of Ukraine) of the circumstance that **holding taxpayers financially liable for violation of tax laws or other legislation, the control over compliance with which is entrusted to regulatory authorities, does not exempt their officials (if there are relevant grounds) from administrative or criminal liability**. In addition, the question of imposing various types of legal liability for a financial offense committed not only in the field of taxation but also in other areas of the state's financial activity is clarified in a similar way.

Similar provisions are contained in the Law of Ukraine "On Collection and Accounting of the Unified Contribution for Compulsory State Social

Insurance”. This law, along with applying financial-law sanctions due to holding the unified contribution payers financially and legally liable, determines the administrative liability of the officials of such payers for violating the procedure for accrual, calculation, payment of the unified contribution, etc. (Article 26). Such provisions are also contained in Law of Ukraine “On State Regulation of Capital Markets and Organized Commodity Markets” No. 448/96-VR dated October 30, 1996. This law, along with applying financial-law sanctions, establishes the possibility of imposing criminal and property liability established by the relevant legislative acts of Ukraine (Article 14) on the officials violating the legislation on securities. The above allows reaching the conclusion that the specified feature of a financial offense, i.e. “creating appropriate composition of either administrative offenses or criminal offenses” is not isolated, but systemic in nature, therefore it should be considered a characteristic feature.

As for the *general features of a financial offense*, they include the following:

A financial offense *can be committed both in an active form (action) and in a passive form (omission)*. In the given context, an action is characterized as active unlawful behavior that caused damage to social relations protected by financial-law norms. An omission, in turn, is conscious refraining from taking actions that a person was obliged to or could take, as a result of which damage was caused to social relations protected by financial-law norms.

The next feature of a financial offense, like any offense, is *unlawfulness of an act*. Not every act (action or omission) is an offense, only that which is committed contrary to legal regulations, i.e. violates the law. Thus, unlawfulness *is* a property of an act (action or omission), which consists in its formal prohibition by a legal norm [166]. *Unlawfulness of a financial offense* is a violation of the norms of financial legislation by participants in financial legal relations. Only an act stipulated by financial legislation is considered to be an offense having the features of a financial offense.

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[166] Bazhanov, M. I., Baulin, Yu. V., Borysov, V. I. *Kryminalne pravo Ukrainy: Zahalna chastyna* [Criminal law of Ukraine: general part] / edited by M. I. Bazhanov, V. V. Stashys, V. Ya. Tatsii. Kyiv : *Yurinkom Inter*, 2005. P. 78. [in Ukrainian]

The establishment of an exhaustive list of such offenses by the legislator outlines the boundaries of unlawful behavior, beyond which it is impossible to raise the question about unlawfulness and prosecution of the relevant act. Therefore, highlighting such a feature as unlawfulness indicates that financial-law sanctions may be applied to a person for a certain act only if such an act is directly defined as illegal by the legislator with the establishment of appropriate liability measures for its commission. This excludes applying the analogy of right or the analogy of law for imposing financial-law liability as well as applying financial-law sanctions. Unlawfulness is a legal form of the material characteristics of the general features of a financial offense.

Culpability as a feature of a financial offense is inherent in other types of legal offenses and consists in the fact that financial liability can be incurred for culpable acts only. Culpability as a feature of an offense indicates a connection between an unlawful act and an offender who committed (allowed) such an action or omission with intent or negligence. At the same time, the issue of the mandatory presence of culpability as part of a financial offense is currently still debatable among scientists in financial law, given that a significant number of financial offenses are committed with intent. The latent nature of financial offenses as well as the legislative imperfection of the procedural form of imposing financial-law liability do not always allow law enforcement agencies to prove the presence of intent and correctly qualify the actions of the offender, which increases the judicial practice of considering disputes in the field of financial activity.

Another general feature of a financial offense is *punishability*. Punishability means the possibility of applying negative legal consequences provided for by financial-law sanctions to a person who has committed a financial offense. Punishability is logically conditioned by the unlawful and antisocial nature of an offense and reflects the negative assessment of such conduct by society and the state.

The punishability of an unlawful act plays a crucial role in implementing the principle of inevitability of financial-law liability. As noted by Ukrainian legal scholars, impunity for an offense, even a minor one, not only encourages further unlawful behavior but also undermines the authority of legal norms and the credibility of state enforcement mechanisms[167]. The presence of the above features in their totality provides grounds for recognizing a certain act as a financial offense.

At the same time, it should be emphasized that Ukrainian legislation in the field of financial activity does not contain a general definition of a financial offense. Instead, separate concepts of a tax offense and a violation of budget legislation are provided. According to Clause 109.1 of Article 109 of the Tax Code of Ukraine, a tax offense is an unlawful act (action or omission) of a taxpayer, tax agent and/or their officials, as well as officials of regulatory authorities, which has resulted in non-fulfillment or improper fulfillment of requirements established by this Code and other legislation, compliance with which is entrusted to regulatory authorities.

It is worth noting that this definition does not contain such a feature of an offense as culpability, which in fact indicates the possibility of holding a person liable and applying financial-law sanctions without the need to prove their intent or negligence when committing an offense. Such a position of the legislator once again emphasizes the debatable nature of the issue of the mandatory presence of culpability as a feature of an offense. Considering the practical application, this definition needs further improvement.

The Budget Code of Ukraine also defines the concept of a violation of budget legislation. However, given that budget legislation provides for the application of enforcement measures rather than classical financial-law sanctions, analysis of this concept goes beyond the scope of this research.

Taking into account the significant diversification of the financial sphere and the fragmented nature of its legal regulation, the absence of a unified statutory definition of a financial offense has led to the application of financial-law sanctions on the basis of unsystematized norms. This situation requires legislative correction, as financial-law sanctions should be applied within

[167] Rabinovych, P. M. *Osnovy zahalnoi teorii prava ta derzhavy* [Fundamentals of the General Theory of Law and State]. Lviv, 2007. P. 312. [in Ukrainian]

clearly defined limits of legal regulation of infringing acts, based on a coherent and systematic understanding of the concept of a financial offense.

Thus, *a financial offense can be defined as a socially harmful (dangerous), unlawful and culpable act (action or omission) of an entity having delictual capacity (natural or juridical person), which encroaches on the financial rights and interests of the state and society protected by law and entails financial-law liability.*

The need to distinguish a financial offense as an independent basis for applying financial-law sanctions is primarily connected with the existence of a special branch of law—financial law, which regulates a specific sphere of social relations related to the formation, distribution and use of public financial resources. Encroachments on the social order established by the norms of financial law necessitate the existence of a special system of state coercion aimed at restoring and ensuring legality in this field. Therefore, the very fact of committing a financial offense entails the application of financial-law sanctions, which allows a financial offense to be regarded as one of the grounds for applying such sanctions. However, a financial offense may be recognized as such only if its body (corpus delicti) is present.

The issue of the body of an offense, despite its significant doctrinal elaboration and partial normative regulation, remains the subject of ongoing scientific debate. The controversy mainly concerns the understanding of the essence of the body of an offense and its correlation with the offense itself, as well as the elements and features of the body of an offense.

In Ukrainian legal doctrine, a normative approach to understanding the body of an offense has traditionally prevailed. In particular, scholars such as P. M. Rabinovych, O. F. Skakun, M. V. Tsvik and V. Ya. Tatsii emphasize that the body of an offense is a legal construction enshrined in the norms of law, through which the legislator describes the essential features of socially harmful unlawful behavior[168].

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[168] Rabinovych, P. M. *Osnovy zahalnoi teorii prava ta derzhavy* [Fundamentals of the General Theory of Law and State]. Lviv, 2007. P. 284–286. [in Ukrainian]

At the same time, representatives of a factual (material) approach, including N. S. Kuznietsova and V. M. Malkov (whose views have been further developed in Ukrainian doctrine), argue that the body of an offense is not an abstract legal formula but the core of a real unlawful act and can be revealed only through the analysis of specific conduct[169].

As noted by Ukrainian scientist E. S. Dmytrenko, the body of an offense is a legal concept about a certain violation, which combines the most essential, typical and universal features of it[170]. Famous Ukrainian legal theorist O. F. Skakun considers the body of an offense as a system of patterns of illegal behavior necessary and sufficient for imposing legal liability[171]. According to M. V. Tsvik, the body of an offense is a set of objective and subjective features of an unlawful socially harmful act envisaged by law, for the commission of which the guilty person is legally liable[172].

First of all, when defining the body of an offense, it is necessary to understand its essence. An offense is a legal fact that takes place in reality and consists in the unlawful actions of a person aimed at violating certain social values. In order to identify such a legal fact as an offense, it is necessary to make a comparison, the so-called qualification, of actions with the relevant legal norms that determine the features of the offense, that is, what exactly the offense consists of, who can commit it, for what purpose, etc. There are many parameters and circumstances of an offense, but not all of them are essential for its definition as such. However, science has identified the main attributes of infringing acts, the simultaneous presence

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[169] Kuznietsova, N. S. *Teoriia pravoporushennia* [Theory of Offense]. Kyiv, 2010. P. 112–115. [in Ukrainian]

[170] *Yurydychna vidpovidalnist subiektiv finansovoho prava u mekhanizmi pravovoho zabezpechennia finansovoi bezpeky Ukrainy: monohrafiia* [Legal liability of entities of financial law in the mechanism of legal support of financial security of Ukraine: monograph]. Kyiv: *Yurinkom Inter*, 2009. P. 202. [in Ukrainian]

[171] Skakun, O. F. *Teoriia derzhavy i prava: pidruchnyk* [Theory of state and law: textbook]. Kharkiv: *Konsum*, 2001. P. 421. [in Ukrainian]

[172] *Zahalna teoriia derzhavy i prava: pidruchnyk* [General theory of state and law: textbook] / M. V. Tsvik, V. D. Tkachenko, L. L. Bohachova [and others]; edited by M. V. Tsvik, V. D. Tkachenko, O. V. Petryshyn. Kharkiv: *Pravo*, 2002. P. 355. [in Ukrainian]

of which allows finding features of an offense in each specific act. Thus, the body of an offense is a kind of frame of an unlawful act, by superimposing on which an actually committed act it is possible to establish the presence of the features necessary for an offense in such an act.

The body of an offense consists of interconnected elements forming an integral system rather than a mere aggregate. This systemic nature means that each element is significant only in combination with the others, while the absence of any element excludes the existence of the body of an offense as a whole. As noted in Ukrainian legal doctrine, the loss of even one structural element destroys the integrity of the body of an offense and makes the imposition of liability impossible[173].

This conclusion applies not only to criminal or administrative offenses but also to financial offenses. The body of an offense reflects a system of general, typical and essential features established by the legislator, through which competent authorities qualify unlawful behavior. The features specified in legal norms characterize the elements of the offense and serve as the basis for recognizing a certain act as unlawful and punishable.

The concept of the body of an offense is not an abstract theoretical construct but a practical legal instrument that allows: 1) determining the necessary and sufficient grounds for recognizing an act as an offense; 2) defining the scope and objectives of investigation and proof; 3) distinguishing unlawful behavior from an offense and differentiating one offense from another. Thus, the exact identification of the body of an offense is a guarantee of ensuring legality and observing the rights of participants in social relations.

In legal science, the *features of the body of an offense are combined into four groups—features characterizing: 1) the object of the offense; 2) the objective side; 3) the offender and 4) the subjective side*.

The application of financial-law sanctions is a legal result of committing a financial offense, the presence of which in certain acts of a person is subject to mandatory identification precisely

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[173] Tatsii, V. Ya. *Pravoporushennia ta yurydychna vidpovidalnist* [Offenses and Legal Liability]. Kharkiv, 2012. P. 203. [in Ukrainian]

by determining the body of the financial offense. The body of a financial offense is the features (elements) established by the norms of financial law, the combination of which allows an unlawful act to be considered a financial offense[174].

The current financial legislation does not specify the concept of the body of a financial offense, but, based on general theoretical provisions, the body of a financial offense should be studied within the already learned (traditional) understanding of the body of an offense and its elements. When characterizing the body of a financial offense, namely its elements, the first element to be analyzed is the **object** of the financial offense.

In Ukrainian financial law doctrine, various approaches exist to defining the object of a financial offense. According to V. P. Nahrebelnyi, the object of a financial offense is financial legal relations against which the offender's unlawful socially harmful behavior is directed[175]. M. P. Kucheriavenko similarly defines the object of a financial offense as social relations arising in the process of financial activity of the state and protected by norms of financial law[176].

With regard to tax offenses, O. Bakun refers to social relations arising from the payment of taxes by citizens to the relevant budgets and funds, between them and the state represented by tax authorities, as the object of a tax offense[177]. Ukrainian scientist Z. M. Budko defines the object of a tax offense more broadly, noting that the object of a tax offense is social relations arising between parties to tax legal relations regarding the provision of taxes,

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[174] Nahrebelnyi, V. P., Chernadchuk, V. D., Sukhonos, V. V. *Finansove pravo Ukrainy. Zahalna chastyna: navch. posibnyk* [Financial law of Ukraine. General part: textbook]. Sumy: *Universytet. knyha*, 2004. P. 114. [in Ukrainian]

[175] Nahrebelnyi, V. P. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kyiv, 2018. P. 142. [in Ukrainian]

[176] Kucheriavenko, M. P. *Podatkove pravo Ukrainy* [Tax Law of Ukraine]. Kharkiv, 2020. P. 97. [in Ukrainian]

[177] Bakun, O. V. *Hromadianyn yak subiekt podatkovykh pravovidnosyn v umovakh perekhodu do rynkovoi ekonomiky* [A citizen as a party to tax legal relations in the transition to a market economy]: dissertation for the degree of Candidate of Legal Sciences: 12.00.07 / Taras Shevchenko National University of Kyiv. Chernivtsi, 2000. P. 156. [in Ukrainian]

fees (mandatory payments) to the budget and special purpose funds[178]. In the financial literature, you can even find identification of the object of tax and other financial offenses[179].

Despite the diversity of doctrinal approaches, scholars generally agree that, in a broad sense, the object of a financial offense consists of social relations protected by financial legislation. A financial offense encroaches precisely on these relations, causing or creating the risk of causing harm to the financial system and the lawful financial activity of the state.

Thus, the object of a *financial offense* should be considered social relations regulated by the norms of financial law, which are harmed as a result of the offense.

The object of a financial offense can also be defined as a circle of those financial relations protected by law, at which the entity's culpable, unlawful and socially harmful (dangerous) behavior is directed.

When identifying the object of a financial offense, it is advisable to distinguish the general, specific and direct objects of the financial offense.

This classification of objects of an offense was substantiated in Ukrainian legal doctrine on the basis of general theoretical developments and is now recognized by the majority of legal scholars[180]. It is based on the gradual "narrowing" of the object of a financial offense depending on the differentiation of financial law into sub-branches and institutions that form relatively isolated homogeneous groups of relations affected by a financial offense. Each subsequent object is contained within the previous one. Such an approach makes it possible to determine the objects

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[178] Budko, Z. M. *Finansovo-pravova vidpovidalnist za vchynennia podatkovykh pravoporushen* [Financial-law liability for tax offenses]: abstract of the dissertation for the degree of Candidate of Legal Sciences / Taras Shevchenko National University of Kyiv: 12.00.07. Zaporizhzhia, 2005. P. 8–9. [in Ukrainian]

[179] Nidzelska, O. *Vidpovidalnist platnykiv podatkiv za porushennia podatkovoho zakonodavstva* [Liability of taxpayers for violation of tax legislation]. *Visnyk podatkovoi sluzhby Ukrainy* [Bulletin of the Tax Service of Ukraine]. 2001. No. 3. P. 21–24. [in Ukrainian]

[180] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2011. P. 463–465. [in Ukrainian]

of financial-law protection at different levels of generalization, ensuring the systematic and comprehensive nature of their analysis.

The general object of a financial offense should be defined as the legally protected financial rights and interests of the state in the sphere of financial activity at all its stages, as well as the system of financial relations related to the accumulation, distribution and redistribution of centralized and decentralized public monetary funds.

In this regard, it should be emphasized that the object of a financial offense is distinguished not in relation to any encroachment on financial relations as such, but only in relation to those acts that are recognized as financial offenses by law. Thus, Ukrainian scholar M. P. Kucheriavenko[181] notes that relations concerning the establishment and introduction of taxes and fees cannot be regarded as the object of a tax offense, since the Tax Code of Ukraine does not provide for liability for violations in this sphere. Likewise, the general object does not include relations arising in connection with challenging acts of tax authorities or actions (omissions) of their officials, nor relations concerning the imposition of liability for a tax offense.

A number of Ukrainian scholars also single out the generic object of a financial offense, which covers homogeneous and relatively independent groups of relations corresponding to particular spheres of financial-law regulation, such as budgetary, tax, currency and others[182].

The specific object of a financial offense consists of social relations in the field of public financial activity of the state, the violation of which entails financial-law liability. These relations form an independent group of social relations harmed by offenses similar in their objective and subjective characteristics.

It is precisely the specific object that plays a decisive role in differentiating financial offenses, including tax offenses.

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[181] Kucheriavenko, M. P. *Podatkove pravo Ukrainy* [Tax Law of Ukraine]. Kharkiv, 2020. P. 181–183. [in Ukrainian]

[182] Dmytrenko, Ye. S. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kyiv, 2019. P. 192. [in Ukrainian]

In the financial law doctrine of Ukraine, two main specific objects of tax offenses are traditionally distinguished: 1) relations arising in connection with the fulfillment of the obligation to pay taxes and fees by obligated persons; 2) relations arising in connection with tax control and supervision exercised by authorized bodies[183].

By analogy, in the sphere of compulsory state social insurance, the specific object should be defined as relations arising in connection with the accrual and payment of the unified social contribution by relevant payers, as well as relations related to the administration of such payments by competent authorities.

With regard to violations of currency legislation, the specific object is the financial interests of the state in ensuring currency regulation and control, including the stability of the national currency, lawful conduct of foreign exchange operations and compliance with established rules for the movement of currency values.

The direct object of a financial (including tax) offense is specific social relations regulated by the norms of financial legislation, the violation of which directly entails financial-law liability. In other words, the direct object consists of clearly defined relations against which the unlawful behavior of the offender is directly directed.

Ukrainian scholar M. P. Kucheriavenko emphasizes that the direct object of a financial offense is specific financial relations and rules protected by financial law, the violation of which gives rise to financial liability[184]. Thus, in the sphere of currency regulation, the direct object includes state interests in regulating operations of residents and non-residents related to the movement of currency values, change of ownership, transfer of currency abroad, receipt of currency for goods and services, as well as obligations to declare currency assets and other property located outside Ukraine. In the securities market, the direct object of unlawful encroachment may be relations concerning the issuance, placement and circulation of securities, as well as professional activities in organized capital markets.

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[183] Nahrebelnyi, V. P. *Finansovo-pravova vidpovidalnist* [Financial-law Liability]. Kyiv, 2017. P. 104–106. [in Ukrainian]

[184] Kucheriavenko, M. P. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kharkiv, 2018. P. 214. [in Ukrainian]

An optional feature characterizing the object of a financial offense is its subject. Ukrainian scholar R. V. Ihonin, referring to the general theory of law developed in Ukrainian doctrine, notes that the subject of an offense is either a material embodiment of social relations and an element of their structure, or an object inseparably connected with such relations and serving as a prerequisite for their existence and normal functioning[185].

Accordingly, the subject of a financial offense may be defined as specific tangible or monetary assets, through unlawful influence on which the offender causes damage to financial relations protected by law (the object of the offense).

The next element characterizing the body of a financial offense is its **objective side**. The body of a financial offense may be consolidated in legal norms only by describing certain features through which it is objectified and abstracted, and the offense acquires real and legally significant characteristics. The formation of the objective side of a financial offense is decisive in this process, since it reflects the external manifestation of unlawful behavior.

Each offense represents a sequence of certain behavioral acts of the offender, united by a common unlawful orientation, which are reflected in the objective side.

The objective side of a financial offense is a set of features of unlawful behavior stipulated by the norms of financial law, which characterize the external manifestation of a financial offense in objective reality[186]. In other words, the objective side answers the question of how (in what manner) the financial offense was committed.

According to Part 2 of Article 109 of the Tax Code of Ukraine, acts are considered intentional if there are circumstances proven by the regulatory authority that indicate that the taxpayer purposefully

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[185] Ihonin, R. V. *Orhanizatsiino-pravovi zasady diialnosti subiektiv vykonavchoho provadzhennia* [Organizational and legal principles of activity of parties to enforcement proceedings]: dissertation for the degree of Candidate of Legal Sciences: 12.00.07 / National Academy of the State Tax Service of Ukraine. Irpin, 2007. Retrieved from http://studrada.com.ua/content/31 (June 18, 2021) [in Ukrainian]

[186] Dmytrenko, Ye. S. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kyiv, 2019. P. 241. [in Ukrainian]

created conditions that could not have any other purpose than non-fulfillment or improper fulfillment of the requirements established by this Code and other legislation, the control over compliance with which is entrusted to regulatory authorities. At the same time, the purposeful creation of conditions for non-fulfillment of tax obligations should be distinguished from the very fact of non-fulfillment of such obligations. The mere failure to fulfill a tax obligation cannot automatically indicate intent. Non-fulfillment of a tax obligation is a consequence that may result from: 1) failure of the taxpayer to take sufficient measures to fulfill the obligation (in which case the offense is culpable but not intentional); or 2) deliberate actions aimed at creating conditions for non-compliance with tax legislation (in which case the offense is intentional).

Accordingly, in order to establish intent in the taxpayer's actions, the regulatory authority must prove: 1) what specific conditions were created by the taxpayer for non-fulfillment of their tax obligations; 2) the fact that these conditions were the result of purposeful behavior of the taxpayer; 3) the fact that the taxpayer had no purpose when committing the relevant acts other than non-compliance with the law. In this case, evidence of intent should be actual data confirming the taxpayer's act aimed at creating conditions for non-fulfillment of tax obligations.

Unfortunately, the adopted version of Article 109 of the Civil Code directly contradicts both the general theory of law and the theory of tax and financial law. Therefore, now an intentional tax offense should already be considered not an unlawful culpable act of an *entity having the delictual capacity* (who was aware of the harmfulness or danger of their actions and in every possible way contributed to their occurrence), which violates the procedure, completeness and timeliness of tax payments as well as compliance with other norms of tax laws, but only the purposeful creation of conditions for such a violation. That is, in terms of fiscal consequences for the legislators initiating such changes, it does not matter whether the tax was paid in full and on time. Undoubtedly, such neglect of the basic principles of the theory of law in general, and the theory of financial law, will result in different interpretations of competing norms, distortion of the practice of applying the legislation and numerous lawsuits regarding the legality of applying financial sanctions for violations of tax legislation.

Omission in a financial offense consists in the non-fulfillment or improper fulfillment of legal obligations imposed on the offender (for example, failure to ensure proper use of registers of settlement operations)[187]. Some Ukrainian scholars point out that a significant part of financial offenses are committed precisely in the form of omission, which reflects the passive nature of unlawful behavior in the financial sphere[188].

Mandatory features of the objective side of a financial offense, in addition to the act (action or omission), include social harm and a causal link between the unlawful act and its consequences.

Social harm may be both material and non-material and consists in causing or threatening to cause damage to financial relations protected by law. Recognition of social harm as a mandatory feature of the objective side distinguishes a financial offense from unlawful behavior that does not affect protected financial relations.

At the same time, it should be noted that not only acts that have actually caused socially harmful consequences are recognized as financial offenses. In some cases, the legislator defines a certain unlawful act as an offense due to its clearly unlawful nature, the social value of the protected good and the real possibility of causing harm.

The issue of whether socially harmful consequences should always be regarded as a mandatory feature of the objective side remains debatable in legal science. Most Ukrainian scholars support the view that a socially harmful result is a mandatory element of offenses with a material body, particularly in tax law, since any unlawful act inevitably produces consequences in objective reality[189]. Other scholars argue that the only mandatory

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[187] Nahrebelnyi, V. P. *Finansovo-pravova vidpovidalnist* [Financial-law Liability]. Kyiv, 2017. P. 156. [in Ukrainian]

[188] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2011. P. 472. [in Ukrainian]

[189] Dmytrenko, Ye. S. *Zahalna teoriia finansovoho pravoporushennia* [General Theory of Financial Offense]. Kyiv, 2018. P. 119. [in Ukrainian]

element of the objective side of a financial offense is the unlawful act itself, while harmful consequences may be outside the body of the offense[190].

Both approaches are justified, taking into account the existence of financial offenses with material and formal bodies.

An offense with a material body is characterized by the mandatory presence of harmful social consequences caused by an unlawful act or omission. In such cases, the body of the offense is complete only when the specified consequences occur, and only from that moment may financial-law sanctions be applied. If the consequences stipulated by law do not occur, liability is excluded due to the absence of a complete body of the offense.

In contrast, an offense with a formal body is characterized by the sufficiency of the unlawful act itself, regardless of whether harmful consequences have occurred. In such cases, financial-law sanctions are applied upon establishing the fact of committing the unlawful act.

However, it would be incorrect to assume that offenses with a formal body do not cause any harm at all. The legislator's recognition of certain behavior as unlawful and punishable reflects the importance of protecting the established order of financial regulation, financial discipline and management procedures. Violation of such order disrupts the normal functioning of financial relations and creates a potential threat of real damage in the future.

Modern financial legislation of Ukraine demonstrates a clear tendency toward the formulation of offenses with a formal body, which simplifies the procedure for proving offenses and expands the scope of protected financial relations.

Along with the above features, the objective side of a financial offense may also include a causal relationship between the unlawful act and socially harmful consequences. At the same time, this feature is mandatory only for offenses with a material body and is not required for offenses with a formal body, which explains the diversity of scientific approaches to this issue.

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[190] Kucheriavenko, M. P.; Nahrebelnyi, V. P. *Aktualni problemy finansovoho prava* [Topical Issues of Financial Law]. Kharkiv, 2020. P. 198. [in Ukrainian]

In particular, according to L. K. Voronova, the mandatory feature of a financial offense is a socially harmful act, while socially harmful consequences and a causal relationship between the act and the consequences may be optional features and are not always expressly fixed in legislation[191]. However, such an approach cannot be fully supported, since the general theory of law is based on the principle according to which a person may be held legally liable only if a causal relationship between the damage caused and the person's action or omission is established.

Causation is always understood as an objective connection between two phenomena, one of which (the cause), under certain conditions, gives rise to another (the effect)[192]. Therefore, a causal relationship in a financial offense may be established only where unlawful conduct directly results in socially harmful consequences. In this regard, L. K. Voronova reasonably notes that the absence of a causal relationship excludes the possibility of holding a person financially liable[193].

Taking into account such an inseparable connection between an unlawful act and its consequences, these features should be reflected simultaneously in the objective side of a financial offense as its mandatory elements.

When characterizing the objective side, it is also necessary to take into account the nature of an unlawful act, which may be *recurring, ongoing or continuing*. Recurrence in financial law means the commission of a similar or identical offense by the same person within the period established by law, provided that a financial sanction has already been applied to such a person for a similar violation. This qualifying feature is directly stipulated, in particular, by Article 117, Part 2 of Clause 119.1 of Article 119 of the Tax Code of Ukraine, as well as paragraphs 3 and 4 of Clause 7.1 of the Regulation on the Application of Enforcement Measures

[191] Voronova, L. K. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kyiv, 2020. P. 312. [in Ukrainian]

[192] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2018. P. 453. [in Ukrainian]

[193] Voronova, L. K. *Pravovi zasady finansovoi vidpovidalnosti* [Legal Foundations of Financial Liability]. Kyiv, 2019. P. 198. [in Ukrainian]

by the National Bank of Ukraine for Violations of Banking Legislation approved by Resolution of the National Bank of Ukraine No. 369 dated August 28, 2001.

An ongoing financial offense is an offense, usually expressed in the form of omission, which is committed continuously over a certain period of time. For example, violation of the statutory deadline for submitting an application for registration with a tax authority may be classified as an ongoing offense. In accordance with Clause 111.4 of Article 111 of the Tax Code of Ukraine No. 2755-VI dated December 2, 2010, a person is deemed to have committed an offense repeatedly if such person has already been brought to liability in the manner and within the time limits established by this Code for a similar offense. Therefore, recurring or ongoing unlawful behavior confirms the culpability of the offender.

The Ministry of Justice of Ukraine, in its Letter dated December 1, 2003, defines ongoing offenses as those related to long-term, continuous non-fulfillment of obligations established by a legal norm, which are terminated either by the fulfillment of the statutory obligation or by holding the offender legally liable. Such offenses are characterized by a continuous state of unlawful conduct or omission that persists over time, during which the person repeatedly violates the law by failing to fulfill the duties imposed on them.

Continuing offenses consist in the commission by one person of several homogeneous unlawful acts united by a common purpose. A typical example is the systematic failure of a tax agent to transfer withheld taxes to the budget.

Along with mandatory features, the body of a financial offense may include optional features, which are incorporated by the legislator if necessary. These include the place, time, circumstances, method and means of committing an offense. The method and means are directly related to the act itself, while the place, time and circumstances constitute the general conditions under which the offense occurs.

With regard to financial offenses, time is the only optional feature that has independent legal significance, as it allows the attribution of the offense to a specific reporting or tax period. Other optional features, except for the amount and timing of payment, generally do not play a decisive role in qualifying a financial offense or in applying financial-law sanctions, unlike in criminal law.

The next element of the body of a financial offense that must be analyzed in order to establish the grounds for applying financial-law sanctions is the entity (offender).

Financial offenders should be defined as persons who committed the financial offense and are able to be held financially and legally liable. The specifics of financial legal relations, which include the areas of tax, public banking, currency, monetary relations, etc., directly affect the involved offenders, which are numerous and diverse. First of all, it should be pointed out that the entities of a financial offense to which financial-law sanctions may be applied are both natural and juridical persons. In addition, the state represented by the bodies authorized by it to carry out public financial activities acts as the entity of a financial offense. Another feature of the entities of a financial offense should be defined as their significant range of types, which is formed depending on the type of financial legal relations.

An important feature of a person being the entity of a financial offense is the legal ability of such a person to be liable for their unlawful acts and to be subject to financial-law sanctions, which is defined as the legal personality of such a person. This will be discussed in more detail in Clause 2.2. of Section 2.

The most controversial and debatable issue is the **subjective side** of a financial offense. The subjective side is a set of features reflecting the inner side of an unlawful act and characterizing the internal mental processes in the offender's mind regarding the offense and its consequences[194].

The content of the subjective side is the mental activity of a person related to an offense, and the features characterizing it include guilt, motive and purpose of the offense. In their totality, they give an idea of the inner processes in the psyche of a person as well as reflect

[194] Nahrebelnyi, V. P. *Finansove pravo Ukrainy. Zahalna chastyna: navch. posibnyk* [Financial law of Ukraine. General part: textbook]. Sumy: *Universytet. knyha*, 2004. P. 198. [in Ukrainian]

the connection between the offender's consciousness, their will and the offense committed.

The central link of the subjective side of the body of a financial offense is culpability. Culpability of a person in the theory of law is considered as the main prerequisite for legal liability for a person who has committed an offense.

Revised Article 109 of the Tax Code of Ukraine came into force on January 1, 2021. Therefore, according to the changes in the financial legislation, culpability becomes a mandatory feature of the subjective side of the body of a financial offense under the current Tax Code of Ukraine. Since Part 1 of Article 109 of this Code explicitly provides for its presence in the legal norm enshrined in the disposition of the article. According to Part 1 of Article 109 of the Tax Code of Ukraine, it is ***determined that tax offenses are unlawful, culpable acts (actions or omissions) of taxpayers, including persons equated to them, regulatory authorities and/or their officials (officers), other entities in the cases expressly provided for by this Code***.

In this regard, it is difficult to disagree with the validity of the statement of O. V. Hedziuk that the issue of the subjective side of a tax offense in tax law was and remains relevant and problematic, since the legislation of Ukraine does not provide comprehensive answers [195].

At the same time, the most elaborated concept of culpability has been developed within criminal law doctrine. According to M. I. Koziubra [196], culpability should be understood as a person's mental attitude to an unlawful act and its consequences, expressed through intent or negligence and manifested in a conscious violation of legally protected values.

From a formal perspective, Ukrainian tax legislation recognizes culpability as an element of a tax offense but interprets it primarily

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[195] Hedziuk, O. V. *Instytut vyny u podatkovomu pravi Ukrainy* [Institution of culpability in the tax law of Ukraine]. *Pravo i hromadianske suspilstvo* [Law and civil society]. 2014. P. 65. [in Ukrainian]

[196] Koziubra, M. I. *Zahalna teoriia prava* [General Theory of Law]. Kyiv, 2015. P. 281–289. [in Ukrainian]

as a form of unlawful behavior rather than as a psychological attitude. This significantly distinguishes the financial-law concept of culpability from its criminal-law understanding, where determining a person's awareness of the act and foresight of consequences is decisive.

A culpable act implies that a person, having the freedom to choose between lawful and unlawful behavior, consciously opts for the latter. The absence of such freedom excludes culpability, even if an unlawful act formally occurred. In this sense, the intellectual ability to understand one's actions and the volitional ability to control them are essential prerequisites for assessing culpability, which may manifest itself in the form of intent or negligence [197].

As O. F. Skakun emphasizes, only acts that were conscious and controlled by a person at the time of their commission may be recognized as offenses [198].

Thus, culpability in general is manifested in the ability of a person to understand their acts with the development of a certain inner attitude to this. However, the processes taking place in the offender's mind at the time and after the commission of an offense can hardly be understood and described using legal terminology, since their nature and inner structure are beyond the scope of jurisprudence. Nevertheless, the significance of these processes for establishing the body of an offense is crucial, first of all, for maintaining public law and order as well as legality. Therefore, they should be studied, and the obtained results should be used as legally significant.

The concept of culpability is one of the most studied, but it still remains the subject of heated debate among scientists regarding its content and place as a legal phenomenon in the theory of law. Different understanding of the category of culpability caused the existence of different approaches to its definition, which were transformed into scientific concepts. As such theories related to the content of culpability, the theories of "exclusively fault-based

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[197] Tsvik, M. V., Tkachenko, V. D., Bohachova, L. L. *Zahalna teoriia derzhavy i prava: pidruchnyk* [General theory of state and law: textbook]; edited by M. V. Tsvik, V. D. Tkachenko, O. V. Petryshyn. Kharkiv: *Pravo*, 2002. P. 356. [in Ukrainian]

[198] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2018. P. 468–472. [in Ukrainian]

principle", "no-fault liability", "two principles", "vicarious liability" as well as "evaluative", "final", "normative" and "psychological" theories should be mentioned.

The concept of liability only for a culpable act denies the possibility of the existence of no-fault liability, since, according to this concept, culpability is the only basis for imposing legal liability. At the same time, proponents of this theory, referring to the inadmissibility of no-fault liability, nevertheless allowed its existence as an exception, which led to the formation of two directions within the given concept. Researchers supporting one of these directions argue that compensation, for example, for innocently caused damage should not be regarded as legal liability in the strict sense of the term. This position is supported, in particular, by Ukrainian scholars, who emphasize that legal liability is inherently connected with culpable behavior, whereas compensation for damage without fault performs a purely restorative function rather than a punitive one[199].

Another group of scholars substantiates the admissibility of no-fault liability mainly within the framework of civil law. Thus, O. V. Dzera, analyzing civil-law mechanisms of compensation for damage, concludes that in certain cases liability may arise without establishing fault, since the primary purpose of such liability is to restore the violated subjective right of the victim rather than to punish the offender[200]. Similar views are expressed by N. S. Kuznetsova, who notes that civil liability without fault is justified by the compensatory nature of civil-law regulation and does not contradict the general principles of justice, provided that it is expressly established by law[201].

The content of the theory of "two principles" lies in the assertion that legal regulation may simultaneously provide for liability both

[199] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2018. P. 468–472. [in Ukrainian]

[200] Dzera, O. V. *Tsyvilno-pravova vidpovidalnist* [Civil Law Liability]. Kyiv, 2011. P. 96–101. [in Ukrainian]

[201] Kuznetsova, N. S. *Vidshkoduvannia shkody v tsyvilnomu pravi Ukrainy* [Compensation for Damage in Civil Law of Ukraine]. Kyiv, 2014. P. 118–123. [in Ukrainian]

for culpable and for innocent behavior. According to O. V. Zaichuk and N. M. Onishchenko, modern legal systems combine the fault-based principle with certain elements of objective (no-fault) liability, depending on the sphere of legal regulation and the interests protected by law[202].

The essence of the concept of "vicarious liability" is that in certain cases liability is imposed on a person who did not directly commit the unlawful act but is legally responsible for the actions of another person. In financial and tax law, this approach manifests itself, for example, in cases where liability is imposed on a taxpayer for unlawful acts committed by their authorized representative. M. P. Kucheriavenko notes that such liability is characterized by the absence of the personal fault of the entity actually held liable and therefore should be regarded as a special legal construction aimed at ensuring the effectiveness of public financial regulation[203].

At the same time, a number of scholars critically assess the concept of "vicarious fault". According to S. V. Shevchuk, attributing fault to a person who did not directly commit the unlawful act contradicts the classical understanding of culpability and undermines the principle of individual responsibility[204]. From this perspective, vicarious liability should be treated as liability without fault, justified exclusively by considerations of legal expediency and public interest.

In addition to the above concepts, legal doctrine also distinguishes the evaluative concept of culpability. Its representatives reduce the content of culpability to a negative legal assessment of behavior by a court, regardless of the actual mental attitude of the person to their act. L. T. Kryvenko points out that such an approach creates excessive discretion for law enforcement bodies and may lead

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[202] Kucheriavenko, M. P. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kharkiv, 2020. P. 221–226. [in Ukrainian]

[203] Shevchuk, S. V. *Sudova otsinka yak element pravozastosuvannia* [Judicial Evaluation as an Element of Law Application]. Kyiv, 2013. P. 74–79. [in Ukrainian]

[204] Kryvenko, L. T. *Problemy yurydychnoi vidpovidalnosti* [Problems of Legal Liability]. Kyiv, 2015. P. 89–94. [in Ukrainian]

to arbitrary application of legal sanctions[205]. Therefore, this concept has not gained wide recognition in modern legal science.

The so-called *"final concept of culpability"* focuses on the ultimate goal or direction of a person's will rather than on the actual act committed. However, as emphasized by Ukrainian scholars, this approach contradicts the principle of legality and the requirement to establish all elements of an offense, including the subjective side, and therefore cannot be accepted as a universal theoretical model.

At present, the psychological and normative concepts of culpability are recognized as the most substantiated and widely used in jurisprudence. The psychological concept originates from Roman law and is based on the principle that the will of the offender must be taken into account when assessing an offense. According to V. I. Borysov and Yu. V. Baulin, culpability should be understood as a person's mental attitude to the unlawful act committed by them and its consequences, expressed in the form of intent or negligence[206].

From the standpoint of criminal law, Article 23 of the Criminal Code of Ukraine defines culpability as the mental attitude of a person to their action or omission and its consequences, expressed as intent or negligence. This legislative definition fully corresponds to the psychological understanding of culpability prevailing in modern legal doctrine.

Analyzing the structure of intent, V. Ya. Tatsii notes that direct intent is characterized by awareness of the socially dangerous nature of the act, foresight of its socially dangerous consequences and the desire for their occurrence[207]. These elements reflect the interaction of the intellectual and volitional components of culpability, which determines the legal assessment of the committed act.

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[205] Koziubra, M. I. *Zahalna teoriia prava* [General Theory of Law]. Kyiv, 2015. P. 287–292. [in Ukrainian]

[206] Borysov, V. I., Baulin, Yu. V. *Kryminalne pravo Ukrainy. Zahalna chastyna* [Criminal Law of Ukraine. General Part]. Kharkiv, 2019. P. 112–118. [in Ukrainian]

[207] Tatsii, V. Ya. *Umysel i neoberezhnist u kryminalnomu pravi* [Intent and Negligence in Criminal Law]. Kharkiv, 2017. P. 61–66. [in Ukrainian]

Therefore, a person's free will to commit a financial offense indicates the presence of intent to commit such an offense. Intent presupposes that the person who committed a financial offense was aware of the unlawful nature of their actions (omissions) and desired or consciously allowed the occurrence of harmful consequences resulting from such actions (omissions). Accordingly, when a person is not aware of the unlawful nature of their actions (omissions) or the harmful nature of their consequences, although they should have been or could have been aware of them, such behavior constitutes negligence.

At the same time, it should be emphasized that modern legislation does not provide clear procedural methods for directly proving the internal mental attitude of a natural person when committing an offense. Therefore, purely theoretical constructions of culpability do not fully solve the practical problem of distinguishing between culpable and objective liability. Although the possibility of appointing forensic psychiatric examinations in proceedings concerning committed offenses is discussed in legal doctrine, such examinations cannot be considered indisputable or sufficient evidence of culpability, since they are unable to reliably reconstruct the real mental processes that took place in the offender's mind at the time of committing the offense.

Moreover, such approaches may be applied exclusively to natural persons, as only a natural person possesses consciousness and free will. Meanwhile, parties to financial legal relations may also include juridical persons (state authorities, enterprises, institutions, organizations, etc.). In such cases, the culpability of a juridical person is traditionally associated with the culpability of its officials or employees. However, the current financial legislation of Ukraine does not contain a comprehensive legal definition of the culpability of juridical persons.

From the above, it follows that the psychological concept of culpability, which is based on identifying the offender's internal mental attitude to their actions and consequences, is largely inapplicable in legal practice. It is practically impossible to establish with sufficient certainty what the offender actually thought, wanted or foresaw at the moment of committing an offense. In this regard, legal science has developed an alternative approach—the normative concept of culpability.

According to M. I. Koziubra, the essence of the normative concept lies in interpreting culpability not as a subjective mental state of a person, but as a legal assessment of their behavior under specific conditions[208]. Within this approach, the decisive factor is not the offender's internal perception of their actions, but whether, under the circumstances, they could and should have acted lawfully. Thus, culpability is established through an external legal evaluation carried out by a competent authority (court, regulatory body), rather than through the reconstruction of psychological processes.

A similar position is expressed by O. V. Skakun, who emphasizes that within the normative concept a person is recognized as culpable if it is established that they had a real possibility to comply with legal requirements but failed to take sufficient measures to do so[209]. In this sense, culpability exists outside the mental sphere of the entity and is manifested in legally significant behavior assessed against statutory standards.

An illustrative example of the normative approach can be found in civil legislation. According to paragraph 2, Part 1 of Article 614 of the Civil Code of Ukraine, a person is considered innocent if they prove that they took all measures necessary for the proper fulfillment of an obligation. This provision clearly reflects the normative understanding of culpability as compliance with a standard of due behavior rather than as an internal psychological attitude.

At the same time, even the normative concept faces difficulties when applied to juridical persons. As noted by M. P. Kucheriavenko, the categories of intent and negligence are inherently linked to consciousness and will, which makes their direct application to juridical persons problematic[210].

[208] Koziubra, M. I. *Zahalna teoriia prava* [General Theory of Law]. Kyiv, 2015. P. 301–305. [in Ukrainian]

[209] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2018. P. 489–494. [in Ukrainian]

[210] Kucheriavenko, M. P. *Podatkove pravo Ukrainy* [Tax Law of Ukraine]. Kharkiv, 2021. P. 264–270. [in Ukrainian]

Therefore, in financial law, the culpability of an organization is often reduced to the culpability of specific officials or employees acting on its behalf.

The debate concerning the necessity of culpability as a mandatory element of the body of a financial offense remains relevant in financial law. However, amendments to the Tax Code of Ukraine introduced by Law of Ukraine No. 466-IX dated January 16, 2020, clearly demonstrate the legislator's intention to consolidate culpability as a prerequisite for applying financial liability.

Thus, pursuant to Clause 112.2 of Article 112 of the Tax Code of Ukraine, a person is considered culpable if it is established that they were able to comply with the rules and norms, for the violation of which liability is provided, but failed to take sufficient measures to comply with them. Part 1 of Article 112 explicitly provides that a person may be held financially liable for a tax offense only in the presence of culpability. In turn, Part 1 of Article 109 of the Tax Code of Ukraine defines tax offenses as unlawful, culpable acts (actions or omissions) of taxpayers and other entities expressly specified by the Code.

Clause 109.3 of Article 109 establishes that in the cases provided for in Subclauses 123.2–123.5 of Article 123, Clauses 124.2 and 124.3 of Article 124, and Subclauses 125-1.2–125-1.4 of Article 125 of the Tax Code of Ukraine No. 2755-VI dated December 2, 2010, the establishment of a person's culpability by regulatory authorities is a mandatory prerequisite for imposing financial liability.

The key novelty of the updated legal regulation, effective since January 1, 2021, is the explicit inclusion of culpability as a defining feature of a tax offense. This approach was further detailed in the letter of the State Tax Service of Ukraine No. 24242/7/99-00-02-01-02-07 dated December 31, 2020, which approved the Recommendations for Determining the Culpability of a Taxpayer, Regulatory Authorities and/or Their Officials (Officers), Other Entities, as well as Intent in Tax Offenses.

According to the position of the State Tax Service of Ukraine, the conditions determining the culpability of a person under Article 112 of the Code are as follows:

establishing a person's ability to comply with the rules and norms for the violation of which the Code envisages liability and the person's failure to take sufficient measures to comply with them;

proving by a regulatory authority that a taxpayer acted unreasonably, in bad faith and without due diligence when performing certain actions or allowing omissions for which liability is envisaged.

The ability of a person to comply with the rules and norms for the violation of which the Code envisages liability and the failure to take sufficient measures to comply with them due to actions that can be qualified as unreasonable, unfair and lacking due diligence (provided that this is proven by a regulatory authority) are an evidence of the person's culpability for committing a tax offense.

In case the regulatory authority does not prove that the taxpayer was able to comply with the rules and norms for the violation of which this Code envisages liability, but failed to take sufficient measures to comply with them, the latter cannot be held liable for such a violation in accordance with Clause 112.7 of Article 112 of the Code. However, the provisions of this clause are applied only if the condition for imposing financial liability for a tax offense is the taxpayer's culpability.

The procedure for proving the circumstances under which a person can be held financially liable for a committed tax offense is determined by procedural legislation within the scope of court proceedings.

All doubts regarding the existence of circumstances under which a person may be held liable for violating tax legislation and other legislation, the control over which is entrusted to a regulatory authority, should be interpreted in favor of such a person (Subclause 4.1.4 of Clause 4.1 of Article 4, Clause 56.21 of Article 56 of the Code).

Therefore, the obligation to prove culpability is imposed by the Tax Code of Ukraine on regulatory authorities. Without fulfilling this obligation, it is impossible to hold a person financially liable for a tax offense in cases where culpability is a mandatory prerequisite for the qualification of such an offense.

The relevant experience in national legal doctrine has not been sufficiently systematized. In this regard, it should be emphasized that an especially intense scientific discussion concerns tax offenses. Following the amendments to the Tax Code of Ukraine, culpability has been consolidated as a mandatory element of the body of a tax offense. Even before the adoption of these legislative changes, the issue of culpability was actively debated in financial and tax law doctrine. Some scholars argued that liability for tax offenses is imposed irrespective of the taxpayer's culpability[211]. Other researchers asserted the existence of a presumption of guilt of the taxpayer, claiming that such an approach was implicitly embedded in tax legislation[212].

At the same time, Ukrainian scholar M. P. Kucheriavenko consistently criticizes the possibility of imposing tax liability without examining the subjective side of an offense, particularly without establishing the offender's culpability[213]. Supporting this position, the scholar emphasizes that the legislator's silence regarding certain circumstances cannot be interpreted as an expression of intent to permit objective liability. Therefore, the absence of an explicit requirement to establish culpability in earlier versions of tax legislation could not be regarded as legislative approval of liability without fault[214].

According to legal scholar O. O. Soloviov, regulatory authorities are entitled to apply financial sanctions only in the presence of culpability of a taxpayer, except for cases expressly provided for by law. Such an approach does not contradict the general principle of legal liability, which presupposes culpability as its foundation[215].

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[211] Kucheriavenko, M. P. *Podatkove pravo Ukrainy* [Tax Law of Ukraine]. Kharkiv, 2019. P. 412–415. [in Ukrainian]

[212] Tertychna, N. V. *Finansova vidpovidalnist u podatkovomu pravi* [Financial Liability in Tax Law]. Kyiv, 2018. P. 97–101. [in Ukrainian]

[213] Kucheriavenko, M. P. *Aktualni problemy podatkovoho prava* [Topical Issues of Tax Law]. Kharkiv, 2020. P. 233–238. [in Ukrainian]

[214] Koziubra, M. I. *Zahalna teoriia prava* [General Theory of Law]. Kyiv, 2015. P. 289–292. [in Ukrainian]

[215] Soloviov, O. O. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kyiv, 2021. P. 356–360. [in Ukrainian]

O. V. Hedziuk rightly notes that the emphasis on culpability in tax law should move from purely doctrinal discussions to clear legislative consolidation. The scholar convincingly argues that the obligation to prove both the fact of committing a tax offense and the culpability of the taxpayer must rest with regulatory authorities rather than with the alleged offender. However, judicial practice in Ukraine still demonstrates inconsistencies in approaches to the burden of proof in tax disputes.

In general, most scholars agree on the necessity of considering culpability when imposing financial-law liability and applying financial sanctions, as this corresponds to the general principles and grounds of legal liability developed by legal theory. Nevertheless, analyzing the current financial legislation, it should be noted that not all unlawful acts in the field of taxation require mandatory establishment of culpability. As previously indicated, the definition of a tax offense contained in Clause 109.1 of Article 109 of the Tax Code of Ukraine No. 2755-VI dated December 2, 2010, characterizes it as unlawful acts (actions or omissions) of taxpayers, tax agents and/or their officials, as well as officials of regulatory authorities, which resulted in non-fulfillment or improper fulfillment of statutory requirements.

Earlier legislative acts and by-laws, including those that are no longer in force, also defined financial offenses exclusively through the prism of unlawfulness and harmful consequences, which in itself served as a sufficient basis for recognizing the existence of an offense.

At the same time, the dispositions of legal norms establishing liability for tax offenses under the Tax Code of Ukraine expressly indicate culpability as an element of the subjective side of a financial offense, in particular in Clause 109.3 of Article 109 and Clause 112.1 of Article 112. Thus, the legislator, when resolving issues of qualification of a tax offense, explicitly treats culpability as a component of an unlawful act. Consequently, under current legislation, financial liability shall be imposed only if culpability (intent or negligence) is established, which obliges regulatory authorities to prove the full body of an offense, including its subjective side.

A person is considered culpable under tax legislation if it is established that they were able to comply with the rules and norms for the violation of which the Tax Code of Ukraine provides liability, but failed to take sufficient measures to comply with them.

Measures taken by a taxpayer are considered sufficient unless the regulatory authority proves that the taxpayer, when performing actions or allowing omissions for which liability is provided, acted unreasonably, in bad faith and without due diligence.

Thus, the conditions determining culpability within the meaning of Article 112 of the Tax Code of Ukraine are:

- establishing a person's ability to comply with the rules and norms for the violation of which this Code envisages liability and the person's failure to take sufficient measures to comply with them;
- proving by a regulatory authority that a taxpayer acted unreasonably, in bad faith and without due diligence when performing certain actions or allowing omissions for which liability is envisaged.

In this regard, it is the *ability of a person to comply with the rules and norms* for the violation of which the Tax Code of Ukraine envisages liability and the failure of this person to take sufficient measures to comply with them due to acts that can be qualified as unreasonable, unfair and lacking due diligence (provided that this is proven by a regulatory authority) are an evidence of the person's culpability for committing a tax offense.

When analyzing culpability as an element of a financial offense, it is also necessary to address such categorical legal concepts as the presumptions of guilt and innocence and their normative consolidation. Legal presumptions, as instruments of legal technique, serve to enhance the effectiveness of legal regulation.

According to Ukrainian legal theorist S. V. Shevchuk, a legal presumption is a legislatively enshrined assumption regarding the existence or absence of legally significant facts, aimed at ensuring stability and predictability of legal regulation[216]. Accordingly, presumptions of guilt and innocence represent assumptions about a person's culpability or non-culpability when they are held liable.

[216] Shevchuk, S. V. *Yurydychna tekhnika* [Legal Technique]. Kyiv, 2017. P. 141–145. [in Ukrainian]

Ukrainian scientist Z. M. Budko[217] notes that the existence of the presumption of innocence is due to ideological factors, that is, those arising from the content of legal principles and features of the method of legal regulation. As a fundamental provision at the legislative level, the presumption of innocence is enshrined in Article 62 of Constitution of Ukraine No. 254k/96-VR dated June 28, 1996, according to which a person is considered innocent of committing a crime and cannot be criminally punished until their culpability is legally proven and established by a court conviction. No one is obliged to prove their innocence with regard to committing a crime. Accordingly, the presumption of innocence is most widely and fully applied in criminal law.

The presumption of guilt is enshrined in civil law as a prerequisite for implementing the measures of civil liability for the violation of contractual obligations, etc. Along with this, the validity of applying the presumptions of innocence and guilt in financial law has been hotly debated for a long time, especially in the tax area.

National legal experts T. V. Kushnarova[218], A. O. Selivanov[219] and others have emphasized the urgent need to legislatively consolidate the principle of imposing legal liability exclusively in the presence of culpability within financial legislation, particularly tax legislation. Conversely, a number of scholars oppose the application of the presumption of innocence in tax law, arguing that such an approach would result in an unjustified mechanical transfer of criminal law constructions into tax law. In their view, this could destabilize the tax system by altering the established balance between taxpayers and regulatory authorities and by creating

[217] Budko, Z. M. *Prezumptsiia nevynuvatosti v podatkovomu pravi* [Presumption of innocence in tax law]. Z. M. Budko. Forum prava [Legal Forum]. 2011. No. 1. P. 142–148. Retrieved from http://www.nbuv.gov.ua/e-journals/FP/2011-1/11bznvpp.pdf (September 12, 2021). [in Ukrainian]

[218] Kushnarova, T. *Pravovidnosyny, shcho vynykaiut mizh subiektamy podatkovoho prava, ta yikh osoblyvosti* [Legal relations arising between entities of tax law and their peculiarities] / T. Kushnarova, 2000. No. 6. P. 106. [in Ukrainian]

[219] Selyvanov, A. *Administruvannia podatkiv: novi problemy v administratyvnomu ta finansovomu pravi Ukrainy* [Tax administration: new problems in administrative and financial law of Ukraine]. Pravo Ukrainy [Law of Ukraine]. 2002. No. 2. P. 38. [in Ukrainian]

additional legal obstacles to the effective exercise of powers by tax authorities when imposing financial liability.

National legislation in the field of tax activity also does not provide ambiguity regarding the legislator's position on the effect of the presumption of innocence or guilt in tax law. The Tax Code of Ukraine, *while identifying culpability as an element of a tax offense*, determines that *during the administrative appeal procedure, the obligation to prove that any accrual made by a regulatory authority in the cases stipulated by this Code or any other decision of the regulatory authority is valid lies with the regulatory authority* (Clause 56.4 of Article 56). In addition, the *Tax Code of Ukraine establishes the presumption of legitimacy of decisions of a taxpayer in the event that the norm of the law or other legal act issued based on the law, or the norms of different laws or different legal acts assume an ambiguous (multiple) interpretation of rights and obligations of taxpayers or regulatory authorities, as a result of which a decision can be made in favor of both the taxpayer and the regulatory authority* (Clause 4.1.4 of the Code).

The Code of Administrative Procedure of Ukraine contains provisions regarding the obligation of a power entity to prove the legitimacy of their decision, action or omission in administrative cases about the illegitimacy of such decisions, actions or omissions of the power entity, if they object to an administrative lawsuit (Part 2 of Article 71). These norms are specified in legislative acts not accidentally, and as regards a taxpayer, it can be considered as a sign of gradual introducing the presumption of the taxpayer's innocence into the tax legislation.

Taking into account the above, it should be stated that today in the current financial legislation of Ukraine, the issue is not so much the determination of the most adequate conceptual approach to establishing the culpability of a person for committing a financial offense, but rather the elimination of the legislator's silent position regarding the mandatory nature of culpability as an element of the body of an offense. The attempt not to regulate this issue in general led to total lack of its regulation in all areas of financial activity and, as a result, constant disputes between the relevant public authorities and parties to financial legal relations (juridical and natural persons) regarding the possibility of imposing financial-law sanctions on the latter without investigating the full scope of the body of an offense, in particular the culpability of such persons. Moreover, taking into account the wide range of legal relations covered by financial law and legislation and their purely imperative direction, ignoring such an important issue is at least incomprehensible and incorrect on the part of the state. Thus, first of all, the financial legislation needs to be changed in terms of defining not only the concept of a financial offense but also establishing features and elements of its body, in particular culpability.

Summarizing the analysis of the culpability concept as the core of the subjective side of the body of a financial offense, it is worth mentioning that such a complex but important institution cannot be revealed only using a psychological or normative approach. Since, despite the sufficient thoroughness of their content, the suitability for using one of these monoconcepts is limited in view of the above. Although the psychological approach is distinguished by a rather subtle sense of the mental and emotional state of an offender in relation to the committed act, it is not complete due to the difficulty of public identification of such a state and its proving by acceptable means.

With regard to the *normative understanding of culpability*, it should be agreed that culpability is essentially normative, just like an offense, otherwise it would not be considered possible to define them in legislation. However, the use of a purely normative theory of culpability in financial law will not lead to the fulfillment of all the dogmas of imposing public liability and will not allow comprehending and reflecting all possible cases of committing a financial offense due to its superficiality.

The majority of financial offenses are committed intentionally, that is, a person mostly knows (intellectual component) about the need to fulfill a certain obligation (pay a tax or a unified contribution for state social insurance, etc.), but for subjective reasons (desire to retain funds to be deducted to the state budget at their disposal, thereby increasing the amount of own funds and, accordingly, the opportunities that can be realized at their expense;

reluctance to initiate and participate in a rather bureaucratic system of state permitting policy) fails to fulfill such an obligation (volitional component). As a result, with regard to an offender being a natural person, a special attitude of such a person to the given situations is clearly visible, which cannot be investigated otherwise than by characterizing the offender's mental processes occurring at the time of the offense. Along with this, the bodies of financial offenses envisaged by the current legislation do not include the necessary presence of intent or negligence in an offender's acts, which are one of the top priorities when qualifying the acts. This is clearly reflected in criminal law, where, for example, only in the presence of intent to kill a victim, a perpetrator's acts can be classified according to the article defining the corpus delicti of "intentional murder" and the appropriate punishment. In this case, establishing a person's culpability, which directly consists in establishing their intent to take the life of another person, is a crucial stage of the proceedings in a criminal case. The lack of convincing evidence of this makes it impossible to hold a person criminally liable for the specified crime.

If it is assumed that a person's culpability is proved through evaluating the circumstances under which an offense was committed and searching for respectful or disrespectful reasons for their acts, such research is eventually reduced to the evaluation of adequacy of the person's acts in relation to the relevant life and situational circumstances, which may differ depending on the direction of the conclusions of each specific law enforcer.

It should be remembered that the proving practical activity of public authorities and the court authorized to apply financial-law sanctions should be aimed at establishing the truth, knowing the facts and certifying them. However, due to the fact that there is no normatively consolidated method for proving the subjective side of an offense, in particular a financial one, and due to the legislator's disregard of the need for such proving and its normative consolidation in general, apparently, as of today, the function of public authorities regarding the full and comprehensive investigation of the circumstances of financial offenses is not fully performed. Only certain points are studied, which form the basis of relevant cases and proceedings. Such a practice, though, is fundamentally wrong and entails all the negative consequences.

Foreign experience demonstrates a tendency toward limited use of methods for establishing culpability and, in some jurisdictions, the application of a presumption of taxpayer fault in tax relations. Ukrainian scholars note that in certain legal systems difficulties in proving intent have led to treating any non-compliance with tax obligations, including negligent errors, as tax offenses[220]. However, this approach cannot be mechanically transferred into Ukrainian legal reality without contradicting constitutional principles and the evolving doctrine of financial liability.

Understanding the truth as an ideal reproduction of reality in knowledge, since it does not exist independently of consciousness and the knowing entity, the final result of the proving process should be the acquisition of knowledge reflecting objective reality. Thus, in order to form an acceptable approach to establishing the culpability of a person for committing a financial offense, it is necessary to develop a methodology for proving culpability, taking into account the specific features of financial offenses, which should be carried out within separate specialized research. Moreover, the culpability should be established taking into account the mental components of an offender as well as the reasons and other accompanying impulses of the person to commit an offense in the form of a special mechanism of combining the above indicators.

In addition to culpability, the subjective side includes *goal and motive*. "Motive consists of the factors (circumstances) encouraging a person to commit an offense. Goal is an idea of the result that an offender will achieve by committing an unlawful act"[221]. Determining the goal that the violator could pursue and the motives that this person was guided by is necessary, first of all, in order to more accurately determine the nature of financial-law liability.

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[220] Kucheriavenko, M. P. *Podatkove pravo Ukrainy* [Tax Law of Ukraine]. Kharkiv, 2020. P. 389–392. [in Ukrainian]

[221] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]. Kharkiv, 2018. P. 498–500. [in Ukrainian]

However, motive and goal do not play a crucial role in the process of qualifying an act as a financial offense, rather they act as optional features of a financial offense.

Along with culpability in financial law, such categories as ***risk and abuse of rights*** should be distinguished, which are related to an offense, where the feature of lawfulness of acts is a boundary. The category of "risk" in law has been studied in the works of a number of authors. The main discussion continued regarding the definition of risk as an objective or subjective phenomenon. Risk, according to Ukrainian legal scholar O. A. Pastukh, is an objectively existing probability of adverse consequences in the sphere of legal regulation, which accompanies socially useful or permissible activity and is not identical to an offense[222]. Ukrainian researcher T. I. Illarionova also points out that in legal norms risk is associated with randomness and uncertainty, which excludes the obligatory presence of a mental attitude aimed at causing harm[223].

Ukrainian scientist V. A. Oihenziht, within the subjective concept, considers risk as a subjective category that characterizes the psychological attitude of an entity to the result of their own and others' acts. Risk, in turn, is a conscious choice of behavior in a situation that does not exclude the achievement of an undesirable result, acceptance of such a result and assumption of possible negative consequences associated with it[224].

The possibility of parallel existence of subjective and objective risks was substantiated by Ukrainian researcher, Professor of Law Ye. O. Kharytonov, who notes that legal risk may simultaneously function as an objectively determined phenomenon and as an element of subjective perception of the behavior of a participant in legal relations[225].

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[222] Pastukh, O. A. *Pravovyi ryzyk u systemi yurydychnoi vidpovidalnosti* [Legal risk in the system of legal liability]. Lviv, 2012. P. 47. [in Ukrainian]

[223] Illarionova, T. I. *Ryzyk yak yurydychna katehoriia* [Risk as a legal category]. Kyiv, 2010. P. 63. [in Ukrainian]

[224] Oihenziht, V. A. *Psykholohichni aspekty yurydychnoi vidpovidalnosti* [Psychological aspects of legal liability]. Kharkiv, 2008. P. 118. [in Ukrainian]

[225] Kharytonov, Ye. O. *Tsyvilistychna kontseptsiia ryzyku* [Civil law concept of risk]. Odesa, 2011. P. 92. [in Ukrainian]

Thus, from the subjective point of view, V. A. Oihenziht considers risk as a ground for liability in accidental but unlawful circumstances related to the acts of a causer of damage, with regard to which it is presumed that they have accepted possible consequences[226]. Therefore, if we consider the views of scientists who defend the objective concept, risk and responsibility are at different levels. Risk, in their opinion, is only one of the objective grounds for applying legal protection measures[227].

In financial law, the "risk" category is less widespread than, for example, in civil law. In particular, the Guidelines on the Procedure for Categorizing Taxpayers According to Focus Areas[228] approved by Order of the State Tax Administration of Ukraine No. 373 dated June 30, 2006, determine tax risk as a probability of violating tax legislation, as a result of which budget losses are possible. Thus, only in the event that such a probability turns into reality, as a result of which a violation of financial legislation defined as such by the legislator is committed, the person who committed such an offense should be hold financially and legally liable, but only in the presence of their culpability, with some exceptions.

It is also necessary to consider the concept of **"abuse of rights"**, which, although it is a type of legal behavior, but very closely borders on an offense, including culpability. Since civil law agreements built in a certain combination and with a certain logic can be used to avoid (as a result of an economic transaction) taxation, which does not create legal circumvention of taxation.

Ukrainian legal theorist O. F. Skakun understands abuse of rights as a special kind of legal behavior consisting in the use of subjective rights in a manner that contradicts their purpose and causes harm

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[226] Oihenziht, V. A. *Osnovy teorii yurydychnoi vidpovidalnosti* [Fundamentals of the theory of legal liability]. Kharkiv, 2009. P. 141. [in Ukrainian]

[227] Pastukh, O. A. *Pravovi zasoby minimizatsii ryzyku* [Legal means of risk minimization]. Lviv, 2014. P. 55. [in Ukrainian]

[228] *Metodychni rekomendatsii shchodo poriadku rozpodilu platnykiv podatkiv za katehoriiamy uvahy: Nakaz Derzhavnoi podatkovoi administratsii Ukrainy vid 30.06.2006 № 373* [Guidelines on the Procedure for Categorizing Taxpayers According to Focus Areas: Order of the State Tax Administration of Ukraine No. 373 dated June 30, 2006]. Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/GDPI7866.html (August 13, 2022). [in Ukrainian]

to society, the state or an individual[229]. According to Ukrainian civil law scholar O. A. Pastukh, when the acts of an authorized person formally comply with the law but contradict the social purpose of the right, such behavior should be regarded as abuse of rights[230].

In case of considering the above concepts in the context of financial legal relations, their inaccuracy can be seen. It consists in the fact that in both the first and second cases the entity's activity is described, which is disruptive due to non-observance of the method, or even going beyond the limits of the given subjective rights. However, abuse of rights differs from ordinary financial offenses by its central feature—formal legality. That is, the essence of abuse of rights is that it is an allegedly lawful act due to no violation of special legal norms, but, at the same time, such formal legality is combined with a violation of the purpose of the used rights in the form of giving priority to one's own interests over state interests, achieving unjustified advantages. It is clear that the form of culpability in this case can only be intentional, although there is no sign of punishment for the act due to no direct violation of the norms of law. As an example, we can cite the optimization of taxation in the tax area.

Summarizing the considered part of the research and covering the main and optional features of a financial offense, it is necessary to sum up that the *body of a financial offense* can be defined as a *legal system of typical features of a culpable unlawful act violating financial norms and entailing financial-law liability envisaged by financial legislation, which is established by the norms of financial law*.

However, when considering the grounds for applying financial-law sanctions, it is necessary to take into account the presence of not only factual grounds in the form of a financial offense but also other grounds, in particular normative and procedural ones.

Normative grounds for the possibility of applying financial-law sanctions are singled out because the mere fact of committing

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[229] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of state and law]. Kharkiv, 2011. P. 512. [in Ukrainian]

[230] Pastukh, O. A. *Zlovzhyvannia subiektyvnymy pravamy u finansovykh pravovidnosynakh* [Abuse of subjective rights in financial legal relations]. Lviv, 2015. P. 77. [in Ukrainian]

an offense cannot be recognized as a sufficient basis for applying liability measures, taking into account the fact that the definition of which act is unlawful and which is considered an offense should be normatively consolidated. Without a written representation of such cases, the essence of the norm of law and law in general as regulators of social relations disappears.

The presence of normative grounds for applying financial-law sanctions means the presence of a norm of law, which provides for the possibility of applying sanctions in the scope determined by the norm as a measure of financial-law liability for committing a financial offense. The absence of such a norm means the impossibility of applying the listed coercive measures. However, in contrast to financial-law norms that regulate, for example, the grounds and procedure for paying taxes or carrying out currency transactions, etc. and can be contained in any sources of financial law and other acts establishing the rules of conduct mandatory for parties to financial legal relations, financial-law sanctions as well as financial offenses can be established exclusively by laws. Such a feature follows, in particular, from the constitutional norms, which establish that, firstly, no one can be held liable for acts that were not recognized by law as an offense at the time of their commission (Part 2 of Article 58 of the Constitution of Ukraine); secondly, in accordance with Part 2 of Article 19 of the Constitution of Ukraine, public authorities, local self-government authorities and their officials are obliged to act only on the basis, within the limits of authority and in the manner stipulated by the Constitution and laws of Ukraine. Along with this, it should be noted that in modern financial legislation, financial-law norms are contained not only in legislative acts but also in by-laws, which, of course, is a non-compliance with the above principle and is subject to unconditional elimination.

Therefore, the legislator in a certain way outlined the range of normative grounds for imposing financial-law liability for tax violations. This means, in particular, the limitation of authorities in the possibility of abuse of power and holding persons financially and legally liable if there are illegal motives for such authorities through the creation of pseudo-offenses and pseudo-sanctions at the right time. The determination of the specific bodies of offenses and financial sanctions for them is the basis of transparency of the government's activity in this direction. At the same time, it should be noted that the structure of the above norm still does not define an exhaustive range of regulatory acts that can envisage the application of sanctions, which is a somewhat subtle way of creating them in the future without making appropriate changes to this Code. *Thus, normative grounds consist of financial-law acts establishing the application of financial-law sanctions*.

Procedural grounds are the existence of a law enforcement act (decision, resolution, etc.), which determines the type, scope and procedure for applying financial-law sanctions for a corresponding financial offense. Such a law enforcement act serves as the material embodiment of the state's directive through its authorities in relation to offenders regarding holding the latter financially and legally liable and applying financial-law sanctions.

According to Ukrainian legal scholar V. M. Kudriavtsev, the correspondence between factual and legal grounds of liability is established only as a result of procedural activity, during which the authorized body determines the presence of the body of an offense in a specific act[231]. Therefore, financial-law sanctions may be applied only in the presence of factual, normative and procedural grounds simultaneously.

Now, it is worth mentioning that without studying financial offenders to which financial-law sanctions may be applied, it is impossible to even analyze the mechanism of applying sanctions. Persons who can and are able to be subject to financial-law sanctions are a real indicator of the scale of using financial-law sanctions in social life of a country. Along with this, special conditions for the emergence of capacity to be held financially and legally liable indicate the development degree of the financial law sector and the institution of financial-law sanctions within the legal system of a state.

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[231] Kudriavtsev, V. M. Pravoporu shennia i yurydychna vidpovidalnist [Offense and legal liability]. Kyiv, 2006. P. 203. [in Ukrainian]

Therefore, establishing and analyzing the involved persons to whom financial-law sanctions may be applied is an important step towards studying the legal phenomenon of financial-law sanctions and proving their separation from other measures of legal liability.

2.2. Offenders Involved

A financial offender is a central figure in a financial offense not only due to the special status that a person acquires after committing the offense but also due to the characteristic features and powers that such a person should possess at the time of committing the offense so that this person can be subject to financial-law sanctions and is able to assume such financial-law liability measures. In addition, an offender is one of the elements of the body of an offense (including a financial one), which should be established in full by public authorities within the proceedings of a financial offense. Competent establishment of an offender is not only a guarantee of protecting public law and order from illegal encroachments, compensating for the damage caused by an offense and taking measures to re-educate the offender, but it is also a guarantee of complying with the law and imposing liability strictly on the person who committed the offense.

A person acquires the status of a financial offender after violating the norms of financial law when being involved in relevant financial legal relations. Thus, a *financial offender is primarily a party to financial legal relations who, at a certain stage of such relations, violated the norms governing them*.

An important aspect in determining a financial offender is the presence of a number of qualities that a person should possess, the existence of which allows such a person to be considered capable of assuming financial-law liability and being subject to financial-law sanctions.

Such properties, with which the majority of scientists agree, are legal capacity, legal competence and delictual capacity, which are united by the term “legal personality”.

The issue of financial legal personality in the science of financial law was developed by Ukrainian scientists O. V. Bakun[232], O. H. Sviechnikova [233] and others. Financial legal personality means an entity's ability to be a party to specific financial legal relations, which is determined by financial legislation[234]. However, such a theoretical possibility is realized through financial legal capacity, legal competence and delictual capacity. Financial legal capacity means the ability (defined by financial-law norms) of a party to financial legal relations to have subjective legal rights and fulfill subjective financial obligations.

Financial legal competence is the ability of a party to financial legal relations to exercise (use and fulfill) subjective financial rights and obligations independently, through conscious actions.

Financial delictual capacity is the ability of a party to financial legal relations to assume financial-law liability for their unlawful acts. At the same time, based on the type of the party to financial legal relations (natural or juridical person), the specified legal states arise and cease depending on various conditions and circumstances.

The essence of financial legal capacity of a natural person lies in the state's recognition of the person as able to have financial rights and obligations in relation to certain objects. Financial legal capacity of natural persons, like their legal capacity in other areas of law, arises from the moment of birth and is an abstract prerequisite for other powers.

The difference between financial legal capacity and financial legal competence of natural persons is that the ability not only to have but also to independently acquire and fulfill financial obligations arises

[232] Bakun, O. V. *Hromadianyn yak subiekt podatkovykh pravovidnosyn v umovakh perekhodu do rynkovoi ekonomiky* [A citizen as a party to tax legal relations in the transition to a market economy]: dissertation for the degree of Candidate of Legal Sciences]: 12.00.07. Chernivtsi, 2000. P. 78. [in Ukrainian]

[233] Sviechnikova, O. H. *Pravovi zasady opodatkuvannia fizychnykh osib-pidpryiemtsiv* [Legal principles of taxation of individual entrepreneurs]: dissertation for the degree of Candidate of Legal Sciences: 12.00.06. K., 2001. P. 99. [in Ukrainian]

[234] Bakun, O. V. *Finansova pravosubiektnist uchasnykiv finansovykh pravovidnosyn* [Financial legal personality of participants in financial legal relations]. Kyiv, 2013. P. 41. [in Ukrainian]

only after reaching a certain age. Accordingly, having financial legal capacity, a natural person does not have financial legal competence until the legally established age is reached.

It is logical that delictual capacity can arise only in the presence of legal competence, since only in this case a person's acts may be assessed as legally significant facts. Legal competence depends on age, physical and mental condition, which determines the person's ability to understand their acts and foresee their consequences. In criminal law, this condition corresponds to sanity. However, unlike criminal and administrative law, financial legislation of Ukraine does not directly establish a minimum age for financial liability, which remains a legislative gap.

Ukrainian scholar O. H. Sviechnikova substantiates the expediency of legislative consolidation of a minimum age threshold for the emergence of full tax delictual capacity of a natural person, proposing the age of 16[235]. N. Yu. Pryshva emphasizes that tax legal competence is derivative and depends on civil legal competence, which may arise earlier than the age of majority under certain circumstances provided by civil law[236].

The approach according to which the age criterion must be taken into account when imposing financial-law liability is supported in Ukrainian legal doctrine. A. M. Kolisnyk notes that a minor may be held financially liable only in cases where such a person independently acquires a taxable object and is able to fulfill tax obligations without the involvement of legal representatives[237].

At the same time, the position according to which the age criterion should not be taken into account in financial legal relations is considered controversial and does not fully correspond to the protective nature of financial liability. In modern Ukrainian doctrine, the prevailing view is that in protective financial legal

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[235] Sviechnikova, O. H. *Podatkova pravosubiektnist fizychnykh osib* [Tax legal personality of natural persons]. Kharkiv, 2012. P. 98. [in Ukrainian]

[236] Pryshva, N. Yu. *Finansove pravo Ukrainy. Zahalna chastyna* [Financial law of Ukraine. General part]. Kyiv, 2016. P. 157. [in Ukrainian]

[237] Kolisnyk, A. M. *Finansovo-pravova vidpovidalnist nepovnolitnikh osib* [Financial legal liability of minors]. Kyiv, 2014. P. 83. [in Ukrainian]

relations (imposition of sanctions), a financial offender must be a sane natural person who has reached the age of 16.

The Civil Code of Ukraine defines that a person who has reached the age of 18 has full civil legal competence (Article 34), but also establishes partial civil legal competence for minors under the age of 14 and incomplete civil legal competence for minors from 14 to 18 years old (Articles 31, 32). In addition, the Code envisages cases of acquiring full civil legal competence by persons over the age of 16 (for example, by a person working under an employment contract or wishing to engage in entrepreneurial activity) or by minors from the moment of marriage registration. At the same time, in accordance with Article 188 of the Labor Code of Ukraine dated December 10, 1971[238], employment of persons under the age of sixteen is not allowed, except in cases expressly provided by law.

It follows from the above that natural persons may be involved in certain financial legal relations from the age of 16, provided that they acquire the relevant civil legal competence through employment, registration or engagement in entrepreneurial activity, or other legally established grounds.

Clause 15.1 of Article 15 of the Tax Code of Ukraine stipulates that taxpayers include, in particular, natural persons (residents and non-residents of Ukraine), juridical persons (residents and non-residents of Ukraine) and their standalone subdivisions that have, receive (transfer) taxable items or conduct activities (transactions) subject to taxation in accordance with this Code or tax laws, on which the obligation to pay taxes and fees is imposed.

Each of the listed entities may be a taxpayer for one or more taxes and fees. Therefore, the legislator does not establish any age limits for natural persons to be taxpayers, but specifies such a characteristic feature as residence.

Clause 99.2 of Article 99 of the Tax Code of Ukraine establishes that the tax obligations of minors or juveniles are fulfilled, until they

[238] *Kodeks zakoniv pro pratsiu Ukrainy vid 10.12.1971 № 322-VIII* [Labor Code of Ukraine No. 322-VIII dated December 10, 1971]. *Vidomosti Verkhovnoi Rady URSR* [Statements of the Supreme Soviet of the Ukrainian SSR]. 1971. Appendix to No. 50. [in Ukrainian]

acquire full civil legal competence, by their parents (adoptive parents) or guardians, who bear joint and several civil liability with the minors for liquidation of financial obligations and/or repayment of tax debt. Thus, the legislator recognizes the possibility of holding minors civilly liable. However, with regard to financial-law liability for failure to submit an application to the State Tax Service for registering minors in the State Register of Individual Taxpayers, such liability is imposed on parents or guardians (Clauses 99.5 and 99.6 of Article 99). Accordingly, the *Tax Code of Ukraine does not recognize a minor as an independent financial offender*.

It should be noted that financial legislation regulating other areas of the state's financial activity also does not contain specific provisions establishing the minimum age of a person or other conditions on which the delictual capacity of a party to financial legal relations depends, which necessitates the adoption of legislatively consolidated provisions on the financial legal personality of participants in financial legal relations.

According to Part 4 of Article 91 of the Civil Code of Ukraine, civil legal capacity of a juridical person arises from the moment of its creation and ceases from the date of making an entry on its termination in the Unified State Register. Part 1 of Article 92 of the Civil Code of Ukraine establishes that a juridical person acquires civil rights and obligations and exercises them through its bodies acting in accordance with the constituent documents and the law. Consequently, legal capacity and legal competence of a juridical person arise simultaneously from the moment of state registration and terminate upon liquidation carried out in accordance with the procedure established by law[239].

Legal capacity of a juridical person is limited to those tasks and powers that are specified in the charter or regulation of the juridical person. As a general rule, the delictual capacity of juridical persons is that a juridical person is solely responsible for their obligations with the property they own.

[239] *Tsyvilnyi kodeks Ukrainy: vid 16.01.2003 № 435-IV* [Civil Code of Ukraine: No. 435-IV dated January 16, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 40–44. Article 356. [in Ukrainian]

Not all scholars distinguish delictual capacity as a separate element of legal personality. However, N. Yu. Pryshva substantiates the necessity of distinguishing financial delictual capacity due to the impossibility of holding standalone subdivisions independently liable for financial offenses[240]. This approach appears justified and consistent with the current structure of financial liability in Ukraine.

Depending on the type of financial legal relations within which a financial offense is committed, a differentiated analysis of financial offenders subject to financial-law sanctions is required.

Financial offenders in tax relations

The tax area is one of the broadest, and therefore a range of tax offenders is considerable. Clause 110.1 of Article 110 of the Tax Code of Ukraine defines persons who are held liable for offenses established by tax laws and other legislation, the control over compliance with which is entrusted to regulatory authorities, which include taxpayers, tax agents and other entities. Therefore, the legislator in this article singles out the following groups of tax offenders: 1) taxpayers; 2) regulatory authorities; 3) their tax agents (officials); 4) other entities expressly provided for by legislation.

Taxpayers are the first and most numerous group of tax offenders. Taxpayer is a particular (special) legal status of a person who, according to the law, is obliged to pay taxes and (or) fees. According to the latest changes in the tax legislation, Article 109 defines a tax offense and refers to persons equated to taxpayers for the purpose of liability. The mandatory elements of the taxpayer's legal status are general rights and obligations, which are the same for natural and juridical persons, established by the norms of tax law as well as liability for violating the legislation on taxes and fees[241]. According to Clause 15.1 of Article 15 of the Tax Code of Ukraine, taxpayers are natural persons (residents and

[240] Pryshva, N. Yu. *Finansovo-pravova vidpovidalnist: teoriia i praktyka* [Financial legal liability: theory and practice]. Kyiv, 2018. P. 211. [in Ukrainian]

[241] *Naukovo-praktychnyi komentar do Podatkovoho kodeksu Ukrainy: v 3 t.* [Scientific and practical commentary on the Tax Code of Ukraine: in 3 volumes] / edited by M. Ya. Azarov. Kyiv: Ministry of Finance of Ukraine, National University of the STS of Ukraine, 2010. P. 91–92. [in Ukrainian]

non-residents of Ukraine), juridical persons (residents and non-residents of Ukraine) and their standalone subdivisions having, receiving (transferring) taxable items or conducting activities (transactions) subject to taxation in accordance with this Code or tax laws, on which the obligation to pay taxes and fees is imposed in accordance with this Code. As can be seen from the above norm, when determining the tax status of a particular taxpayer, such a criterion as residency is taken into account.

The principle of residency (permanent residence) divides all taxpayers into two groups: a) residents, i.e. persons who have a permanent place of residence or location in the state and whose income is subject to taxation from all sources (assume full tax liability); b) non-residents, i.e. persons who do not have a permanent place of residence in the state and who are taxed only on the income received by them in this territory (assume limited tax liability). The Tax Code of Ukraine (Subclause 14.1.213 of Article 14) establishes the rules for determining the residency of a natural person. Tax residents of Ukraine are natural persons who have a place of residence in Ukraine. If a natural person also has a place of residence in a foreign country, this person is considered a resident if they have a place of permanent residence in Ukraine. If a person also has a place of permanent residence in a foreign country, this person is considered a resident if they have closer personal or economic ties (center of vital interests) in Ukraine. In this case, if the state where a natural person has a center of vital interests cannot be determined, or if a natural person does not have a place of permanent residence in any of the states, they are considered a resident if they stay in Ukraine for at least 183 days (including the day of arrival and departure) during the period or periods of a tax year. This so-called physical presence test is established annually and is valid within a calendar year. Accordingly, natural persons who are not tax residents of Ukraine are recognized as tax non-residents of Ukraine (Subclause 14.1.122 of Clause 14.1 of Article 14 of the Tax Code of Ukraine). However, when a person has signs of tax residency of two or more countries, in this case the provisions of a bilateral international agreement between the countries of which the person is a tax resident are applied. If there is no such agreement on the avoidance of double taxation between countries, the person is obliged to pay the appropriate taxes and fees in those countries which they are a tax resident of.

This issue has become especially relevant for temporarily displaced natural persons being citizens of Ukraine in the territory of other countries, mainly in the countries of the European Union, after February 24, 2022. Considering that at the time of writing the paper, more than 183 calendar days have already passed since the beginning of the attack on independent Ukraine and Russia's invasion of Ukrainian territory, as a result of which more than 8 million Ukrainian citizens moved abroad. Proceeding from the fact that Russia's aggression against Ukraine has acquired a long-term nature, citizens of Ukraine have to adapt to the tax requirements of the host country depending on the presence (or absence) of international agreements between Ukraine and the country of residence of a temporarily displaced person being a tax resident of Ukraine at the time of relocation. It should be added that at the time of writing, only Poland, based on the relevant appeal of the Cabinet of Ministers of Ukraine, made changes to its own tax legislation according to which natural persons being tax residents of Ukraine and temporarily displaced persons will not be recognized as tax residents of Poland until the end of the Russian-Ukrainian war from 2022. The leadership of other EU states, where Ukrainian citizens are located as a result of fleeing the war, did not make such changes to the tax legislation of the respective countries.

Payers of taxes and fees collected from juridical persons include Ukrainian enterprises and organizations whose place of business is Ukraine or whose management is located in Ukraine as well as foreign enterprises and organizations. According to Subclause 14.1.213 of Clause 14.1 of Article 14 of the Tax Code of Ukraine, juridical persons and their standalone subdivisions are residents if such persons have been founded and conduct their activity in accordance with the legislation of Ukraine with a location both within and outside its territory. Diplomatic representative offices, consular institutions and other official representative offices of Ukraine abroad, which have diplomatic privileges and immunity, are also residents[242].

Non-residents are foreign companies, organizations founded in accordance with the legislation of other states, their branches, representative offices and other standalone subdivisions located in the territory of Ukraine and registered (accredited or legalized) in accordance with the legislation of Ukraine. Diplomatic representative offices, consular institutions and other official representative offices of foreign states and international organizations located in the territory of Ukraine are also non-residents (Subclause 14.1.122 of Clause 14.1 of Article 14 of the Tax Code of Ukraine).

Nevertheless, taxpayers cannot always be financial offenders. financial-law sanctions cannot be applied to standalone structural subdivisions (branches, representative offices) of juridical persons registered under the legislation of Ukraine due to the lack of financial legal personality in such standalone entities. Branches and representative offices are not endowed with the status of a juridical person, but only perform the functions or represent and protect the juridical person. That is why standalone structural subdivisions cannot act as an independent subject of financial-law liability, while participation in court or enforcement proceedings may be carried out on behalf of the legal entity. Accordingly, in case of violation of the tax legislation requirements by these taxpayers, financial-law sanctions will be applied to the juridical person, which is reflected in Subclause 47.1.1 of Clause 47.1 of Article 47 of the Tax Code of Ukraine.

The second group of tax offenders are **tax agents**. The tax legislation of Ukraine envisages the payment of a tax not only directly by a taxpayer but also by another authorized person who withholds the tax while paying or providing income or funds to the taxpayer. Such persons are defined by law as tax agents. According to Article 18 of the Tax Code of Ukraine, tax agent

[242] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy [Voice of Ukraine]*. December 4, 2010. No. 229. [in Ukrainian]

is a person who is assigned by this Code the duty of calculating, withholding from income accrued (paid, provided) to the payer and transferring taxes to the relevant budget on behalf and at the expense of the taxpayer. Tax agents are equated to taxpayers as well as have the rights and fulfill the obligations established by this Code for taxpayers[243].

The obligation to perform the functions of a tax agent arises in a number of cases in order to ensure organized and timely payment of taxes. In particular, when paying personal income tax, tax agents are enterprises, institutions, organizations or private entrepreneurs who pay income to natural persons; when paying corporate income tax by foreign juridical persons, Ukrainian enterprises and organizations that pay income to foreign juridical persons act as tax agents.

In case of inheritance of the right to deposit in a bank (non-bank financial institution) in accordance with Article 1228 of the Civil Code of Ukraine, this bank (non-bank financial institution) is a tax agent.

In case of transfer of the right to receive insurance payments in accordance with Article 1229 of the Civil Code of Ukraine, a tax agent is an insurer, i.e. a financial institution (Clause 174.5 of Article 174 of the Tax Code of Ukraine).

Accordingly, Clause 120.1 of Article 120 of the Tax Code of Ukraine also defines (in addition to taxpayers) “other persons obliged to calculate and pay taxes, fees”, which include, in particular, tax agents, as entities (offenders) committing offenses related to the failure to submit or untimely submission of tax returns (calculations).

However, tax agents should not be confused with representatives of taxpayers.

According to Article 19 of the Tax Code of Ukraine, a taxpayer manages the payment of taxes personally or through their representative. A taxpayer’s representative enjoys the rights established by this Code for taxpayers. Moreover, it is clear from

[243] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy [Voice of Ukraine]*. December 4, 2010. No. 229. [in Ukrainian]

the above article that representation can be based on the law or a power of attorney.

The basis of the institution of representation in tax law is a number of norms of civil and civil procedural legislation. Tax representation differs significantly from civil legal representation though. The fundamental difference in the legal nature between tax representation and civil procedural one is the tendency of the method for regulating relations arising in various forms of representation. Tax representation regulates the implementation of a taxpayer's primary obligation (payment of taxes and fees), which is based on relationship of power and subordination, and is ensured by authoritative, imperative methods, unlike civil legal representation that has a dispositive nature [244].

Along with this, regarding the liability of a taxpayer's representative, the following should be noted.

The legislator defines two grounds for tax representation: the law, where an example can be the representation of legitimate interests of minors by their parents (adoptive parents), guardians (custodians) as well as the representation of legally incompetent persons by their guardians, and a power of attorney, which is issued at the request of an adult and legally competent taxpayer and (or) in case of such need. However, if in the first case, the Tax Code of Ukraine envisages the liability of such legal representatives (for example, for failure to submit tax returns in accordance with Clause 99.5, Clause 99.6 of Article 99 and Clause 120.1 of Article 120), which is consistent with the norms of civil law regarding the institution of legal representatives, as for the financial-law liability of representatives acting on the basis of a power of attorney, the Code does not quite clearly regulate this issue.

Subclause 47.1.2 of Clause 47.1 of Article 47 of the Tax Code of Ukraine, regulating the issue of liability for failure to submit, violation of the procedure for filling out tax reporting documents,

[244] *Naukovo-praktychnyi komentar do Podatkovoho kodeksu Ukrainy: v 3 t.* [Scientific and practical commentary on the Tax Code of Ukraine: in 3 volumes] / edited by M. Ya. Azarov. Kyiv: Ministry of Finance of Ukraine, National University of the STS of Ukraine, 2010. P. 91–92. [in Ukrainian]

etc., determines that such liability is imposed not only on natural persons being taxpayers and their legal representatives but also on authorized representatives in cases stipulated by law.

Nevertheless, the possibility of such liability of authorized representatives is considered doubtful. Since a representative acting on the basis of a power of attorney represents the interests of their principal and exercises the powers determined by the power of attorney exclusively in the interests of the principal, which results in the creation, change and termination of the corresponding rights and obligations and the emergence of legal consequences in relation to the principal. As for the obligations of a person who authorizes another person to perform certain actions, it is necessary not only to control the correctness and completeness of the representation but also to assume liability in case of improper performance of the corresponding actions by such a representative (in particular, regarding the payment of taxes to the budget, submission of reports). Thus, in order to avoid ambiguous interpretation, the given issue is subject to better regulation.

The third group of tax offenders are **regulatory authorities and their officials (officers)**.

Not only taxpayers should be liable, but also regulatory authorities are liable to taxpayers. Tax offenses of regulatory authorities are defined in Article 128 of the Tax Code of Ukraine. Tax offenses on the part of regulatory authorities may include:

1) making an illegal decision as well as committing illegal acts (actions or omissions) that led to an unjustified refusal to acquire or loss of the status of a taxpayer or a payer of one of the taxes, the acquisition and/or revocation (loss) of which occurs according to the decision of a regulatory authority[245];

2) failure to enter or untimely entry of data into the Register of Applications for Refunding the Amount of Budgetary Compensation and/or violation of the deadlines for initiating a desk audit envisaged by Clause 200.10 of Article 200 of the Tax Code

[245] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

of Ukraine, and, in the cases defined by Clause 200.11 of Article 200 of this Code, an audit specified in this clause if the deadlines for refunding the amounts of budgetary compensation were violated as a result of such unlawful acts;

3) making a decision by officials (officers) of a regulatory authority regarding the use of the property specified in Clause 87.3 of Article of this Code as a source for repaying the taxpayer's monetary obligation or tax debt;

4) obstruction by officials (officers) of a regulatory authority to releasing a person's property from the temporary detention regime;

5) illegal seizure of property or funds in accounts by officials (officers) of a regulatory authority;

6) unjustified entry by officials (officers) of a regulatory authority of data on the presence a taxpayer's tax debt, or late entry or failure to enter data on the absence of a taxpayer's tax debt.

In accordance with Clause 110.3 of Article 110 of the Tax Code of Ukraine, regulatory authorities shall bear liability in the form of compensation for damage caused to a person against whom a tax offense was committed, pursuant to Article 114 of this Code. Regulatory authorities shall be held liable for tax offenses committed by their officials (officers).

It should be noted that the Tax Code of Ukraine does not contain a definition of the term "official". Moreover, the Code also uses the term "officer", the legal nature of which is not disclosed either. However, these concepts should not be equated. A well-known Ukrainian expert in administrative law, Professor V. Averianov, emphasized that the main criterion for distinguishing between the concepts of "official" and "officer" is the nature of the powers vested in such persons. The actions of an officer give rise to legal consequences for natural and juridical persons who are not in service relations with them, whereas an official is a holder of authoritative powers and has the authority to direct the activities of subordinate employees toward the performance of assigned tasks and functions, as well as to carry out organizational and administrative actions. Thus, a characteristic feature of an official is the occupation of a managerial position that grants the right to perform legally authoritative actions with respect to subordinates[246].

The Law of Ukraine "On Civil Service"[247] considers officials to be heads and deputy heads of public authorities and their staff, other civil servants who are entrusted by laws or other regulatory acts with the implementation of organizational and administrative as well as consultative and advisory functions (Part 2 of Article 2). Moreover, Part 3 of Clause 1 of Resolution of the Plenum of the Supreme Court of Ukraine No. 5 "On Judicial Practice in Cases of Bribery" dated April 26, 2002[248], stipulates that organizational and administrative obligations are the obligations of managing, in particular, a team, area of work, production activity of individual employees in enterprises, institutions or organizations, regardless of the form of ownership. Such functions are performed, among others, by heads of collective or private enterprises, institutions and organizations, their deputies, heads of structural subdivisions, their deputies, persons who manage work areas.

In view of the above, functions related to the calculation and payment of taxes, accounting and reporting are performed by heads of enterprises, institutions and organizations, their deputies and chief accountants, who may be regarded as officials of taxpayers and tax agents. Undoubtedly, appointment to such a position or assignment of temporary performance of the relevant duties must be documented by an order, decision or other official act. In the absence of such formalization, the person concerned cannot be recognized as a tax offender.

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[246] Averianov, V. B. *Derzhavne upravlinnia: problemy administratyvno-pravovoi teorii ta praktyky* [Public governance: problems of administrative and legal theory and practice]. Kyiv: *Fakt*, 2003. P. 285–288. [in Ukrainian]

[247] *Pro derzhavnu sluzhbu: Zakon Ukrainy vid 10.12.2015* [On Civil Service: Law of Ukraine dated December 10, 2015]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2016. No. 4. Article 43. [in Ukrainian]

[248] *Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26.04.2002 № 5 "Pro sudovu praktyku u spravakh pro khabarnytstvo"* [Resolution of the Plenum of the Supreme Court of Ukraine No. 5 "On Judicial Practice in Cases of Bribery" dated April 26, 2002]. *Yurydychnyi visnyk Ukrainy* [Legal Bulletin of Ukraine]. 2002. No. 28. Article 21. [in Ukrainian]

Banks and other financial institutions should be included in the fourth group of tax offenders.

The Tax Code of Ukraine provides for liability for tax offenses committed by persons referred to as “other offenders” in Clause 110.1 of Article 110 of the Tax Code of Ukraine. Such persons include banks and other financial institutions that are legally obliged to notify the State Tax Service authorities of the opening or closing of taxpayers’ accounts, to refrain from conducting debit transactions on taxpayers’ accounts prior to receiving notification of account registration with the State Tax Service, and to perform other duties stipulated by tax legislation. In such cases, financial-law sanctions are imposed on banks and other financial institutions not as taxpayers, but as entities authorized by law to perform specific functions in the tax administration system [249].

An interesting point is clarifying the issue of possibility of applying financial-law sanctions to officials of regulatory authorities if the latter commit financial offenses. As follows from Clause 109.1 of Article 109 of the Tax Code of Ukraine, *officials of regulatory authorities* are considered as persons who can commit tax offenses, along with taxpayers, tax agents and (or) officials of taxpayers and tax agents. However, the *mentioned officials do not belong to the persons who are held liable for committing the relevant offenses*.

Article 56 of the Constitution of Ukraine establishes that everyone has the right to compensation, at the expense of the state or local self-government bodies, for material and moral damage caused by unlawful decisions, actions or omissions of public authorities, local self-government bodies, their officials and officers in the exercise of their powers. Thus, while the Constitution distinguishes public authorities from their officials as separate participants in public relations, it assigns liability for the damage caused by officials primarily to the state. Such an approach is aimed at ensuring effective protection of the rights and interests

[249] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

of individuals and society as a whole. However, it does not fully resolve the issue of delineating liability between public authorities and their officials.

Ukrainian scientist V. Ya. Malynovskyi notes the following: “This obligation of a public authority to be liable for the actions of its representative follows from the fact that an official or officer is endowed with a share of the competence of this authority (i.e. a power), therefore the latter should perform a function of control over the actions of their employees and provide them with financial incentives”[250]. At the same time, a question about the possibility of such a division in general arises because decisions, actions or omissions of a public authority are connected exclusively with such acts of their employees (officials and officers, etc.). On the contrary, the decision of an official (for example, a head) of a public authority represents the will and corresponding position of this authority on a certain occasion for which such a decision is made.

Foreign theory and practice attach great importance to this problem taking into account the principles and features of their legal system. Professor F. Ossenbühl of the University of Bonn in his monograph “State Liability” considered the problem of dividing the liability of a public governance authority and an official. He comes to the conclusion about the indirect liability of public authorities in case of unlawful acts even of their regular officials committed within the competence, that is, there can be no question of direct liability of the state even in these cases. This implies that the division of liability of a public governance authority and an official is determined by the scope of given competence. The governance authority should not be held liable for the acts of an official committed by them beyond the competence[251]. The competence aspect of the mentioned problem does exist, but it is not the only one when determining the liable entity.

National tax legislation regulates this issue as follows. Clause 114.2 of the Tax Code of Ukraine establishes that damage

[250] Malynovskyi, V. Ya. *Derzhavne upravlinnia: navchalnyi posibnyk* [Public governance: textbook]. Lutsk: Vezha, 2000. P. 547. [in Ukrainian]

[251] Ibid. P. 544. [in Ukrainian]

caused by unlawful decisions, actions or omissions of regulatory authorities or their officials (officers), recognized as tax offenses under this Code, shall be compensated in full in accordance with the procedure established by legislation on compensation for damages. In addition, Clause 21.3 of Article 21 of the Tax Code of Ukraine provides that damage caused by unlawful acts of officials of regulatory authorities shall be compensated at the expense of state budget funds allocated to the relevant regulatory authorities. This indicates the civil-law nature of such liability.

Furthermore, pursuant to Clause 43.5 of Article 43 of the Tax Code of Ukraine, a regulatory authority is obliged, no later than five business days before the expiration of the twenty-day period from the date of submission of an application by a taxpayer, to prepare a conclusion on the refund of the relevant amounts from the appropriate budget or from a single account and to submit it to the authority responsible for treasury servicing of budget funds.

On the basis of the received conclusion, the treasury authority shall, within five business days, refund erroneously and/or excessively paid amounts and penalties to taxpayers in accordance with the procedure established by the central executive authority that ensures and implements state financial policy.

According to Part 4 of Clause 43.5 of Article 43 of the Tax Code of Ukraine, a regulatory authority, as a tax offender, bears liability under the law for the late submission of a conclusion on the refund of relevant amounts from the appropriate budget or from a single account to the treasury authority for execution[252].

Thus, the subject liable for incomplete or untimely refund of overpaid taxes is the regulatory authority that violated statutory deadlines or understated the refundable amount.

Moreover, the Tax Code establishes that penalties payable in such cases are recovered from budget revenues to which the relevant tax is credited or from the budget account designated for the corresponding regulatory authority. Therefore, under the current

[252] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

provisions of the Tax Code of Ukraine, officials of regulatory authorities are not recognized as independent subjects of financial-law or civil liability to whom financial sanctions may be directly applied. Violations committed by such officials entail liability of the regulatory authority itself, which is borne at the expense of the state budget.

This situation is due to differences in the legal status and scope of powers of an official and a public authority. Legal status may be defined as a system of legally established possibilities that characterize and determine a person's position within the state. According to O. F. Skakun, the structure of legal status includes legal personality, rights, freedoms, duties and legal liability[253].

Famous scientist Yu. M. Starilov notes that the legal status of officers in the governance process "is the content (essence) of public and service relations and is revealed through the establishment of their rights, obligations and liability"[254]. Meanwhile, Ukrainian legal theorist O. F. Skakun emphasizes that the rights and obligations of officers are "a system of legally established and state-guaranteed measures of necessary and possible behavior of a person in public service relations"[255].

Concerning the legal status of a public authority, there is a slightly different approach to its definition. Well-known Ukrainian scholar in administrative law V. B. Averianov distinguishes three main blocks in the category of the legal status of a public authority: target (goals, tasks of the authority), structural and organizational (procedure for creation, functioning, etc.) as well as competence (powers of the authority)[256]. Therefore, if the legal status of an official of a public authority can be

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[253] Skakun, O. F. *Teoriia derzhavy i prava: pidruchnyk* [Theory of state and law: textbook]. Kharkiv: Konsum, 2001. P. 380. [in Ukrainian]

[254] Starilov, Yu. N. *Sluzhebnoe pravo* [Service law]. M.: BEK, 1996. P. 318. [in Russian]

[255] Skakun, O. F. *Teoriia derzhavy i prava* [Theory of State and Law]: textbook. Kharkiv: Konsum, 2011. P. 393–395. [in Ukrainian]

[256] Averianov, V. B. *Administratyvne pravo Ukrainy. Akademichnyi kurs* [Administrative Law of Ukraine. Academic Course]. Kyiv, 2004. Vol. 1. P. 312–315. [in Ukrainian]

defined by the position held by them in such an authority with the endowment of the person with a portfolio of rights and obligations, as part of the competence granted to the authority by the state, and the establishment of proportional liability for offenses, then the legal status of the public authority represents a systematic set of rights, obligations, powers and liability of the authority as a complete organizational structure, which are connected by a stable interdependent relationship. That is, the positions of an official and a public authority differ in the scope of tasks, powers and liability as well as in the degree of complexity and comprehensive nature of the latter.

It follows from the above that the peculiarity of an official's legal status determines the peculiarity of their liability in official relations, which is a consequence of their improper performance or failure to perform official duties. That is, the liability of an official should correspond to their rights and obligations and be proportionate thereto. An identical approach should be applied to a public authority, taking into account the specifics of its powers and legal status.

In view of the above and considering the current state of development of scientific knowledge about liability, applying financial-law sanctions to officials of regulatory authorities in the tax area is not considered possible. This is due to the fact that such persons are not independent representatives of the state in financial legal relations and are not endowed with personal competence to control the payment of taxes to budgets and state trust funds as well as to ensure repayment of tax debts. However, such persons may be held administratively, criminally, financially and (or) disciplinarily liable for offenses committed while holding their positions and exercising their powers.

Financial offenders in currency relations

On February 7, 2019, the Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, entered into force. In this regard, the Decree of the Cabinet of Ministers of Ukraine No. 15-93 "On the System of Currency

Regulation and Currency Control" dated February 19, 1993, and the Law of Ukraine No. 185/94-VR "On the Procedure for Payments in Foreign Currency" dated September 23, 1994, became invalid.

Along with the enactment of the Law of Ukraine "On Currency and Currency Transactions", a new system of currency regulation was introduced, which consists of eight main Regulations of the Board of the National Bank of Ukraine adopted to replace previous legal acts in the field of currency regulation (as amended): 1) Regulation on the Structure of the Foreign Exchange Market of Ukraine, Conditions and Procedure for Trade of Foreign Exchange and Bank Metals in the Foreign Exchange Market of Ukraine No. 1 dated January 2, 2019[257]; 2) Regulation on the Conduct of Transactions with Currency Valuables No. 2 dated January 2, 2019[258]; 3) Regulation on Cross-Border Transfer of Currency Valuables No. 3 dated January 2, 2019[259]; 4) Regulation on the List

[257] *Pro zatverdzhennia Polozhennia pro strukturu valiutnoho rynku Ukrainy, umovy ta poriadok torhivli inozemnoiu valiutoiu ta bankivskymy metalamy na valiutnomu rynku Ukrainy: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 1* [On Approval of the Regulation on Structure of the Foreign Exchange Market of Ukraine, Conditions and Procedure for Trade of Foreign Exchange and Bank Metals in the Foreign Exchange Market of Ukraine: Resolution of the Board of the National Bank of Ukraine No. 1 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0001500-19#Text (September 15, 2021) [in Ukrainian]

[258] *Pro zatverdzhennia Polozhennia pro zdiisnennia operatsii iz valiutnymy tsinnostiamy: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 2* [On Approval of the Regulation on the Conduct of Transactions with Currency Valuables: Resolution of the Board of the National Bank of Ukraine No. 2 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0002500-19#Text (February 14, 2022) [in Ukrainian]

[259] *Pro zatverdzhennia Polozhennia pro transkordonne peremishchennia valiutnykh tsinnostei: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 3* [On Approval of the Regulation on Cross-Border Transfer of Currency Valuables: Resolution of the Board of the National Bank of Ukraine No. 3 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0003500-19#Text (August 13, 2022) [in Ukrainian]

of Safeguards, Procedure and Criteria for Their Introduction, Extension and Early Termination No. 4 dated January 2, 2019[260]; 5) Regulation on Safeguards and Determining the Procedure for Certain Transactions in Foreign Currency No. 5 dated January 2, 2019[261]; 6) Regulation on the Procedure for Providing Information by Banks Regarding Contracts Envisaging Fulfillment of Debt Obligations by Residents to Non-Resident Creditors for Credits and Loans Raised by Residents No. 6 dated January 2, 2019[262]; 7) Instruction on the Procedure for Currency Supervision of Banks for Residents' Compliance with Settlement Deadlines in Goods

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[260] *Pro zatverdzhennia Polozhennia pro perelik zakhodiv zakhystu, poriadok ta kryterii yikh zaprovadzhennia, podovzhennia ta dostrokovoho prypynennia vid 02.01.2019 № 4: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 4* [On Approval of Regulation on the List of Safeguards, Procedure and Criteria for Their Introduction, Extension and Early Termination No. 4 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine No. 4 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0004500-19#Text (August 16, 2022) [in Ukrainian]

[261] *Pro zatverdzhennia Polozhennia pro zakhody zakhystu ta vyznachennia poriadku zdiisnennia okremykh operatsii v inozemnii valiuti: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 02.01.2019 № 5* [On Approval of the Regulation on Safeguards and Determining the Procedure for Certain Transactions in Foreign Currency: Resolution of the Board of the National Bank of Ukraine No. 5 dated January 2, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0005500-19#Text (August 16, 2022) [in Ukrainian]

[262] *Pro zatverdzhennia Polozhennia pro poriadok nadannia bankamy informatsii shchodo dohovoriv, yaki peredbachaiut vykonannia rezydentamy borhovykh zoboviazan pered nerezydentamy-kredytoramy za zaluchenymy rezydentamy kredytamy, pozykamy: vid 02.01.2019 № 6: Postanova Pravlinnia Natsionalnoho banku Ukrainy* [On Approval of Regulation on the Procedure for Providing Information by Banks Regarding Contracts Envisaging Fulfillment of Debt Obligations by Residents to Non-Resident Creditors for Credits and Loans Raised by Residents No. 6 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0006500-19#Text (August 16, 2022) [in Ukrainian]

Export and Import Transactions No. 7 dated January 2, 2019[263]; 8) Regulation on the Procedure for Analysis and Verification of Documents (Information) on Currency Transactions by Authorized Institutions No. 8 dated January 2, 2019[264].

In this regard, the sphere of currency relations is a specific type of social relations characterized by the regulation of a special type of money, which in a market economy has acquired significant importance for the development of the state. A characteristic feature of currency legal relations is their two-level structure, which consists in their division into relations concerning the circulation of currency and currency valuables (including cross-border transfers, settlements in foreign currency and other currency transactions) as well as relations concerning currency regulation and supervision exercised by public authorities over such circulation and transactions.

These relations may also be defined as horizontal and vertical, depending on the parties involved: independent and equal participants of the foreign exchange market take part in horizontal relations, while imperative relations based on authority and subordination arise in vertical relations.

According to the peculiarities of financial offenses defined by the currency legislation, offenders can be divided into two groups:

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[263] *Pro zatverdzhennia Instruktsii pro poriadok valiutnoho nahliadu bankiv za dotrymannia rezydentamy hranychnykh strokiv rozrakhunkiv za operatsiiamy z eksportu ta importu tovariv vid 02.01.2019 № 7: Postanova Pravlinnia Natsionalnoho banku Ukrainy* [On Approval of Instruction on the Procedure for Currency Supervision of Banks for Residents' Compliance with Settlement Deadlines in Goods Export and Import Transactions No. 7 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0007500-19#Text (August 16, 2022) [in Ukrainian]

[264] *Pro zatverdzhennia Polozhennia zdiisnennia upovnovazhenymy ustanovamy analizu ta perevirky dokumentiv (informatsii) pro valiutni operatsii vid 02.01.2019 № 8: Postanova Pravlinnia Natsionalnoho banku Ukrainy* [On Approval of Regulation on the Procedure for Analysis and Verification of Documents (Information) on Currency Transactions by Authorized Institutions No. 8 dated January 2, 2019: Resolution of the Board of the National Bank of Ukraine]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0008500-19#Text (August 16, 2022) [in Ukrainian]

1) residents and non-residents conducting currency transactions; 2) banks and other financial institutions. Currency and currency valuables circulate primarily through currency transactions, which, in accordance with current legislation, include transactions related to the transfer of ownership of currency valuables (except for transactions between residents in the currency of Ukraine); transactions involving the use of currency valuables in international circulation as a means of payment; as well as transactions related to the import, export, transfer and sending of currency valuables to and from the territory of Ukraine[265].

The main participants in such movement and use of currency and currency valuables are natural persons, legal entities and their standalone subdivisions, as well as diplomatic, consular, trade and other official representative offices, which are divided into residents and non-residents in accordance with currency legislation.

Therefore, residents being financial offenders may include:

a) natural persons (citizens of Ukraine, foreign citizens, stateless persons) who, as a rule, reside in the territory of Ukraine for more than 183 days a year;

b) natural persons—entrepreneurs registered in accordance with the legislation of Ukraine;

c) legal entities established in accordance with the legislation of Ukraine;

d) standalone subdivisions of legal entities (branches, representative offices, departments) that do not have the status of a legal entity and conduct business on behalf of a legal entity in the territory of Ukraine.

Non-residents may include:

a) natural persons (citizens of Ukraine, foreign citizens, stateless persons) who reside outside Ukraine for more than 183 days a year or have independently recognized themselves as residents of another state in accordance with its legislation;

[265] *P. 2 ch. 1 st. 1 Dekretu Kabinetu Ministriv Ukrainy "Pro systemu valiutnoho rehuliuvannia ta valiutnoho kontroliu"* [Clause 2, Part 1, Article 1 of the Decree of the Cabinet of Ministers of Ukraine "On the System of Currency Regulation and Currency Control"]. [in Ukrainian]

b) legal entities and their standalone subdivisions established in accordance with the legislation of foreign states and located outside Ukraine;

c) standalone subdivisions of legal entities operating outside Ukraine in accordance with foreign legislation;

d) other persons as defined by law.

For example, Resolution of the Cabinet of Ministers of Ukraine No. 524 "On Approval of the Procedure for Applying Enforcement Measures by Tax Authorities in the Form of Penal Sanctions to Legal Entities for Violating Requirements of Currency Legislation" dated May 26, 2021, which remains in force, provides for liability of legal entities for violations of currency legislation. In particular, such liability may arise for conducting settlements in violation of statutory requirements, breaching the procedure for trading currency valuables or transferring them across the customs border, as well as for violating safeguard measures and conducting certain foreign currency transactions. Penal sanctions may be applied, inter alia, at a rate of up to 25% of the amount of the transaction in violation of currency legislation, converted into the national currency at the official exchange rate of the National Bank of Ukraine, subject to the type of violation and special currency restrictions introduced by the National Bank of Ukraine.

Article 14 of the Law of Ukraine "On Currency and Currency Transactions" defines liability for violating currency legislation. Financial sanctions are applied to residents and non-residents found culpable of violating the rules of currency regulation and currency supervision. A resident's violation of the settlement deadlines established by Article 13 of the Law of Ukraine "On Currency and Currency Transactions" entails the accrual of a penalty for each day of delay at a rate of 0.3% of the amount of funds not received under the foreign economic contract, calculated from the value of undelivered goods (works, services) in the national currency, unless otherwise provided by international treaties of Ukraine or special regulatory acts of the National Bank of Ukraine adopted for the period of martial law.

It should be noted that the National Bank of Ukraine applies enforcement measures depending on the offenses committed by banks, ranging from preliminary measures (written warnings) to more stringent coercive measures stipulated by the Regulation on the Application of Enforcement Measures by the National Bank of Ukraine for Violating Banking and Currency Legislation, including restrictions, suspension or termination of certain types of currency transactions, as well as suspension or revocation (cancellation) of a license to conduct currency transactions, approved by the relevant Resolution of the Board of the National Bank of Ukraine. Moreover, the National Bank of Ukraine, in accordance with Article 14 of the Law of Ukraine "On Currency and Currency Transactions", is entitled to apply enforcement measures to authorized institutions in the form of penal sanctions in an amount of up to 20% of the equity (own capital) of the respective authorized institution. Another category of enforcement measures applied by the National Bank of Ukraine is provided for by the Regulation on Safeguards and Determining the Procedure for Certain Transactions in Foreign Currency, approved by Resolution of the Board of the National Bank of Ukraine No. 5 dated January 2, 2019 (as amended), which expanded the scope of liability for violating currency legislation.

The analysis of this Regulation allows concluding that it determines the types of currency offenses as well as the financial and economic sanctions applied for their commission. It is also important to note that the Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Currency and Currency Transactions' and Other Laws of Ukraine (Regarding the Circulation of the Currency of an Aggressor State in the Territory of Ukraine)" (reg. No. 7334 dated April 29, 2022), although not adopted as of 2026, proposed a number of measures intended to be applied for the period of martial law, including:

- a prohibition on any use of the currency of an aggressor state within the territory of Ukraine and for cross-border transfers and movements;
- forced placement (temporary blocking) of assets denominated in the currency of an aggressor state for the duration of martial law without charging interest or commissions, without termination of ownership but with its temporary restriction;

- withdrawal from civil circulation of assets denominated in the currency of an aggressor state owned by residents of such state;
- at the request of the Cabinet of Ministers of Ukraine, authorization of the National Bank of Ukraine to extend the specified restrictions to the currencies of other states that support or facilitate armed aggression against Ukraine;
- a prohibition on admitting to trading financial instruments denominated in the currency of an aggressor state, including, but not limited to, instruments of the stock, money and commodity markets.

The second group of financial offenders includes banks, non-banking financial institutions (including insurance companies and securities traders), as well as the national postal operator, which may be subject to financial-law sanctions for violations of currency legislation. Such liability arises both in connection with the organization of their own currency transactions and with the exercise of currency supervision functions in relation to residents and non-residents conducting currency transactions. A new procedure for issuing licenses for currency transactions to non-banking financial institutions and postal operators was introduced by Resolution of the National Bank of Ukraine No. 25 “On Approval of Amendments to the Regulation on the Procedure for Issuing Licenses for Currency Transactions to Non-Banking Financial Institutions and Postal Operators” dated March 26, 2021, which remains in force. According to this Resolution, the list of currency transactions subject to licensing was revised. In particular, the following currency transactions are currently not subject to licensing:

- insurance transactions, except for settlements under life insurance contracts;
- factoring transactions, except for settlements related to international factoring;
- assignment (transfer) of claims and related obligations.

The legal status of banks in the field of currency regulation and supervision is dual. On the one hand, banks act as business entities conducting their own currency transactions, which are subject to licensing by the National Bank of Ukraine. On the other hand, banks perform the functions of currency supervision agents in accordance with current legislation. The National Bank of Ukraine is entitled to adopt decisions on limiting, suspending or terminating certain types of currency transactions, as well as revoking licenses, in cases of: 1) non-compliance with or violation of the requirements established by legal acts of the National Bank of Ukraine regarding licensing of currency transactions, including requirements concerning the minimum amount of own capital required to conduct certain transactions; 2) significant violations of currency legislation after the application of enforcement measures in the form of penal sanctions to the institution within the previous two years; 3) failure to comply with the National Bank's requirements to eliminate violations within the established timeframe; 4) violation of other requirements of the National Bank's legal acts, except for the cases specified in Subclauses 1–3 of Clause 25 of Subsection II of the Regulation on Currency Supervision No. 13 dated January 3, 2019 (as amended).

The absence of a license entails the application of financial-law sanctions in the form of a fine by the National Bank of Ukraine as the primary currency regulation and supervision authority. In addition, banks are entrusted with the functions of currency supervision agents, which requires them to monitor the legality of currency transactions conducted by residents and non-residents through banking institutions. Failure by banks to properly perform such supervisory functions also entails their financial-law liability and the application of enforcement measures. The National Bank of Ukraine is entitled to apply enforcement measures in the form of a fine to an institution for: 1) violation of the requirements of Article 5 of the Law "On Currency and Currency Transactions" and/or relevant legal acts of the National Bank concerning settlement procedures; 2) violation of the requirements of Article 6 of the Law and/or legal acts of the National Bank governing the conditions and procedure for trading foreign exchange and bank metals; 3) violation of the requirements of Articles 4 and 7 of the Law and/or legal acts of the National Bank concerning the transfer of currency valuables; 4) violation of the requirements of Articles 4 and 8 of the Law and/or legal acts of the National Bank regarding cross-border transfer of currency valuables; 5) conducting currency transactions that require a license under Article 9 of the Law and/or are not specified in the issued license; 6) violation of the requirements of Article 10 of the Law regarding the frequency, terms, method and procedure for submitting statistical reporting on currency transactions, as well as submission of unreliable or significantly erroneous information; 7) detection of significant violations of currency legislation during the period subject to inspection; 8) violation of the requirements of Article 11 of the Law and/or legal acts of the National Bank regarding improper performance of currency supervision obligations; 9) violation of the requirements of legal acts of the National Bank concerning licensing of currency transactions; 10) failure to comply with or improper fulfillment of decisions of the National Bank on the application of enforcement measures; 11) violation of other requirements of legal acts of the National Bank of Ukraine on currency regulation and supervision, except for those expressly listed above.

Financial offenders in public banking relations

The sphere of banking relations has a two-vector orientation, which allows distinguishing two types of legal relations: those of a private-law nature (between banks and customers based on the equality of parties) and those of a public-law nature (between the National Bank of Ukraine and banks), which differ not only in terms of their object and content but also in terms of their subjects.

Private-law relations are regulated mainly by civil and economic legislation and are inherently dispositive, as they are based on the equality of the parties and their free will to establish such relations through agreements concluded between them.

Public-law relations arise directly from the law and are constructed in a vertical manner, where one party exercises authoritative powers and the other is obliged to comply. These relations are public in nature due to the National Bank of Ukraine exercising the powers conferred upon it by law in the field of banking regulation and supervision, which constitute specific forms of public administration of the banking system. Such activities are carried out publicly, through the application of appropriate legal regulation and the use of imperative methods. Banking supervision by the National Bank of Ukraine is aimed at ensuring the reliability and efficiency of banking institutions in order to guarantee the stability and uninterrupted functioning of the banking system as a whole.

A banking institution is a specific participant in banking legal relations, as it simultaneously acts as a party to private-law relations and to public-law relations. However, unlike its position in private banking relations (attracting deposits, placing funds of natural and juridical persons on its own behalf, opening and maintaining bank accounts), which is characterized by relative autonomy in concluding contracts for banking services, a bank is accountable to and subject to supervision by the National Bank of Ukraine in relations concerning compliance with mandatory requirements for banking activities. Ukrainian scholar in financial law, Academician O. P. Orliuk, emphasizing the peculiarities of banking legal relations, notes that “the state always directly or indirectly participates in banking legal relations. Another characteristic feature is the absence of free discretion of the parties in determining the forms of such relations and the rules for their implementation, which substantiates the use of an imperative method of legal regulation in these social relations.” Indeed, even within private-law relations, banks operate within the limits established by binding acts of state authorities. Therefore, banking institutions, in their relations with the National Bank of Ukraine, should primarily be classified as financial offenders in the sphere of public banking relations[266].

In accordance with Part 1 of Article 2 of the Law of Ukraine “On Banks and Banking Activities,” a bank is a juridical person which, on the basis of a banking license, has the exclusive right to provide banking services and information about which is entered into the State Register of Banks. A bank may be recognized as a financial offender and be subject to financial-law sanctions

[266] Orliuk, O. P. *Finansove pravo. Akademichnyi kurs: pidruchnyk* [Finance law. Academic course: textbook]. Kyiv: *Yurinkom Inter*, 2010. P. 623. [in Ukrainian]

only if it possesses financial legal personality. At the same time, a distinctive feature of the legal status of a bank is that its state registration as a juridical person alone does not entitle it to fully participate in banking relations, in particular with regard to carrying out banking activities.

Ukrainian scholar M. V. Starynskyi, analyzing the conditions for the emergence of a bank's delictual capacity, distinguishes: the general delictual capacity of a bank acquired upon state registration; administrative delictual capacity acquired after obtaining a banking license; and extended administrative delictual capacity acquired upon receiving a special written authorization from the National Bank of Ukraine to conduct certain types of transactions[267]. Despite the debatable nature of such a classification, it is reasonable to conclude that banks are endowed with a special legal personality, characterized by their ability to participate in banking legal relations and to bear financial-law liability for financial offenses committed in the course of banking activities only after obtaining the appropriate license from the National Bank of Ukraine.

Licensing of banks is one of the key functions of the National Bank of Ukraine as the central authority for banking regulation. In addition, the National Bank carries out indicative regulation of banks' activities, which includes establishing mandatory economic standards, determining mandatory reserve requirements, setting norms for provisioning, and other prudential measures.

Based on the results of supervisory activities, the National Bank of Ukraine is authorized to apply enforcement measures and financial-law sanctions in the form of fines, the grounds, procedure, and amounts of which are determined by the Regulation on the Application of Enforcement Measures by the National Bank of Ukraine for Violations of Banking Legislation, approved by Resolution of the Board of the National Bank of Ukraine

[267] Starynskyi, M. V. *Banky yak uchasnyky administratyvno-deliktnykh vidnosyn u sferi bankivskoi diialnosti* [Banks as participants in administrative and delictual relations in the field of banking activities]: abstract of the dissertation for the degree of Candidate of Legal Sciences: 12.00.07. Kyiv. 2009. P. 13. [in Ukrainian]

No. 346 dated August 17, 2012, registered with the Ministry of Justice of Ukraine on September 17, 2012 under No. 1590/21902, as well as by the Regulation on Currency Supervision approved by Resolution of the Board of the National Bank of Ukraine No. 13.

Amendments approved by the National Bank of Ukraine to the Regulation on the Application of Enforcement Measures expanded the list of grounds for imposing fines of up to one percent of a bank's regulatory capital. In particular, such sanctions may be applied for violations of legal acts of the National Bank of Ukraine establishing the specific rules for the functioning of the banking system under conditions of martial law or a special period.

From a theoretical perspective, the question of recognizing the National Bank of Ukraine as a subject of financial liability may arise, given that it is a public authority exercising constitutional and statutory powers in the sphere of monetary policy and financial stability. In this regard, Clauses 1 and 9 of Article 6 of the Law of Ukraine No. 315/96-VR "On the Accounting Chamber"[268] dated July 11, 1996, provide that the Accounting Chamber exercises control over the execution of the State Budget of Ukraine, including operations conducted by the National Bank of Ukraine and authorized banks.

For this purpose, pursuant to Clause 2 of Part 1 of Article 7 of the said Law, the Accounting Chamber is empowered to conduct financial audits and inspections of the National Bank of Ukraine.

At the same time, Clause 8 of Part 1 of Article 19 of the Law of Ukraine "On the National Bank of Ukraine" establishes that the Governor of the National Bank of Ukraine is accountable to the Verkhovna Rada of Ukraine and the President of Ukraine for the activities of the National Bank. Legal doctrine contains differing views regarding the nature of such accountability. Some scholars argue that the Governor bears exclusively political responsibility, given the collegial nature of decision-making within the National

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[268] *Pro Rakhunkovu palatu: Zakon Ukrainy vid 11.07.1996 № 315/96-VR* [On the Accounting Chamber: Law of Ukraine No. 315/96-VR dated July 11, 1996]. *Holos Ukrainy vid 29.10.1996* [Voice of Ukraine dated October 29, 1996]. No. 204. [in Ukrainian]

Bank. Other researchers maintain that, alongside political responsibility, the Governor should also bear legal responsibility for the outcomes of monetary policy. Nevertheless, as of today, the legislation of Ukraine does not provide for specific financial or legal sanctions applicable to the National Bank of Ukraine as an institution.

Financial offenders in monetary teller transactions

The sphere of monetary teller relations in modern conditions permeates almost all aspects of social and economic life. State regulation of social relations arising in the course of money circulation and teller transactions underscores their significance. The sphere of monetary teller relations includes two interrelated components: money circulation and teller transactions.

Money circulation requires proper state regulation and influence by public authorities. Being closely connected with the overall economic system of the state, it takes various forms and affects multiple spheres of social relations, which to some extent complicates effective regulatory influence. In a general sense, money circulation may be defined as the continuous turnover of lawful means of payment and their functioning as means of payment and circulation aimed at serving the needs of the national economy. In the course of constant movement of money, its essence and functions are realized, as money circulates among all economic entities, facilitating the movement of goods and services. Money circulation operates through the payment system, which constitutes a basic infrastructure of the modern market economy. Its efficiency and stability serve as instruments for the sustainable functioning of the national economic system, including monetary and financial markets[269].

Money circulation requires proper state regulation and influence by public authorities. Being closely linked with the entire economic system of the state, it takes various forms and affects different spheres of social relations, which to some extent complicates the state's regulatory impact on it.

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[269] Orliuk, O. P. *Finansove pravo. Akademichnyi kurs: pidruchnyk* [Finance law. Academic course: textbook]. Kyiv: Yurinkom Inter, 2010. P. 657. [in Ukrainian]

Accordingly, money circulation exists in cash and non-cash forms. Cash settlements may be defined as payments made by enterprises (entrepreneurs) and natural persons in cash for sold products (goods), performed works or provided services, as well as for transactions not directly related to the sale of products (goods, works, services) and other property[270]. At present, cash payments are predominantly used in settlements not related to entrepreneurial activity, primarily within the consumer market.

Non-cash settlements are defined as the transfer of a certain amount of funds from the accounts of payers to the accounts of recipients, as well as the transfer by banks, on behalf of enterprises and natural persons, of funds deposited in cash at bank cash offices to the accounts of recipients[271]. Cashless circulation of funds represents a significant achievement of the modern economy, as it not only reduces time and transaction costs but is also generally safer than cash circulation. In addition, it serves as an important source of statistical information on money circulation within the state, enabling effective monitoring and regulation by public authorities. The requirements for non-cash settlements between business entities are established by current legislation. In particular, Part 2 of Article 1087 of the Civil Code of Ukraine No. 435-IV dated January 16, 2003, provides that settlements between juridical persons, as well as settlements involving natural persons related to their entrepreneurial activity, shall

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[270] *Polozhennia pro vedennia kasovykh operatsii u natsionalnii valiuti v Ukraini: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 29.12.2017 № 148* [Regulation "On Conducting Cash Transactions in National Currency in Ukraine": Resolution of the Board of the National Bank of Ukraine No. 148 dated December 29, 2017]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. February 2, 2018, No. 10, p. 49, Article 369, act code 88967/2018. [in Ukrainian]

[271] *Instruktsiia pro bezghotivkovi rozrakhunky v Ukraini v natsionalnii valiuti: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 21.01.2004 № 22, p. 1.4* [Instruction on Non-Cash Settlements in Ukraine in National Currency: Resolution of the Board of the National Bank of Ukraine No. 22 dated January 21, 2004, Clause 1.4]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. 2004. No. 13. Article 110. [in Ukrainian]

be carried out in non-cash form, unless otherwise established by law [272].

Cash and non-cash forms of settlements are interconnected due to their common subject and objectives, as well as due to the constant transformation of funds from non-cash into cash and vice versa. This transformation occurs, inter alia, through the posting of cash via an enterprise's cash office and its subsequent crediting by a bank to a current or other account, as a result of which cash funds are converted into non-cash funds. Consequently, teller transactions play a significant role in the circulation of cash.

Teller transactions are defined as transactions of enterprises (entrepreneurs) among themselves and with natural persons, related to the receipt and issuance of cash during settlements conducted through cash offices, with mandatory recording of such transactions in the relevant accounting documentation [273]. The rules for conducting teller transactions are established by the National Bank of Ukraine. Accordingly, participants in monetary teller settlements include natural and juridical persons, including their standalone subdivisions acting as holders of funds and users of payment instruments, banks as intermediaries through which settlements are conducted, as well as the National Bank of Ukraine.

From the perspective of state protection, the sphere of monetary teller relations, in addition to legal regulation, is subject to protective mechanisms, which involve identifying socially harmful acts as financial offenses and establishing financial-law sanctions for their commission. In the field of cash circulation and teller transactions, financial-law sanctions are applied, inter alia, for

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[272] *Tsyvilnyi kodeks Ukrainy: Zakon Ukrainy vid 16 sichnia 2003 r. № 435-IV* [Civil Code of Ukraine: Law of Ukraine No. 435-IV dated January 16, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 40–44. Article 356. [in Ukrainian]

[273] *Polozhennia pro vedennia kasovykh operatsii u natsionalnii valiuti v Ukraini: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 15.12.2004 № 637, p. 1.2* [Regulation "On Conducting Cash Transactions in National Currency in Ukraine" : Resolution of the Board of the National Bank of Ukraine No. 637 dated December 15, 2004, Clause 1.2]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. 2005. No. 3, No. 7. Article 186 (DI), Article 55. [in Ukrainian]

exceeding established cash balance limits in cash offices, failure to post cash (including incomplete or untimely posting), violation of established time limits for using accountable cash, and similar offenses. Financial offenders in this sphere include juridical persons of all forms of ownership, natural persons who are citizens of Ukraine, foreign citizens and stateless persons engaged in entrepreneurial activity, as well as permanent representative offices of non-residents through which economic activity is conducted fully or partially.

Significant changes in the regulation of cash circulation occurred in 2021. On September 17, 2021, the Board of the National Bank of Ukraine adopted the Resolution "On Approval of the Regulation on Transfer of Cash Reserves for Safekeeping to Authorized Banks and Related Transactions," which repealed a number of earlier regulatory acts in this field, including Resolution of the Board of the National Bank of Ukraine No. 408 dated December 7, 2016, and subsequent amendments thereto. At the same time, the primary requirements for conducting teller transactions are established by the Regulation on Conducting Cash Transactions in the National Currency of Ukraine, approved by Resolution of the Board of the National Bank of Ukraine No. 148 dated December 29, 2017, as amended. On June 23, 2019, Presidential Decree No. 418/2019 dated June 20, 2019, entered into force, repealing, inter alia, Presidential Decree No. 436 dated June 12, 1995, which had previously established penalties for violating cash circulation regulations. The repealed Decree had applied to juridical persons of all forms of ownership, natural persons engaged in entrepreneurial activity, including foreign citizens and stateless persons, as well as permanent representative offices of non-residents.

The Law of Ukraine "On the Use of Registers of Payment Transactions in Trade, Catering and Services" establishes, in Article 17, the composition of financial offenses related to the use of registers of payment transactions, the subjects of which are business entities. Financial-law sanctions are applied, in particular, for failure to generate or store daily fiscal reporting receipts and other violations of the established procedure. Teller transactions conducted in accordance with this Law must comply with its requirements, as expressly provided for in Clause 3.2 of the Regulation on Conducting Cash Transactions in the National Currency of Ukraine.

Resolution of the Board of the National Bank of Ukraine No. 59 dated May 7, 2020, amended the Regulation on Conducting Cash Transactions in the National Currency of Ukraine. In particular, it introduced provisions according to which the posting of cash in the cash offices of institutions' or enterprises' standalone subdivisions that conduct cash settlements using software-based registers of payment transactions without maintaining a cash book consists in ensuring the daily generation of fiscal reporting receipts in paper or electronic form, their transmission to the fiscal server via telecommunications channels, as well as the submission of electronic settlement documents and notifications for registration and long-term storage [274].

Banks constitute system-forming participants in financial legal relations, whose activities are subject to state supervision exercised by the National Bank of Ukraine, including with regard to compliance with the established rules for conducting monetary teller transactions, given their professional role in such operations [275]. Pursuant to Part 5 of Article 11 of the Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions" dated June 21, 2018, the National Bank of Ukraine carries out currency supervision over authorized institutions in accordance with the procedure determined by it.

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[274] *Pro zatverdzhennia zmin do Polozhennia pro vedennia kasovykh operatsii u natsionalnii valiuti Ukrainy: Postanovoiu Pravlinnia Natsionalnoho banku Ukrainy vid 07.05.2020 № 59* [On Approval of Amendments to the Regulation "On Conducting Cash Transactions in National Currency in Ukraine": Resolution of the Board of the National Bank of Ukraine No. 59 dated May 7, 2020]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database]/ *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0059500-20#Text (July 15, 2022). [in Ukrainian]

[275] *Polozhennia pro poriadok ta umovy torhivli inozemnoiu valiutoiu: Postanova Pravlinnia Natsionalnoho banku Ukrainy vid 10.08.2005 № 281* [Regulation on the Procedure and Conditions for Trade of Foreign Exchange : Resolution of the Board of the National Bank of Ukraine No. 281 dated August 10, 2005]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. 2005. No. 35. Article 122. [in Ukrainian]

According to Clause 9 of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine approved by Resolution of the Board of the National Bank of Ukraine No. 346 dated August 17, 2012, the National Bank is empowered to impose fines on banks in the amounts specified in Clause 9 of Article 73 of the Law of Ukraine "On Banks and Banking Activities" for violations of the procedure, terms, and technology for conducting transactions established by its regulatory acts. In addition, Clause 42 of the Regulation on Currency Supervision provides for fines for violations of legislation governing the trade of foreign currency and bank metals in the foreign exchange market of Ukraine. Thus, financial offenders in the sphere of money circulation include natural and juridical persons directly participating in money circulation, as well as banks conducting relevant banking operations. The National Bank of Ukraine acts as a public authority representing the state in these relations; however, current legislation does not establish financial or legal liability measures applicable to it in this sphere[276].

Financial offenders in teller transactions may therefore be defined as enterprises (entrepreneurs), both residents and non-residents, as well as banks through which teller transactions of such entities are carried out.

Financial offenders in compulsory state social insurance

Compulsory state social insurance includes such types of insurance as pension insurance, insurance in connection with temporary disability and expenses related to childbirth or burial, insurance against accidents at work and occupational diseases that cause loss of working capacity, as well as unemployment insurance. Accordingly, the range of participants in legal relations in the field of compulsory state social insurance is sufficiently broad. Trust funds accumulated for the subsequent distribution among persons

[276] *Pro zatverdzhennia Polozhennia Pro valiutnyi nahliad: Postanova Natsionalnoho banku Ukrainy vid 01.03.2019 № 13* [On Approval of the Regulation on Currency Supervision: Resolution of the National Bank of Ukraine No. 13 dated March 1, 2019]. *Zakonodavstvo Ukrainy*: *baza danykh* [Legislation of Ukraine: database]/ *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v0013500-19#Text (July 15, 2022) [in Ukrainian]

in need of social protection are formed through the introduction of a system of payment of the unified contribution for compulsory state social insurance.

Payers of the unified contribution, in accordance with the Law of Ukraine No. 2464-VI "On Collection and Accounting of the Unified Contribution for Compulsory State Social Insurance" dated July 8, 2010, include a wide range of persons, namely juridical persons, natural persons—entrepreneurs, self-employed persons and other employed persons. In general, they may be divided into insurers and insured persons.

The body authorized to maintain records of unified contribution payers, ensure the collection and accounting of insurance funds, control the completeness and timeliness of their payment, administer the State Register of Compulsory State Social Insurance, generalize the practice of applying legislation on the collection and accounting of the unified contribution, conclude agreements with enterprises, institutions and organizations (including those located outside Ukraine) regarding the voluntary participation of Ukrainian citizens working for them, and perform other functions provided for by law is the State Tax Service of Ukraine[277]. Given that the unified contribution in a significant number of cases is paid through cashless transfers, banks through which funds are transferred to the relevant trust funds also participate in legal relations related to the payment of the unified contribution.

An analysis of legislation in the field of compulsory state social insurance makes it possible to classify almost all participants in the relevant legal relations—primarily unified contribution payers, bodies of the Pension Fund of Ukraine and banks—as potential financial offenders. Pursuant to Part 11 of Article 25 of Law of Ukraine No. 2464-VI "On Collection and Accounting of the Unified

[277] *Ukaz Prezydenta Ukrainy vid 18.03.2013 № 141/2013 "Pro Ministerstvo dokhodiv i zboriv Ukrainy"* [Decree of the President of Ukraine No. 141/2013 "On the Ministry of Revenue and Duties of Ukraine" dated March 18, 2013]. *(Na sohodni tse pokladeno na Derzhavnu fiskalnu sluzhbu Ukrainy, yaka transformuietsia v Derzhavnu podatkovu sluzhbu ta Derzhavnu mytnu sluzhbu — avtor)* [(Today, this is entrusted to the State Fiscal Service of Ukraine, which is being transformed into the State Tax Service and the State Customs Service — author)]. [in Ukrainian]

Contribution for Compulsory State Social Insurance" dated July 8, 2010, liability in the form of financial sanctions is imposed on unified contribution payers for failure to register, failure to pay (transfer) the unified contribution, late payment, as well as other violations established by law.

The special legal status of unified contribution payers directly affects their financial delictual capacity, since a prerequisite for the application of financial-law sanctions is the acquisition by such persons of the status of unified contribution payers.

Measures of financial-law liability in the form of penalties and fines are also applied to banks for untimely transfer or untimely crediting of amounts of the unified contribution and financial sanctions to the accounts of the State Tax Service of Ukraine. At the same time, the State Tax Service of Ukraine is obliged to pay penalties in cases of unjustified collection of funds from juridical and natural persons, as provided by current legislation.

Financial offenders in the securities market

The main parties to legal relations arising in the securities market and, consequently, potential financial offenders in this field are market participants and regulatory authorities. According to Article 2 of the Law of Ukraine No. 448/96-VR "On State Regulation of Capital Markets and Organized Commodity Markets" dated October 30, 1996, participants in the capital market include issuers, investors, self-regulatory organizations and professional participants in the capital markets.

An issuer is a juridical person, territorial communities represented by local self-government bodies, as well as the state represented by authorized public authorities, which places issue securities on its own behalf and assumes obligations towards their holders.

Investors in securities are natural and juridical persons, residents and non-residents, who have acquired ownership of securities for the purpose of receiving income from invested funds and/or acquiring rights granted to the owner of securities in accordance with legislation.

A self-regulatory organization of professional capital market participants is a non-profit association of professional participants carrying out activities related to securities trading, asset management of institutional investors and depository activities, established in accordance with the criteria and requirements defined by the National Securities and Stock Market Commission.

Professional capital market participants are juridical persons that, on the basis of a license issued by the National Securities and Stock Market Commission, carry out professional activities in capital markets, the types of which are determined by the laws of Ukraine. Depending on the nature of such activities, professional participants include entities engaged in securities trading, asset management of institutional investors, depository activities and organization of trading in capital markets.

State regulation of capital markets is carried out by the National Securities and Stock Market Commission and consists in the implementation of a system of measures aimed at regulating, supervising and controlling capital markets and organized commodity markets, as well as preventing abuses and violations in this sphere. Accordingly, the range of participants in legal relations related to securities is specific, and the legal status of a party to such relations is acquired exclusively through participation in transactions with securities.

According to Article 11 of the Law of Ukraine No. 448/96-VR “On State Regulation of Capital Markets and Organized Commodity Markets” dated October 30, 1996, financial offenses in this field include, inter alia, the placement of securities without registration of their issue in accordance with the procedure established by law; carrying out activities in capital markets without a license where such licensing is mandatory; violation of the procedure for maintaining registers of securities owners or depository accounting systems by issuers or professional participants, which resulted in the loss of such systems or their parts, as well as failure to introduce changes or the introduction of deliberately false information.

Taking into account the nature of the specified financial offenses, it may be concluded that the offenders include the majority of participants in financial legal relations in the securities market. At the same time, a mandatory feature of an offender is the possession of the status of a legal entity, as directly provided for in Article 11 of the above-mentioned Law and determined by the specific nature of legal relations in this sphere. The emergence of financial legal personality of certain participants is also linked to the acquisition of a license for specific types of activities. In particular, professional activities in capital markets may be carried out exclusively on the basis of a license issued by the National Securities and Stock Market Commission. Prior to obtaining such a license, a person may not lawfully engage in the relevant activity and, accordingly, cannot be considered a participant in the securities market or a financial offender in this field.

A specific subject of capital market relations is the state represented by its public authorities, which, on the one hand, may act as an issuer, investor or professional participant, and, on the other hand, is vested with regulatory powers, including the authority to establish liability for violations of capital market legislation. From a theoretical perspective, this allows considering the state as a potential financial offender subject to financial-law sanctions. However, in practice, the implementation of such liability remains insufficiently defined.

The National Securities and Stock Market Commission, as a regulatory authority, is also a participant in legal relations related to capital markets and is vested with a set of rights and obligations. Non-compliance with such obligations theoretically presupposes the possibility of its liability. Nevertheless, current legislation does not establish specific financial-law sanctions applicable to the Commission. Consequently, financial offenders in the field of securities and capital markets include issuers, investors, self-regulatory organizations and professional participants in capital markets that possess the status of juridical persons.

The feasibility and possibility of modifying the system of financial-law liability for public authorities by establishing such liability with applying adequate financial-law sanctions to such supreme authorities as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine as well as the President of Ukraine deserve special consideration. The above issue is not accidental and is justified by the fact that in the system of financial activity of the state, these entities perform important functions, but do not assume financial liability for financial offenses.

First of all, it is necessary to mention the rule-making function of the above authorities, in particular regarding financial issues. The powers of the Verkhovna Rada of Ukraine to adopt financial legal acts are justified, in particular, by Part 2 of Article 92 of Constitution of Ukraine No. 254k/96-VR dated June 28, 1996, according to which solely the laws of Ukraine establish a taxation system, taxes and fees; principles for creation and functioning of financial, monetary, credit and investment markets; status of the national currency as well as status of foreign exchange in the territory of Ukraine; procedure for issuing state securities and their circulation as well as their types.

The Cabinet of Ministers of Ukraine and the President of Ukraine also implement financial policy through the issuance of their own legal acts (in the field of currency activities, etc.).

Special attention should be given to the powers of the President of Ukraine to issue decrees on tax amnesty, according to which it is possible to exempt a person from financial-law sanctions.

Thus, the listed entities are participants in financial legal relations and are empowered to implement tasks that, in theory, may not be performed or may be performed improperly by them for any reason, thus causing public harm, or even posing a public danger.

In this case, liability for such acts is logical and dictated by the need for society representatives to be liable to society as an important element of public liability. However, taking into account the modern development of legislation as regards liability of supreme authorities, it should be recognized that today such persons are not held financially and legally liable and cannot be subject to financial-law sanctions. The legislation is set out in such a way that it envisages the imposition of financial-law liability and the application of corresponding sanctions only in relation to other (non-state) participants in financial legal relations (except for isolated cases), which occupy positions opposite to public authorities, and the mechanisms for the application of sanctions have been developed specifically for these cases. Therefore, the *current system of financial legislation is unsuitable for its use in relation to authorities for the purpose of applying financial-law sanctions*. This is especially evident in the total lack of a mechanism for imposing financial (and generally legal) liability on collective entities being juridical persons that adopt and approve acts on the budget, amendments to it as well as approve a report on the budget execution. It is about the Verkhovna Rada of Ukraine and local councils of all levels.

However, whether it is worth changing the structure of the prosecution of financial offenses towards its expansion due to the involvement of new entities to whom financial-law sanctions may be applied should be carefully analyzed. Since another solution may be the introduction of personal financial and other liability for culpable officials. Meanwhile, the procedure for proving the existence of such culpability and harmful consequences of unlawful acts may be too complicated, taking into account the wide range of persons who are subject to the powers of such authorities and their legislative acts, and the absence of a direct connection between the aforementioned participants in financial relations.

As follows from the above, the range of financial offenders is extremely wide and diverse, which is due to the multidimensional nature of financial legal relations, and hence the involvement of a significant number of participants in them. In general, financial offenders include natural and juridical persons that have financial legal personality and are capable of bearing liability for violations of financial-law obligations. The state represented by public authorities that supervise financial activities and are authorized to apply financial-law sanctions is also a financial offender. However, the regulation of cases and conditions for holding public authorities financially and legally liable is currently remains insufficiently regulated at the legislative level. This issue certainly requires further consideration in order to establish liability of public authorities to society at the legislative level as an indicator of positive dynamics of development in financial legal relations.

Furthermore, an important stage in studying the essence of financial-law sanctions is the examination of their procedural component, which consists in the procedure for applying financial-law sanctions, since law enforcement is the implementation of a legal norm in order to realize its function within the legal system. Without the application of financial-law sanctions, it is impossible to imagine the efficient system of financial-law liability. Meanwhile, the sequence of actions performed by law-enforcement authorities from the detection of an offense to the actual implementation of adverse consequences of financial-law liability is equally important, since the efficiency of the protective system of financial-law sanctions depends on how effectively it operates.

2.3. Procedure for the Application of Financial-Law Sanctions

The application of financial-law sanctions occurs through the imposition of financial-law liability on a person and corresponds to this stage of financial-law liability. The procedure for applying sanctions lies at the intersection of the procedures for imposing financial-law liability on a person and implementing its measures and symbolizes the transition of one stage to another. It is clear that sanctions are applied at a number of liability stages, but this has not been singled out in legal scholarship at one of them as a component of this process and is the specification of actions and events that occur when holding a person liable.

In order to understand the place of this procedure in the context of the financial-law liability process, it is necessary to analyze the progress of the above law enforcement activity. Since the application of financial-law sanctions is preceded by a number of interconnected stages of financial-law liability, each of which is implemented to achieve a specifically defined goal both in a specific sense and in general—the goal of the financial-law liability process. In this regard, it is necessary to distinguish, on the one hand, the stages reflecting the general logical sequence of law enforcement actions and, on the other hand, the stages reflecting the functional nature of solving a particular case depending on its features, which are sequential procedural actions that are enshrined in various law-enforcement acts and provide for achieving the result envisaged by the result envisaged by the applicable norm of substantive law.

The term “process” (from Latin **processus**—progression, progress, course advance) means activity, movement. In this case, the concept of “process” should not be confused with the concept of “procedure”, despite their similarity and definition of a certain stage-by-stage approach and change in manifestations.

Analyzing the correlation between the concepts of “process” and “procedure”, O. V. Petryshyn substantiates that these categories are not synonymous. Process characterizes a phenomenon as a whole, while procedure refers to a regulated sequence of actions; process inherently contains dynamics and continuity, whereas procedure has a normative and structured character and functions as an integral element of the legal process[278]. Indeed, the concept of legal process in relation to legal procedure appears to be more extensive and combines certain components of a procedural and other nature.

Legal process, in a broad sense, is an order of creating, interpreting and implementing legal norms by entities, which is established by the norms of law. Legal process also means a system of interdependent legal forms of activity of public authorities and officials with regard to solving legal cases based on law with the consolidation of their course and results in the relevant legal acts. According to O. F. Skakun, legal process reflects law in action and dynamics, defining not merely a system of legal norms, but the course of their realization and enforcement[279].

The process of financial-law liability is also subject to the general rule and is characterized by its stage-by-stage approach. In Ukrainian legal doctrine, M. V. Tsvik distinguishes the stages of emergence

[278] Petryshyn, O. V. *Zahalna teoriya prava* [General theory of law]. Kharkiv, 2013. P. 287. [in Ukrainian]

[279] Skakun, O. F. *Teoriya derzhavy i prava* [Theory of State and Law]. Kharkiv, 2011. P. 498. [in Ukrainian]

of legal liability, its establishment and implementation, emphasizing that liability cannot be realized outside a procedurally regulated framework[280]. According to Academician O. F. Skakun, legal liability includes the following stages: the stage of general condition (from the moment of committing an offense), the stage of imposing liability (from the moment the competent authority identifies the offender and investigates the circumstances of the offense), the stage of establishing legal liability (decision on the application or non-application of a sanction and determination of its type and measure), and the stage of incurring legal liability (implementation of specific liability measures)[281]. This approach more fully reveals the content of law-enforcement activity, although from the standpoint of logical sequence, the establishment of liability should precede its imposition.

Thus, according to the author, the *following stages of financial-law liability can be distinguished*:

1) recording of a fact and qualification of an act;
2) imposition of liability;
3) implementation of measures unfavorable for an offender.

The beginning of the financial-law liability process is the commission of a financial offense. At this point, from a subjective point of view, the first stage begins, which consists in the law enforcement activity of authorities with regard to documenting the fact of the financial offense and its qualification, i.e. comparison with the corresponding norm of law. Based on the results of such actions, a procedural document containing a description of the discovered circumstances and confirmation of the offense commission is drawn up.

Such a legal document of a statutory nature, along with the evidence collected during the first stage, is the basis for their consideration by a law enforcement authority and making a decision that the fact of an offense commission is proven and unlawful acts are qualified correctly as well as making a decision that the violator

[280] Tsvik, M. V. *Zahalna teoriya derzhavy i prava* [General theory of state and law]. Kharkiv, 2009. P. 412. [in Ukrainian]

[281] Skakun, O. F. *Teoriia derzhavy i prava: pidruchnyk* [Theory of state and law: textbook]. Kharkiv: Konsum, 2001. P. 441. [in Ukrainian]

of financial-law norms should be held financially and legally liable with subjecting to the measures of such liability.

At this stage, it is worth talking about the procedure for applying financial-law sanctions as an inseparable component of the liability process. The measures of financial-law liability are applied through the adoption by a public authority of a legal document (decision, resolution, etc.) containing an indication, in addition to other circumstances of the case, of the type and amount of financial-law sanctions to be imposed on a specific person. From the moment of announcement (review, receipt) of such a legal act of individual action, a person is considered the one on whom financial-law sanctions are imposed.

A legal act on applying financial-law sanctions has a number of features that can include:

— individual nature due to addressing an act to a specific party to financial relations;

— issuance by a competent public authority;

— form of objectification (external expression) established by a regulatory act and necessary details;

— binding nature both for the party to financial legal relations in respect of which it was issued and for other parties to financial legal relations, which is ensured by the coercive power of the state.

In terms of formal logic, such a decision is developed and formulated according to the rules of syllogistic thinking: the role of a major premise in this syllogism (conclusion) is performed by the applicable norm, the role of a minor premise is performed by the legally significant facts established in the case, and the conclusion is the legally enforceable decision [282].

The relevant subjective legal rights and obligations are assigned to the considered parties to financial legal relations by such an individual legal act. That is, after a certain decision on applying financial-law sanctions is made, a financial offender becomes the bearer of the subjective obligation to pay the corresponding

[282] Rabinovych, P. M. *Osnovy zahalnoi teorii prava ta derzhavy: navchalnyi posibnyk* [Foundations of the general theory of law and state: textbook]. Kyiv: *Atika*, 2001. P. 139. [in Ukrainian]

sanctions, and a law enforcement authority (collecting authority, etc.) is granted the corresponding right to receive (collect) such sanctions for its benefit, namely for the benefit of the state that such an authority represents. Therefore, the mentioned law enforcement act transfers the parties to legal relations to another state qualitatively new for them, which did not exist before. Accordingly, the fulfillment of obligation by a violator of financial-law norms will end at the moment of adjudging financial-law sanctions and the main debt to be paid, and the subjective right of an authority to receive the amount of sanctions, and the main debt (if any) will be exercised at the moment of their receipt. As a result, in case of compliance of the performed actions with the provisions of the relevant act on applying sanctions as well as with other significant circumstances, the legal regulation of the above legal relations exhausts itself.

A special procedural order for applying financial-law liability measures as a distinctive feature of this legal institute has been emphasized by Ukrainian scholars. In particular, O. F. Skakun[283] and Yu. S. Shemshuchenko[284] note that in most cases legal liability cannot be realized without special law-enforcement activity of public authorities aimed at identifying, considering and resolving the case of an unlawful act, which necessitates strict procedural regulation in the interests of legality and justice.

At the same time, some scholars express a critical position regarding the sufficiency of procedural guarantees in the application of financial-law liability. Thus, Yu. S. Shemshuchenko points out the need to further improve procedural mechanisms in public-law liability in order to ensure effective protection of the rights of persons held liable[285]. Such a position, however, does not negate the existence of a special procedural order for applying financial sanctions, which is enshrined in current legislation and conditioned by the public-law nature of financial liability.

[283] Skakun, O. F. *Teoriya derzhavy i prava* [Theory of State and Law]. Kharkiv, 2011. P. 495–497. [in Ukrainian]

[284] Shemshuchenko, Yu. S. *Pravova vidpovidalnist u publichnomu pravi* [Legal liability in public law]. Kyiv, 2018. P. 162–165. [in Ukrainian]

[285] Ibid. P. 164. [in Ukrainian]

The procedure for applying financial-law sanctions for tax offenses is determined by the Tax Code of Ukraine and consists in the following. Violations detected during a taxpayer's audit or in other circumstances are recorded in an act to be signed by officials of the State Tax Service and the taxpayer (or their legal representatives (if any)). Communicating the audit results to the taxpayer who violated the tax legislation is an important phase, since the taxpayer has the right to object to the audit findings reflected in the act, which should be considered and taken into account when making a decision on applying sanctions. However, the entity who is accused of committing an offense can exercise this right only after getting acquainted with the relevant arguments of auditing authorities, which should be supported by specific facts and evidence in accordance with the requirements of regulatory documents.

A decision on determining monetary obligations is made by the head of the State Tax Service authority (or their deputy) taking into account the results of review of the taxpayer's objections (if any). Thus, the enforcement act in this case is a decision notice that in accordance with Article 58 of the Tax Code of Ukraine, among other things, should contain the basis for accrual of tax obligation or other obligation pursuant to this Code and its amount as well as the warning about the consequences of non-payment. In addition, the calculation of financial-law sanctions is attached to the decision. Such a decision is the basis for the taxpayer's payment of the amounts of obligations specified therein.

In accordance with Part 4 of Article 15 of the Law of Ukraine "On Currency and Currency Transactions", the Resolution of the National Bank on Applying Enforcement Measures in the Form of Penal Sanctions is an executive document and comes into force from the date of its adoption. In this regard, in the sphere of currency relations, the law enforcement act of individual action on holding the National Bank of Ukraine liable for violating currency legislation is a resolution of an authorized official of the National Bank or its territorial administration, which reflects a decision to apply sanctions. It is worth noting that, in accordance with

Clause 14 of the Regulation on Currency Supervision approved by the Resolution of the Board of the National Bank of Ukraine dated January 3, 2019, a decision of the National Bank concerning the application of an enforcement measure to an institution should contain the description of the enforcement measure applied to the institution, details of the document indicating the violations, description of the violation with indication of the currency legislation norms that were violated.

In accordance with Part 14 of Article 25 of Law of Ukraine No. 2464-VI "On Collection and Registration of Unified Contribution for Compulsory State Social Insurance" dated July 8, 2010, the amounts of penalties and fines envisaged by this Law shall be paid by a unified contribution payer within ten calendar days after receiving the relevant decision. The specified amounts are credited to the accounts of tax authorities opened in the central executive authority, which implements the state policy in the field of treasury maintenance of budget funds, for crediting the unified contribution to a single account. Financial-law sanctions for financial offenses related to securities and stock market are imposed on offenders by a resolution to be issued by an official of the State Commission for Securities and Stock Market, which is stipulated in Part 5 of Article 12 of the Law of Ukraine "On State Regulation of Capital Markets and Organized Commodity Markets".

The period for consideration of the relevant case on a financial offense should be considered a *special feature of the financial-law procedure for applying financial-law liability measures*.

As already mentioned, the procedural periods when applying financial sanctions for tax offenses are legally defined requirements for the application, payment, collection and appeal of financial fines for violating tax legislation, which can be both related to the taxpayer's tax obligation and have an individual nature.

The periods for applying and implementing financial sanctions can be classified into:

— period for applying financial fines;
— period for paying financial fines;
— period for collecting and appealing financial fines;

— limitation periods for applying financial fines[286].

Therefore, a 10-day period is established for accepting a tax decision notice from the date of delivery, or a period of 3 business days following the date of consideration of a taxpayer's objections and submission (sending) of a written response to the taxpayer (Clause 86.8 of Article 86 of the Tax Code of Ukraine). In addition to the specified periods, the Tax Code stipulates that in case of calculating a monetary obligation by the State Tax Service authority based on the results of an audit appointed in accordance with the criminal procedure law or the law on criminal intelligence and surveillance operations, a tax decision notice based on the results of this audit is not accepted until the date when the relevant court decision enters into force (Clause 86.9 of Article 86 of the Tax Code of Ukraine).

According to the amendments made to the Tax Code of Ukraine in 2020, Part 7 of Article 113 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010, stipulates that in case of applying penal (financial) sanctions (fines) by regulatory authorities to a taxpayer for violating tax laws and other legislation, the control over compliance with which is entrusted to regulatory authorities, tax decision notices should be sent (delivered) to such taxpayers. In this regard, a regulatory authority may apply for one tax offense only one type of penal (financial) sanction (fine) envisaged by this Code and other laws of Ukraine.

The amendments made by Order of the Ministry of Finance of Ukraine No. 846 dated December 31, 2020 (registered in the Ministry of Justice of Ukraine under No. 222/35844 on February 22), to Order of the Ministry of Finance of Ukraine No. 1204 "Procedure for Submitting Tax Decision Notices by Regulatory Authorities to Taxpayers" dated December 28, 2015, came into force on March 20, 2021. This procedure defines the following:

1) current forms of tax decision notices and grounds for their preparation;

2) content of tax decision notices. Therefore, the procedural basis for financial-law liability is a tax decision notice, which

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[286] Ivanskyy, A. Y. *Pravove rehuliuvannia strokiv pry zastosuvanni finansovykh sanktsii* [Legal regulation of periods when applying financial sanctions]. *Yevropeiski perspektyvy* [European Prospects]. 2011. No. 4; Part 1. P. 146–152. [in Ukrainian]

is prepared by the head of a regulatory authority based on a documentary audit certificate, and in case of objections, based on the results of the objections review.

The legislator, having repealed the Instruction on the Procedure for Imposing and Collecting Penal (Financial) Sanctions by the State Tax Service Authorities, which was approved by Order of the State Tax Administration of Ukraine No. 110 dated March 17, 2001 [287], failed to ensure the adoption of a new special subordinate legal act that would thoroughly clarify the procedures for applying and collecting financial fines. Unfortunately, the Tax Code of Ukraine fails to handle this task. The vast majority of its articles, and there are only 340 of them, have a blanket nature (or are reference norms). That is, in order to find out a certain period, it is necessary to refer to a whole series of articles, which are often devoid of details as well [288].

In the field of financial monitoring, an authorized official of the competent state regulatory authority (in accordance with the legislation on prevention and counteraction to money laundering) has 30 days after the initiation of proceedings in the case of violating anti-money laundering legislation to decide on imposing a fine on an offender or closing the proceedings in the case [289].

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[287] *Instruktsiia pro poriadok zastosuvannia ta stiahnennia sum shtrafnykh (finansovykh) sanktsii orhanamy derzhavnoi podatkovoi sluzhby: Nakaz DPA Ukrainy vid 17.03.2001 № 110* [Instruction on the Procedure for Imposing and Collecting Penal (Financial) Sanctions by the State Tax Service Authorities: Order of the State Tax Administration of Ukraine No. 110 dated March 17, 2001]. Retrieved from http://zakon.rada.gov.ua/cgiin/laws/main.cgi?nreg=z0268-01 (December 12, 2021). [in Ukrainian]

[288] Ivanskyy, A. Y. *Pravove rehuliuvannia strokiv pry zastosuvanni finansovykh sanktsii* [Legal regulation of periods when applying financial sanctions]. *Yevropeiski perspektyvy* [European Prospects]. 2011. No. 4. Part 1. P. 146–152. [in Ukrainian]

[289] *Poriadok zastosuvannia Derzhavnoiu komisiieiu z rehuliuvannia rynkiv finansovykh posluh Ukrainy shtrafiv za nevykonannia (nenalezhne vykonannia) vymoh Zakonu Ukrainy "Pro zapobihannia ta protydiiu lehalizatsii (vidmyvanniu) dokhodiv, oderzhanykh zlochynnym shliakhom": Rozporiadzhennia Derzhavnoi komisii z rehuliuvannia rynkiv finansovykh posluh Ukrainy vid 13.11.2003 № 120* [Procedure for Imposing Fines by the State Commission for Regulation of Financial Services Markets of Ukraine for Non-Fulfillment (Improper Fulfillment) of the Requirements of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime": Order of the State Commission for Regulation of Financial Services Markets of Ukraine No. 120 dated November 13, 2003]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. 2003. No. 49. Article 268. [in Ukrainian]

The decision to impose a fine for a financial offense related to securities circulation is made by an official of the National Securities and Stock Market Commission of Ukraine within 10 business days after receiving the relevant documents confirming the fact of violation (Part 5 of Article 12 of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine"). Therefore, depending on the type of financial offense, the legislation sets different periods for making a decision on applying sanctions. These periods are specific to the procedure for applying financial-law sanctions, since they differ from the procedure for conducting administrative proceedings, which, among other things, establishes a 7- or 15-day period for considering an administrative offense case (Article 277 of the Code of Ukraine on Administrative Offenses).

Thus, in accordance with the current legislation of Ukraine, financial-law sanctions are applied through the issuance of individual legal acts in the form of a decision or resolution in the form of a decision or resolution by authorized officials of public authorities within the period established by the legislation. Deviation from the above requirements of legal acts cannot be regarded as lawful, and therefore, in the absence (in case of non-issuance, etc.) of such a document on applying sanctions, it is considered that financial-law sanctions were not imposed on a person. In addition, it is necessary to distinguish between the beginning of the period for applying financial sanctions from the moment of establishing or discovering the fact of a financial offense and the period for their application itself, which depends on the specific type of such offense. At this point, the **stage of imposing financial-law liability ends and the stage of implementing of measures of financial-law liability begins**.

The stage of implementing unfavorable measures for violating financial-law norms is a key stage in the liability process in general, since the all preceding actions is aimed precisely at achieving the final result, which consists in enforcement of sanctions imposed on an offender. Therefore, as can be seen, the concept of "imposition" is not the same as the concept of "collection".

The procedure for applying (imposing) financial-law sanctions stipulates that an authority, having detected an offense and established its body and an offender's culpability, establishes the fact of its commission and the violated norm of financial legislation. As a result, by its decision, the authority obliges the offender to assume the financial-law liability measure established by law. That is, the fact of imposing financial-law sanctions is not yet a direct basis for changing the property status of an offender, and at the specified stage, the offender is not deprived of any property. The application of financial-law liability measures, which consists in making a corresponding decision on applying sanctions, is only an official act of notification on the part of the state represented by its authorities regarding detection of an offender's unlawful acts. These acts, due to them being proved and illegal, are subject to condemnation, and the offender should face unfavorable consequences for such acts.

Meanwhile, the *procedure for collecting financial-law sanctions* provides for a property claim addressed directly to the violator of financial legislation regarding the payment of sanctions imposed by a decision through the reduction of the violator's property (monetary) funds in order to implement the decision. At this stage, the corresponding actions to implement the decision made are taken, and it is possible to assert the final stage of financial-law liability, i.e. the implementation of its measures.

Certainly, these procedures are closely related as cause and effect, one procedure leads to another. The logical conclusion of the procedure for applying sanctions will be their actual collection from an offender, and therefore it is appropriate to consider some aspects of the stage of implementing liability measures.

An important point is the determination of the time from which a person is considered obligated to implement a decision on applying sanctions. The voluntary implementation of the decision can be initiated by the offender immediately after issuing such an act on applying sanctions and (or) after reviewing its text or receiving it.

However, today a significant number of such law enforcement documents are appealed by persons in relation to whom they were issued due to their disagreement with the fact of such a decision in general (i.e. with the fact of violating financial legislation) as well as with certain circumstances, in particular with the amount of imposed sanctions. Moreover, violation of the procedure for holding a person financially and legally liable is one of the main grounds for appealing the relevant activity of authorities, which, if such grounds are established, leads to invalidation and repeal of the legal act. In this case, the legislator regulates the issue of starting the decision implementation in different ways.

Clause 56.15 of Article 56 of the Tax Code of Ukraine stipulates that, in the event of administrative appeal, a complaint suspends the taxpayer’s obligation to fulfill the monetary obligations specified in a tax decision notice for the duration of the appeal procedure. During the specified period, tax returns for the appealed tax are not submitted, and the amount of the appealed monetary obligation is not considered agreed upon. The legislator’s position is identical in the field of compulsory state social insurance, where Decree of the President of Ukraine No. 141/2013 “On the Ministry of Revenue and Duties of Ukraine” dated March 18, 2013, establishes that an appeal against a decision of the Ministry of Revenue and Duties on applying financial sanctions suspends the period for their payment until the court renders a decision in the case. The period for paying financial sanctions is also suspended until the court renders a decision, provided that the payer duly initiates the appeal procedure within the statutory time limits.

The procedure for appealing decisions on applying financial-law sanctions in most cases provides for two options for appealing such a decision: to the relevant (regulatory) supreme authority (administrative procedure) and to the court (judicial procedure). A collecting authority is empowered by law to initiate a judicial procedure for collecting the amount of financial-law sanctions by applying to the court with a corresponding claim if the person on whom they are imposed, after receiving such documents, fails to fulfill their obligations. However, not all cases require the forced collection of sanctions through a judicial procedure. For example, a decision of the Ministry of Revenue and Duties of Ukraine on imposing penalties and/or fines is an executive document. Therefore, in the event that a unified contribution payer fails to pay the amounts specified in the decision within ten business days and notify of an appeal against the decision within this period, this decision should be transferred to a state enforcement service in accordance with the procedure established by law.

Judicial appeal against an act on applying financial-law sanctions, as a general rule, does not allow for the possibility of enforcing such a decision until the case is considered on the merits or the proceedings in the case are closed, if the claim is left without consideration, etc. Moreover, a controversial point is the issue of the fact that an offender should start its own countdown of the period for executing the decision (payment of sanctions) or appealing it from the moment the decision is made or received.

The Tax Code of Ukraine links the commencement of such a period to the moment a taxpayer receives a tax assessment notice. Similar provisions are contained in the Law of Ukraine "On the Collection and Accounting of a Unified Contribution for Compulsory State Social Insurance" and the Regulation on Currency Supervision approved by the relevant resolutions of the Board of the National Bank of Ukraine adopted in accordance with the Law of Ukraine "On Currency and Currency Operations", as amended. Along with this, the Law of Ukraine "On the Use of Registrars of Settlement Operations in Trade, Catering and Services", as applied in conjunction with the provisions of tax and fiscal legislation, contains a norm according to which the amounts of financial sanctions are subject to transfer by economic entities to the State Budget of Ukraine within ten days from the date of receipt of the decision on applying such financial sanctions issued by the authorities of the State Tax Service of Ukraine (Article 25).

In view of the need to fully respect the rights of an offender to appeal such an official decision, it is appropriate to determine the *beginning of the period for executing the decision on applying sanctions* not from the moment when it is made, but from the moment when it is received. Since the period of submission (delivery) of such a decision from when it is made by an authority to its receipt by a person to whom it concerns may take a considerable time and not in favor of the non-authority party to legal relations.

In light of the above, the *procedure for applying financial-law sanctions* should be defined as a *consistent performance of imperative, procedural actions associated with the legal fact of committing a financial offense and within which an offender is obligated to incur new or additional unfavorable property-related restrictions, and authorities are obligated to subject the offender to unfavorable property-related restrictions envisaged by the sanction of the violated financial-law norm*.

The procedure for applying financial-law sanctions does contain specific features that allow identifying the applied sanctions as financial-law sanctions, and not as measures of administrative or other liability. Such a feature is indicated by the involved offenders, including juridical persons, different legal sources governing this range of relations, different law enforcers, different procedural grounds as well as by the fact that administrative legislation does not single out a very significant moment when the obligation to pay money to the state treasury is agreed upon. This is of great importance for the success and legality of the procedure for imposing and collecting financial-law sanctions. At the same time, sanctions are not always applied even if there are the relevant legal grounds, just as not all cases provide that already applied financial-law sanctions should be paid by the culpable person. Furthermore, *financial law contains norms that exclude even the potential possibility of applying financial-law sanctions, despite the presence of prerequisites for this*. Such cases are not unique and quite often occur in financial legal relations, which makes them the subject of consideration in the next paragraph. It should also be added that, unfortunately, previously this important direction (for all participants in financial activities) of systematization and grouping of grounds for exemption from financial-law liability as well as grounds for incurring financial-law liability, applying and collecting financial-law sanctions has not been thoroughly examined in legal scholarship. This can be explained by the relatively short period of existence of such a very important phenomenon (which was scientifically substantiated and accepted as the main underlying concept of litigation by the Supreme Court of Ukraine and was fully reflected in the relevant sections of the Tax Code of Ukraine) as financial-law liability. A review of the next paragraph will bring us to an interesting study.

The above procedures are applied in accordance with the current legislation of Ukraine, taking into account subsequent amendments and special legal regimes, including those introduced during martial law.

2.4. Exemption from the Application and Payment of Financial-Law Sanctions

The application of financial-law liability measures is not always possible due to a number of reasons, where this is either inappropriate or objectively impossible.

National legal theorist V. V. Kopieichykov notes the following: "The inevitability of liability, as one of the principles of the state's legality, does not mean that a person must be legally liable for every offense, serve the full sentence or be subject to a penalty. The legislator provides the grounds for exemption from legal liability"[290].

Exemption from the application of financial-law sanctions should be distinguished from exemption from their payment (collection), that is, from the actual incurrence of financial-law liability, which is possible at the stage of implementing the relevant legal act of individual action by which a decision on the collection of sanctions from an offender is made.

In general, *exemption from the application of financial-law sanctions should be understood as exemption from financial-law liability as such.* This is due to the fact that the non-implementation of state condemnation of an offender for

[290] Kopieichykov, V. V. *Pravoznavstvo: pidruchnyk* [Jurisprudence: textbook] / edited by V. V. Kopieichykov, A. M. Kolodii. Kyiv: *Yurinkom Inter*, 2006. P. 176. [in Ukrainian]

committing a financial offense in the form of adopting a relevant law enforcement act serves as the legal basis for not applying liability measures, that is, for not imposing the obligation to pay sanctions on the offender. Thus, exemption from the application of financial-law sanctions is characterized by the absence of both state condemnation and punishment, despite the fact that the offense itself objectively took place. In such cases, the offense remains legally insignificant due to the presence of circumstances expressly provided for by law.

This feature fundamentally distinguishes exemption from the application of financial-law sanctions from exemption from their payment (collection). In the latter case, the state condemnation has already taken place, and a decision on applying sanctions has already been adopted; however, the execution of such a decision is either postponed, terminated or rendered impossible due to legally relevant circumstances.

When studying the essence of exemption from financial-law liability, it is advisable to rely on doctrinal developments elaborated in other branches of law, in particular criminal law, where the institution of exemption from liability has reached a high degree of normative and theoretical elaboration.

In criminal law, exemption from criminal liability is understood as the refusal of the state, represented by competent authorities, to apply criminal law measures to a person who has committed a criminal offense, in cases and on grounds provided for by criminal legislation. The social and legal basis of such exemption lies in the need to ensure proportionality, fairness and effectiveness of legal regulation.

The Criminal Code of Ukraine provides for various grounds for exemption from criminal liability, including active repentance, reconciliation with the victim, transfer on bail, change of circumstances, expiration of limitation periods, as well as acts of amnesty and pardon. At the same time, criminal legislation also distinguishes circumstances that exclude the criminality of an act, such as necessary defense, extreme necessity, detention of an offender, justified risk, and others.

The distinction between exemption from liability and exclusion of the possibility of liability is of fundamental importance. As noted by Ukrainian legal scholars, the exclusion of liability refers to circumstances under which an act, although formally resembling an offense, loses its unlawful character due to legally significant conditions, and therefore cannot give rise to liability at all. According to O. F. Skakun, the absence of a set of legally required conditions that make liability possible and mandatory excludes legal liability, which distinguishes exclusion of liability from exemption from it [291]. In a similar vein, V. V. Ivanov emphasizes that circumstances excluding legal liability are expressly defined by the legislator and result in the loss of unlawfulness of an act, making the application of liability measures legally impermissible [292]. O. V. Tserkovna, summarizing doctrinal approaches to this issue, concludes that the grounds for exclusion of legal liability primarily include circumstances related to the absence of a subject of liability or the absence of unlawfulness, such as insanity or necessary defense, whereas exemption from liability concerns situations in which liability could arise but is not implemented due to special legal grounds [293].

Thus, the separation of the concepts of exemption from liability and exclusion of the possibility of liability is theoretically justified and practically significant, since these legal phenomena differ in the moment of occurrence and in their legal consequences.

Current financial legislation of Ukraine does not provide for a unified and systematic regulation of grounds for exemption from the application or payment of financial-law sanctions, nor does it expressly distinguish such exemption from the exclusion

[291] Skakun, O. F. *Teoriia derzhavy i prava: pidruchnyk* [Theory of state and law: textbook]. Kharkiv: Konsum, 2001. P. 439–440. [in Ukrainian]

[292] Ivanov, V. V. *Pravovi pidstavy yurydychnoi vidpovidalnosti* [Legal Grounds of Legal Liability]. Kyiv: Alerta, 2014. P. 98. [in Ukrainian]

[293] Tserkovna, O. V. *Kharakterystyky poniat “vykliuchennia tsyvilno-pravovoi vidpovidalnosti” ta “zvilnennia vid tsyvilno-pravovoi vidpovidalnosti”* [Characteristics of the concepts of “exclusion of civil liability” and “exemption from civil liability”]. Pivdennoukrainskyi pravnychyi chasopys [South Ukrainian Law Journal]. 2010. No. 3. P. 62–65. [in Ukrainian]

of the possibility of applying sanctions. At the same time, analysis of financial legislation and law enforcement practice demonstrates the expediency of differentiating: 1) exemption from the application of financial-law sanctions; 2) exemption from their payment (collection); and 3) exclusion of the possibility of applying financial-law sanctions from the outset.

Despite certain similarities between financial and criminal law in terms of imperative regulation and public interest orientation, the legal mechanisms governing exemption from liability in these branches differ significantly due to the specific nature of financial relations and the compensatory and fiscal functions of financial liability.

For a long time, acts regulating financial legal relations did not contain either the concept of exemption from financial-law liability or a structured list of its grounds. This gap was partially addressed as a result of the tax reform implemented in 2020 with the adoption of Law of Ukraine No. 466-IX “On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Elimination of Technical and Logical Discrepancies in Tax Legislation,” which entered into force on January 1, 2021 and remains effective as of 2026.

Part 8 of Article 112 of the Tax Code of Ukraine establishes an exhaustive list of circumstances exempting from financial liability for tax offenses and violations of other legislation, compliance with which is entrusted to regulatory authorities. These circumstances include, inter alia: expiration of limitation periods for applying fines; acting in accordance with duly registered individual tax advice or agreed tax advice; acting in accordance with legal conclusions of the Supreme Court later revised; commission of an act as a result of unlawful actions or omissions of regulatory authorities; fault of banks, treasury authorities, payment system participants or postal operators; technical or methodological errors in electronic systems; independent correction of errors by the taxpayer in accordance with statutory procedure; force majeure; and acting in accordance with binding customs advice or preliminary decisions subsequently amended or revoked.

These provisions form the normative basis for distinguishing exemption from financial-law liability within tax relations and serve as a reference point for further development of analogous mechanisms in other areas of financial law.

The grounds for exemption from applying financial-law sanctions should be determined as follows:

1. *Expiration of a limitation period.*

In general, the application of a limitation period corresponds to such a principle of legal liability as timeliness, which establishes that the primary purpose of legal liability is to ensure public order rather than to punish an entity that has already ceased unlawful behavior and has not committed a repeated offense.

In criminal law, as already noted, there exists an institution of exemption from criminal liability due to expiration of a limitation period, according to which a person is exempted from criminal liability if the period established by the Criminal Code of Ukraine has expired from the date of commission of a crime to the date of entry into force of a sentence, except for crimes against peace and security of mankind.

The period of time that passes from the moment of committing a crime to imposing criminal liability and punishment significantly affects achievement of the purpose of punishment. The shorter this period, the more effectively the principle of inevitability of punishment is realized and the goals of general and special prevention are achieved. Conversely, the passage of a significant amount of time weakens the educational and preventive value of punishment and, in some cases, renders its application inappropriate and inconsistent with the principle of humanism[294].

In the field of financial-law liability, the legislator also applies the concept of a limitation period. Article 114 of the Tax Code of Ukraine establishes that deadlines for imposing penal (financial) sanctions (fines) on taxpayers correspond to limitation periods for determining tax liabilities defined in Article 102 of this Code.

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[294] Andrusiv, H. V., Andrushko, P. P., Beniuvskyi, V. V. *Kryminalne pravo Ukrainy. Zahal. chastyna: pidruch.* [Criminal law of Ukraine. General part: textbook] / edited by P. S. Matyshevskyi and others. Kyiv: *Yurinkom Inter,* 1997. P. 353. [in Ukrainian]

Article 102 provides for the right of a controlling authority to independently determine the amount of a taxpayer's monetary obligations no later than the expiration of 1,095 days following the last day of the statutory deadline for submitting a tax return, payment of tax liabilities, or, where applicable, the actual date of submission of such return.

The amendments introduced by Law of Ukraine No. 1797-VIII of December 21, 2016, which entered into force on January 1, 2017, remain applicable. Under Clause 102.1 of Article 102 of the Tax Code of Ukraine, the controlling authority is entitled to conduct an audit and independently determine monetary obligations within 1,095 days, or 2,555 days in the case of controlled transactions under Article 39 of the Code[295].

Therefore, when planning, organizing, and conducting documentary audits, controlling authorities must take into account that limitation periods apply not only to the imposition of sanctions but also to the period that may be covered by an audit.

If the deadline for determining monetary obligations is calculated with reference to the date of issuance of a tax notification-decision based on audit results, compliance with the limitation periods requires that the audit coverage period be calculated with reference to the audit commencement date specified in the audit order.

Failure to apply penal sanctions within the statutory limitation period makes their presentation for payment impossible and exempts the taxpayer from the obligation to pay such financial-law sanctions.

The Procedure approved by Order of the Ministry of Finance of Ukraine No. 460 of April 23, 2015, governing consideration of violations of legislation on prevention of money laundering, terrorist financing, and proliferation of weapons of mass destruction, establishes that sanctions may be applied within six months from

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[295] *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo pokrashchennia investytsiinoho klimatu v Ukraini: Zakon Ukrainy vid 21 hrudnia 2016 roku № 1797-VIII* [On Amendments to the Tax Code of Ukraine on Improving Investment Environment in Ukraine: Law of Ukraine No. 1797-VIII dated December 21, 2016]. *Vidomosti Verkhovnoi Rady* [Statements of the Verkhovna Rada]. 2017. No. 5–6. Article 48. [in Ukrainian]

the date of detection of the offense, but not later than one year from the date of its commission[296].

In the field of banking regulation, under the Regulation on the Application of Enforcement Measures by the National Bank of Ukraine, approved by Resolution of the NBU Board No. 346 of August 17, 2012, fines under Article 73 of the Law of Ukraine "On Banks and Banking Activities" are imposed within six months from the date of detection of the offense.

Thus, exemption from applying financial-law sanctions due to expiration of limitation periods is a *legal fact*, directly established by law, arising upon expiration of the statutory term and *not requiring an additional discretionary decision of a competent authority*.

Such restrictions are justified, as they protect an offender from delayed liability caused by inaction of public authorities and stimulate timely response by regulatory bodies, ensuring effectiveness of punitive and educational functions.

2. *Judicial recognition of a natural person as legally incompetent, missing, or declaring them dead, or the death of a natural person in case of insufficient property* execution on which can be levied in accordance with the law also makes the imposition of financial-law sanctions on them impossible.

The decisive factor is the moment when such circumstances arise. Exemption applies if recognition of incapacity, missing status, declaration of death, or death occurs after the commission of a financial offense but before the adoption of a decision to impose liability, as at that time the person lacks financial legal personality.

At the same time, the peculiarities of financial-law relations allow for partial succession of obligations. An heir assumes tax obligations and tax debt of the deceased, except for liquidated damages (fines and penalties), which, pursuant

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[296] *Pro deiaki pytannia zastosuvannia sanktsii Ministerstvom finansiv Ukrainy: Nakaz Ministerstva finansiv Ukrainy 23.04.2015 № 460* [On Certain Issues Concerning the Application of Sanctions by the Ministry of Finance of Ukraine: Order of the Ministry of Finance of Ukraine No. 460 dated April 23, 2015]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. Official edition dated June 2, 2015, No. 41, p. 115, Article 1284. [in Ukrainian]

to Part 3 of Article 1231 of the Civil Code of Ukraine, are payable by the heir only if such amounts were awarded by a court during the testator's lifetime [297].

3. *Occurrence of a corresponding tax debt due to force majeure*.

Force majeure (from Latin **vis major**) is a term borrowed from French in the literal sense "superior force", better known as "irresistible force". In a general sense, force majeure should be understood as an unforeseen event that does not depend on the will and actions of the parties, but leads to the impossibility of their fulfillment of certain obligations.

Martial law was introduced in Ukraine by Decree of the President of Ukraine No. 64/2022 dated February 24, 2022 [298]. The Chamber of Commerce and Industry of Ukraine recognizes the circumstances related to the introduction of martial law as force majeure. These circumstances are considered force majeure from February 24, 2022, until their official termination in accordance with legislation. Therefore, the introduction of martial law led to significant changes in all spheres of public life and substantially affected economic activity. The tax system of Ukraine was not left unaffected, since under conditions of martial law the legislator faced the necessity of ensuring a balance between fiscal stability and support of taxpayers.

In this regard, the State Tax Service of Ukraine informed, in explanatory and informational letters, that the application of penal sanctions for violations of tax legislation committed during martial law is subject to special legal regulation. According to Law of Ukraine No. 2118-IX "On Amendments to the Tax Code and Other Legislative Acts of Ukraine Regarding the Specifics of Taxation

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[297] *Tsyvilnyi kodeks Ukrainy: Zakon Ukrainy vid 16 sichnia 2003 roku* [Civil Code of Ukraine: Law of Ukraine dated January 16, 2003]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2003. No. 40–44. Article 356. [in Ukrainian]

[298] *Pro vvedennia voiennoho stanu v Ukraini: Ukaz Prezydennta Ukrainy vid 24 liutoho 2022 r. № 64/2022* [On Introduction of Martial Law in Ukraine: Decree of the President of Ukraine No. 64/2022 dated February 24, 2022]. *Zakonodaastvo Ukrainy: baza danykh: ofits. internet predstavnytstvo Prezydenta Ukrainy* [Legislation of Ukraine: database: official website of the President of Ukraine]. Retrieved from https://www.president.gov.ua/documents/642022-41397 (February 27, 2022) [in Ukrainian]

and Reporting During the Period of Martial Law" dated March 3, 2022, taxpayers may be exempted from financial-law sanctions for the period of martial law, provided that such violations occurred as a result of force majeure circumstances. This regulation applies, in particular, to fines for:

- untimely registration of excise invoices in the Unified Register of Excise Invoices and adjustment calculations thereto;
- untimely submission of electronic documents containing data on the actual remaining fuel and the volume of fuel or ethyl alcohol turnover;
- violations of declaration and payment of value added tax, excise tax, and rent payments.

Given the direct effect of Clause 112.8.9 of the Tax Code of Ukraine, during force majeure circumstances penal sanctions are not applied for violations of legislation regulating licensed activities, and measures aimed at revocation of licenses are not implemented, provided that such violations are causally related to force majeure. In such cases, licenses are considered valid if, during the period of force majeure, the next license payment was not made and/or the license for the following activities formally expired:

- production, wholesale and retail trade of alcoholic beverages, tobacco products and liquids used in electronic cigarettes;
- production, storage, wholesale and retail trade of fuel [299].

It should be noted that according to Law of Ukraine No. 2120-IX "On Amendments to the Tax Code and Other Legislative Acts of Ukraine Regarding the Validity of Norms for the Period of Martial Law" [300], fines for offenses related to using registers

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[299] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

[300] *Pro vnesnennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy shchodo dii norm na period dii voiennoho stanu: Zakon Ukrainy vid 15 bereznia 2022 r. №2120-IX* [On Amendments to the Tax Code and Other Legislative Acts of Ukraine Regarding the Validity of Norms for the Period of Martial Law: Law of Ukraine No. 2120-IX dated March 15, 2022]. *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/2120-20#Text (May 12, 2022) [in Ukrainian]

of payment transactions committed during military aggression will not be applied as well, since such exemption is expressly provided for in Clause 112.8.9 of the Tax Code of Ukraine, which states that a taxpayer is exempted from liability for tax offenses and violations of other legislation, the control over compliance with which is entrusted to a regulatory authority, if an offense occurred as a result of force majeure. However, in Law No. 2120-IX, the legislator allowed the imposition of penal sanctions to entrepreneurs for violating the procedure for payment transactions when selling excise goods. It should be pointed out that according to Law of Ukraine No. 2115-IX "On Protecting the Interests of Entities Submitting Reports and Other Documents During the Period of Martial Law or State of War" dated March 3, 2022[301], taxpayers who, as a result of martial law, were objectively unable to submit reports, pay taxes and fees, or register tax invoices and adjustment calculations were exempted from liability for failure to fulfill such obligations. During martial law and within six months after its termination, such taxpayers are exempted from financial liability, provided that the impossibility of fulfillment was caused by circumstances beyond their control. At the same time, the legislator established simplified approaches to confirming such impossibility, which significantly expanded the scope of application of this exemption.

The Verkhovna Rada of Ukraine continues to amend tax legislation in order to adapt it to the conditions of martial law. In this context, Law of Ukraine No. 2260-IX "On Amendments to the Tax Code and Other Laws of Ukraine Regarding the Specifics of the Tax Administration of Taxes, Fees and a Single Contribution During

[301] *Pro zakhyst interesiv subiektiv podannia zvitnosti ta inshykh dokumentiv u period dii voiennoho stanu abo stanu viiny: Zakon Ukrainy vid 03.03.2022 № 2115-IX* [On Protecting the Interests of Entities Submitting Reports and Other Documents During the Period of Martial Law or State of War: Law of Ukraine No. 2115-IX dated March 3, 2022]. *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/2115-20#Text (May 12, 2022). [in Ukrainian]

the State of Martial Law, State of Emergency" dated May 12, 2022, plays a key role [302].

In accordance with Clause 69.1 of Article 69 of the Tax Code of Ukraine, as amended, if a taxpayer does not have the opportunity to timely fulfill their tax obligations in terms of paying taxes and fees, submitting reports, including reports envisaged by Clause 46.2 of Article 46 of this Code, registering tax or excise invoices and adjustment calculations, or submitting electronic documents containing data on the actual remaining fuel and volume of fuel or ethyl alcohol turnover, such taxpayer is exempted from liability stipulated by the Tax Code, subject to mandatory fulfillment of these obligations within six months after the termination or cancellation of martial law.

It should be noted that taxpayers who had the opportunity to timely fulfill their tax obligations were exempted from liability for untimely fulfillment of such obligations, the deadline for which fell within the period from February 24, 2022, until the date of entry into force of Law No. 2260-IX, provided that they registered tax invoices by July 15, 2022, submitted tax returns by July 20, 2022, and paid taxes and fees no later than July 31, 2022.

Taxpayers, including with regard to their branches, representative offices, standalone or other subdivisions, whose ability to fulfill tax obligations was restored, are exempted from liability for untimely fulfillment of obligations, the deadlines for which fell within the period from February 24, 2022, until the date of restoration of such ability, provided that these obligations were fulfilled within 60 calendar days from the first day of the month following the month of restoration of such ability.

In case of independent correction by a taxpayer, within tax periods up to July 25, 2022, in compliance with the procedure

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[302] *Pro vnesnennia zmin do Podatkovoho kodeksu Ukrainy shchodo osoblyvosei administruvannia podatkiv, zboriv ta yedynoho vnesku pid chas diii voiennoho, nazhdzvychainoho stanu: Zakon vid 12 travnia 2022 r. № 2260-IX* [On Amendments to the Tax Code and Other Laws of Ukraine Regarding the Specifics of the Tax Administration of Taxes, Fees and a Single Contribution During the State of Martial Law, State of Emergency: Law No. 2260-IX dated May 12, 2022]. *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Update date: May 27, 2022. Retrieved from https://zakon.rada.gov.ua/laws/show/2260-IX#Text (May 17, 2022). [in Ukrainian]

and requirements of Article 50 of the Tax Code of Ukraine, of errors that led to understatement of tax liabilities in reporting periods falling within the period of martial law, such taxpayer is exempted from the imposition and payment of penal sanctions and penalties specified in Clause 50.1 of Article 50 of the Tax Code of Ukraine. After this period, the following fines apply:

- submission of a clarifying calculation—a 3% fine;
- inclusion of the understated amount in the tax return for the next reporting period—a 5% fine.

Despite the broad use of the concept of force majeure in contractual and public-law relations, Ukrainian legislation does not contain a single, exhaustive and universal definition of this term. In economic doctrine, force majeure is traditionally understood as a contractual clause that specifies circumstances arising after the conclusion of a contract for reasons beyond the control of the parties and preventing its execution, allowing postponement or exemption from liability[303].

At the legislative level, Part 1 of Article 617 of the Civil Code of Ukraine establishes that a person who has violated an obligation is exempted from liability if they prove that the violation occurred as a result of an accident or force majeure. Thus, the legislator emphasizes the key feature of force majeure—its irresistible nature, that is, the impossibility of eliminating its consequences by the efforts of the obligated party. Similar approaches are reflected in sectoral regulatory acts, including Order of the State Aviation Administration of Ukraine No. 186 dated March 14, 2006, which defines force majeure as extraordinary and unforeseen circumstances beyond the control of the parties, the consequences of which could not be avoided even with maximum diligence. Earlier expanded definitions were contained in regulatory acts that have since lost legal force. The Resolution of the Cabinet of Ministers of Ukraine approving the list of circumstances indicating a threat of occurrence or accumulation of tax debt interprets

[303] *Ekonomichna entsyklopediia* [Economic encyclopedia]: in 3 volumes. Kyiv: Vydav. tsentr “Akademiia”, 2002. Vol. 3. P. 847. [in Ukrainian]

force majeure as circumstances of irresistible force caused by exceptional natural phenomena or unforeseen social events occurring regardless of the will of the applicant[304].

In accordance with paragraph 12 of Clause 1 of Section 1 of the Procedure for Issuing, Accounting, Postponing and Paying (Repaying) a Bill of Exchange (Written Commitment) Issued by a Business Entity when Conducting Transactions with Customer-Supplied Raw Materials in External Economic Relations approved by Order of the State Tax Administration of Ukraine No. 83 dated February 25, 2002[305], it is determined that force majeure circumstances are unforeseen and insurmountable events occurring regardless of the will and desire of a customer or an executor (war, blockade, strike, fire, accident, flood, sea freezing, closure of sea straits on a usual sea route between the ports of shipment and unloading, other natural disasters, export (import) ban, currency restrictions or other restrictions on ownership of raw materials or finished products, including their movement, adopted by the state or the relevant public authority, etc.) and resulting in the violation of the terms and conditions of concluded contracts, the Law of Ukraine "On Transactions

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[304] *Pro zatverdzhennia pereliku obstavyn, shcho svidchat pro naiavnist zahrozy vynyknennia abo nakopychennia podatkovoho borhu, i dokazu isnuvannia takykh obstavyn: Postanova Kabinetu Ministriv Ukrainy vid 27 hrudnia 2010 roku. № 1235* [On Approval of the List of Circumstances Indicating a Threat of Occurrence or Accumulation of Tax Debt and Evidence of the Existence of Such Circumstances: Resolution of the Cabinet of Ministers of Ukraine No. 1235 dated December 27, 2010]. *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/1235-2010-п#Text (August 24, 2021). [in Ukrainian]

[305] *Poriadok vydachi, obliku, vidstrochennia ta oplaty (pohashennia) vekselia (pysmovoho zoboviazannia), shcho vydaietsia subiektom pidpryiemnytskoi diialnosti pry zdiisnenni operatsii z davalnytskoiu syrovynoiu u zovnishnoekonomichnykh vidnosynakh: Nakaz Derzhavnoi podatkovoi administratsii Ukrainy vid 25.02.2002 № 83* [Procedure for Issuing, Accounting, Postponing and Paying (Repaying) a Bill of Exchange (Written Commitment) Issued by a Business Entity when Conducting Transactions with Customer-Supplied Raw Materials in External Economic Relations: Order of the State Tax Administration of Ukraine No. 83 dated February 25, 2002]. *Ofitsiinyi visnyk Ukrainy* [Official Bulletin of Ukraine]. 2002. No. 11. Article 342. [in Ukrainian]

with Customer-Supplied Raw Materials in External Economic Relations”[306] and other legislative acts.

The provisions of Part 2 of Article 14 of Law of Ukraine No. 671/97-VR “On the Chamber of Commerce and Industry” dated December 2, 1997, define force majeure circumstances as extraordinary and unavoidable circumstances that objectively make it impossible to fulfill the obligations envisaged by the terms and conditions of a contract (agreement, etc.), obligations in accordance with legislative and regulatory acts. It is worth noting that the Chamber of Commerce and Industry of Ukraine defines the military aggression of the Russian Federation against Ukraine as force majeure. This is evidenced by a letter from the Chamber of Commerce and Industry of Ukraine. Furthermore, the Chamber of Commerce and Industry of Ukraine, taking into account the extremely difficult situation faced by our country, decided to simplify the certification of force majeure.

Force majeure is generally divided into irresistible force and legal force majeure. The general principle of determining irresistible force should include objective and absolute nature of the circumstances. In other words, the effect of the factors that became an obstacle to the fulfillment of obligations should be objective and absolute, i.e. affect not only the party that caused damage but also apply to all or a large number of other entities. The absoluteness of circumstances of irresistible force or force majeure implies the impossibility of fulfilling obligations regardless of the debtor’s efforts.

According to judicial and business practice, irresistible force includes natural disasters, such as floods, earthquakes, landslides, etc., or other circumstances that cannot be predicted and prevented (or can be predicted, but cannot be prevented) at the current level of development of science and human

[306] *Pro operatsii z davalnytskoiu syrovynoiu u zovnishnoekonomichnykh vidnosynakh: Zakon Ukrainy vid 15.09.1995 № 327/95-VR* [On Transactions with Customer-Supplied Raw Materials in External Economic Relations: Law of Ukraine No. 327/95-VR dated September 15, 1995]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 1995. No. 32. Article 255. [in Ukrainian]

capabilities. In all civilized legal systems, irresistible force is an exculpatory circumstance.

Legal force majeure includes decisions of supreme public authorities to prohibit export or import, introduction of currency restrictions, etc.; social circumstances, such as hostilities, coup d'états, strikes, epidemics and related quarantines, etc.[307]. Thus, the occurrence of such circumstances is a reason for both temporary non-fulfillment of obligations by the affected party and exemption of this party from the application of financial-law sanctions due to such circumstances.

The Tax Code of Ukraine grants the right to exemption from payment of tax debt, including financial-law sanctions, that arose as a result of force majeure circumstances. Such circumstances must be properly confirmed in accordance with the procedure established by law. The Cabinet of Ministers of Ukraine amended the list of circumstances indicating a threat of occurrence or accumulation of tax debt and evidence of the existence of such circumstances by Resolution No. 1235 dated December 27, 2010[308].

In particular, it was clarified that the circumstances constituting grounds for postponement of monetary obligations or tax debt include force majeure circumstances specified in Part 2 of Article 14 of the Law of Ukraine "On Chambers of Commerce and Industry in Ukraine", which objectively make fulfillment of obligations impossible.

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[307] Ivanskyy, A. I. *Fors-mazhorni obstavyny pry zastosuvanni finansovo-pravovoi vidpovidalnosti* [Force majeure circumstances when imposing financial-law liability]. *Derzhava i pravo: zb. nauk. pr.* [State and law: collection of research papers]; Issue 27. Kyiv: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2005. P. 413–419. [in Ukrainian]

[308] *Pro zatverdzhennia pereliku obstavyn, shcho svidchat pro naiavnist zahrozy vynyknennia abo nakopychennia podatkovoho borhu, i dokazu isnuvannia takykh obstavyn: Postanova Kabinetu Ministriv Ukrainy vid 27 hrudnia 2010 roku. № 1235* [On Approval of the List of Circumstances Indicating a Threat of Occurrence or Accumulation of Tax Debt and Evidence of the Existence of Such Circumstances: Resolution of the Cabinet of Ministers of Ukraine No. 1235 dated December 27, 2010]. *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/1235-2010-п#Text (August 24, 2021). [in Ukrainian]

The occurrence of such circumstances is confirmed by:

- a certificate issued by the Chamber of Commerce and Industry of Ukraine confirming force majeure circumstances;
- a decision of the President of Ukraine on declaring certain territories zones of emergency ecological situation approved by the Verkhovna Rada of Ukraine.

In the latter case, an applicant must additionally submit a certificate issued by a competent local authority authorized to confirm the existence of force majeure circumstances (Resolution No. 393 dated June 7, 2017).[309]

4. *A taxpayer's act in accordance with a tax advice due to or as a result of which the taxpayer violated financial-law norms, in particular based on the fact that such tax advice was later amended or repealed.*

This condition is specified in Clause 53.1 of Article 53 of the Tax Code of Ukraine. In this case, such non-application of financial-law (as well as criminal, administrative, etc.) liability measures is based on the existence of an advice in written or electronic form and extends exclusively to those offenses that were committed before the revocation, cancellation or clarification of the tax advice. It should also be taken into account that such tax advice should also meet certain characteristics, in particular, the tax advice should be provided in accordance with the current legislation, comply with it and not be prepared as a result of collusion between the taxpayer and the person who signed this tax advice. The tax advice must be issued by an authorized body or official in accordance with the requirements of Article 53 of the Tax Code of Ukraine, correspond to the provisions of the tax legislation in force at the time of its issuance, and must not be prepared as a result of collusion between the taxpayer and the person who signed such tax advice.

[309] *Obstavyny, yaki ye pidstavoiu dlia vidstrochennia hroshovykh zoboviazan abo podatkovoho borhu* [Circumstances being the basis for postponing monetary obligations or tax debt] // *Visnyk. Ofitsiino pro podatky* [Bulletin. Officially About Taxes] / Official edition of the State Fiscal Service of Ukraine. Retrieved from http://www.visnuk.com.ua/uk/news/100005054-obstavini-yaki-ye-pidstavoyu-dlya-vidstrochennya-groshovikh-zobovyazan-abo-podatkovogo-borgu [in Ukrainian]

5. *A taxpayer's independent calculation of a sanction at a lower rate.*

Such an opportunity is allowed by the Tax Code of Ukraine (Clause 50.1 of Article 50) on the condition that the taxpayer submits a clarifying calculation and pays an amount of underpayment upon self-discovery of the fact of understating the tax obligation for the past tax periods. The financial-law sanction in the form of a fine in this case is 3%, and 5% in case of including the underpayment amount in the tax return submitted for the next tax period[310]. The application of such reduced sanctions is possible only if the clarifying calculation is submitted within the statutory limitation periods and in compliance with the procedural requirements established by the Tax Code of Ukraine.

This case is special in view of the fact that the exemption from applying the sanction does not occur as a result of the adoption of a relevant procedural act by a regulatory authority, but is carried out directly by the taxpayer based on the norm of law. In addition, it is important to note that in this case the exemption from applying the sanction is not complete, but partial.

6. *Tax amnesty.*

Tax amnesty is singled out by the vast majority of scientists as a basis for exemption from applying financial-law sanctions in legal science[311].

However, as of 2026, Ukrainian legislation does not provide for a general tax amnesty that would exempt taxpayers from financial-law liability for tax offenses committed prior to the entry into force of a specific amnesty law. Legislative initiatives concerning tax amnesty have been proposed at various times, but no comprehensive and permanent tax amnesty regime has been enacted and remains in force. Therefore, tax amnesty may be considered only as a theoretical or historical construct rather than a currently applicable legal basis for exemption from financial-law sanctions.

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[310] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

[311] Braynin, Ya. M. *Ugolovnaya otvetstvennost i ee osnovaniya v sovetskom ugolovnom prave* [Criminal liability and its grounds in Soviet criminal law]. M.: Yurid. lit., 1963. P. 12. [in Russian]

7. *The possibility of reducing the agreed amount of tax debt as a result of a tax compromise.*

It should be noted that in criminal and civil laws, the institution of reconciliation of the parties roughly corresponds to a tax compromise. As for the financial liability, the possibility of exemption from payment of a tax debt, including financial-law sanctions, due to reaching a tax compromise was envisaged by the Law of Ukraine "On the Procedure for Repayment of Taxpayers' Obligations to Budgets and State Trust Funds", which determined the right of an authorized employee of a tax authority to offer such a taxpayer, who appeals the tax authority's decision within the administrative appeal procedure, a compromise solution to the dispute that consists in satisfying part of the taxpayer's complaint under the obligation of the latter to agree to the remaining tax obligations calculated by the regulatory authority. This Law has lost its force, and the described mechanism no longer applies under current legislation.

In the case of a compromise regarding the reduction of the tax obligation amount calculated earlier, the previously sent tax notice was considered revoked from the day the taxpayer received a new tax notice containing a new amount of the tax obligation. The legal regime concerning tax compromise was temporarily restored in a special and limited form due to the entry into force of the Law of Ukraine "On Amendments to the Tax Code of Ukraine Regarding the Specifics of Clarifying Tax Obligations on Corporate Income Tax and Value Added Tax in Case of Tax Compromise" dated December 25, 2014[312], and Letter of the State Fiscal Service of Ukraine No. 550/2/99-99-10-04-01-10 dated March 6, 2015, which contains an explanation of the procedure and grounds for applying

[312] *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo osoblyvostei utochnennia podatkovykh zoboviazan z podatku na prybutok pidpryiemstv ta podatku na dodanu vartist u razi zastosuvannia podatkovoho kompromisu: Zakon Ukrainy vid 25 hrudnia 2014 roku* [On Amendments to the Tax Code of Ukraine Regarding the Specifics of Clarifying Tax Obligations on Corporate Income Tax and Value Added Tax in Case of Tax Compromise: Law of Ukraine dated December 25, 2014]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2015. No. 6. Article 38. [in Ukrainian]

tax compromise[313]. These acts had a temporary nature and are no longer applicable.

Tax compromise is a regime of exemption of taxpayers and/or their officials (officers) from legal liability for underestimating tax obligations on corporate income tax and/or VAT for tax periods that occurred before April 1, 2014, taking into account the limitation periods established by Article 102 of the Tax Code. In particular, limitation periods mean the determination of monetary obligations within 1,095 days from the day following the last day of the deadline for submitting a tax return, and if such a return was submitted later, within 1,095 days from the day following the day of its actual submission[314].

It is known that such types of legal liability as financial, administrative and criminal are imposed for violating tax laws. In this case, financial liability is imposed, as a rule, in accordance with the Tax Code in the form of penal (financial) sanctions (fines) and/or penalties.

Therefore, the legislator at that time stipulates that tax obligations according to the tax compromise procedure should be paid by a taxpayer to the budget at the rate of 5% of the tax obligation understatement amount. The other part, 95%, was considered repaid solely within the framework of the tax compromise procedure, penal sanctions are not applied to the payer, and therefore a penalty is not imposed.

Exemption from criminal liability was ensured only within the limits of the special tax compromise legislation in accordance with the procedure envisaged by the Criminal and Criminal Procedure Codes, since an act committed by a taxpayer or their officials (officers) which led to understating their tax obligations on corporate income tax and/or VAT, if such tax obligations had been clarified according to the tax compromise procedures and paid

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[313] *Lyst Derzhavnoi fiskalnoi sluzhby Ukrainy vid 06.03.2015 № 550/2/99-99-10-04-01-10* [Letter of the State Fiscal Service of Ukraine No. 550/2/99-99-10-04-01-10 dated March 6, 2015]. *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from http://zakon.rada.gov.ua/rada/show/v550_872-15 (August 12, 2022) [in Ukrainian]

[314] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

to the budgets, was not considered willful evasion of taxes and fees (Clause 10 of Law No. 63, Article 212 of the Criminal Code of Ukraine). This provision currently has no independent regulatory effect.

At the same time, it is necessary to take into account that the essence of tax compromise consisted in the exemption from liability for understating corporate income tax obligations and overstating VAT credit, and above all, was aimed at encouraging conscientious taxpayers during a limited transitional period, rather than establishing a permanent mechanism of exemption from financial-law liability[315].

8. *Exemption from applying financial-law sanctions for the period of quarantine*.

In a pandemic and quarantine, it is hardly possible to demand from business entities the strict fulfillment of all tax obligations. Therefore, the legislator softened the requirements established by the Tax Code of Ukraine and Law of Ukraine No. 2464-VI "On Collection and Registration of Unified Contribution for Compulsory State Social Insurance" dated July 8, 2010, introducing a moratorium on the collection of penalties and certain types of fines envisaged by these legislative acts.

The moratorium on tax fines was introduced by Law of Ukraine No. 533-IX "On Amendments to the Tax Code and Other Laws of Ukraine Regarding Support for Taxpayers for the Period of Implementing Measures Aimed at Preventing the Emergence and Spread of Coronavirus Disease (COVID-19)" dated March 17, 2020[316]. This law came into force on March 18, 2020, and resulted

[315] *Podatkovyi kompromis yak forma nalahodzhennia dialohu mizh fiskalnymy orhanamy ta platnykamy podatkiv* [Tax compromise as a form of dialogue between fiscal authorities and taxpayers]. *Visnyk. Ofitsiino pro podatky* [Bulletin. Officially About Taxes]: Official edition of the State Fiscal Service of Ukraine: *Zakonodavstvo Ukrainy: baza danykh* [Legislation of Ukraine: database] / *Verkhov. Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from http://www.visnuk.com.ua/ua/pubs/id/8125 (August 12, 2022) [in Ukrainian]

[316] *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakoniv Ukrainy shchodo pidtrymky platnykiv podatkiv na period zdiisnennia zakhodiv, spriamovanykh na zapobihannia vynyknenniu i poshyrenniu koronavirusnoi khvoroby (COVID-19): Zakon Ukrainy vid 17.03.2020 № 533-IX* [On Amendments to the Tax Code and Other Laws of Ukraine Regarding Support for Taxpayers for the Period of Implementing Measures Aimed at Preventing the Emergence and Spread of Coronavirus Disease (COVID-19): Law of Ukraine No. 533-IX dated March 17, 2020]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2020. No. 17. Article 106. [in Ukrainian]

in the inclusion of Clause 52[1] in Section XX of the Tax Code of Ukraine, according to which no penal sanctions were applied for violations of tax legislation committed during the period from March 1 to May 31, 2020. Subsequently, Clause 52[1] was amended by Law of Ukraine No. 540-IX dated March 30, 2020, which supplemented the list of offenses not subject to the moratorium.

Law of Ukraine No. 591-IX dated May 13, 2020, further extended the application period of the moratorium, linking it to the duration of the COVID-19 quarantine established by the Cabinet of Ministers of Ukraine. According to Clause 52[1] of Subsection 10 of Section XX of the Tax Code of Ukraine, penal sanctions were not applied for violations committed from March 1, 2020, until the last calendar day of the month in which the quarantine ended. Exceptions included violations related to: long-term life insurance or non-state pension contracts, alienation of property under tax lien, fuel and alcohol accounting and excise warehouse requirements, VAT and excise tax obligations, and other special cases.

In accordance with Clause 52 of Subsection 10 of Section XX "Transitional Provisions" of the Tax Code of Ukraine, penal sanctions were not imposed for violations of tax legislation committed during the period from March 1, 2020, to the last calendar day of the month in which the COVID-19 quarantine officially ended (30 June 2023), except for sanctions related to:

- violating the requirements for long-term life insurance contracts or insurance contracts within non-state pension provision, in particular additional pension insurance;
- alienating property subject to a tax lien without approval by a regulatory authority;
- violating the legislative requirements in terms of:

— accounting, production, storage and transportation of fuel, ethyl alcohol by taxpayers;

— equipping excise warehouses with flowmeters and/or level gauges;

— performing the functions defined by legislation with regard to production and turnover of spirits, alcoholic beverages, tobacco products, and fuel;

— business entities selling fuel or ethyl alcohol without registration as excise taxpayers;

— violating the requirements for calculation, declaration and payment of VAT, excise tax, rent.

Therefore, taxpayers were not exempted from the imposition of financial sanctions by regulatory authorities for non-submission or late submission of VAT returns, or for non-payment or late payment of VAT obligations.

It should be pointed out that after the official termination of the COVID-19 quarantine on 30 June 2023, the quarantine-related moratorium ceased to apply, and regulatory authorities currently apply financial sanctions under the general provisions of the Tax Code of Ukraine and related legislation. The historical laws introducing the moratorium (Laws No. 533-IX[317], No. 540-IX[318], No. 591-IX[319]) remain relevant only for the period when the moratorium was in effect.

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317 *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakoniv Ukrainy shchodo pidtrymky platnykiv podatkiv na period zdiisnennia zakhodiv, spriamovanykh na zapobihannia vynyknenniu i poshyrenniu koronavirusnoi khvoroby (COVID-19): Zakon Ukrainy vid 17.03.2020 № 533-IX* [On Amendments to the Tax Code and Other Laws of Ukraine Regarding Support for Taxpayers for the Period of Implementing Measures Aimed at Preventing the Emergence and Spread of Coronavirus Disease (COVID-19): Law of Ukraine No. 533-IX dated March 17, 2020]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2020. No. 17. Article 106. [in Ukrainian]

318 *Pro vnesennia zmin do deiakykh zakonodachykh aktiv Ukrainy, spriamovanykh na zabezpechennia dodatkovykh sotsialnykh ta ekonomichnykh harantii, u zviazku iz poshyrenniam koranovirusnoi khvoroby (COVID-19): Zakon Ukrainy vid 30.03.2020 № 540-IX* [On Amendments to Certain Legislative Acts of Ukraine Aimed at Ensuring Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19): Law of Ukraine No. 540-IX dated March 30, 2020]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2020. No. 16. Article 100. [in Ukrainian]

319 *Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakoniv Ukrainy shchodo dodatkovovoi pidtrymky platnykiv poatkiv na period zdiisnennia zakhodiv, spriamovanykh na zapobihannia vynenknenniu i poshyrenniu koronavirusnoi khvoroby (COVID-19): Zakon Ukrainy vid 13.05.2020 № 591-IX* [On Amendments to the Tax Code and Other Laws of Ukraine Regarding Additional Support for Taxpayers for the Period of Implementing Measures Aimed at Preventing the Emergence and Spread of Coronavirus Disease (COVID-19): Law of Ukraine No. 591-IX dated May 13, 2020]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2020. No. 39. Article 294. [in Ukrainian]

Exemption from application of financial-law sanctions differs from exemption from their collection, since the above phenomena mark different stages of financial-law liability. In order to understand the practical difference between the above concepts, it is advisable to analyze the **grounds for exemption from collection of sanctions as financial-law liability measures**, which are more clearly defined in the tax legislation, namely: *write-off of tax debts*. This possibility is established by Article 101 of Tax Code of Ukraine No. 2755-VI dated December 2, 2010, which determines that a bad tax debt is subject to write-off, including penalty and penal sanctions accrued on such tax debt. That is, the key reason for a regulatory authority's obligation not to collect sanctions as a result of their write-off is the existence of a bad tax debt, as confirmed by the Tax Code and the Procedure for write-off approved by the Ministry of Finance, which applies to physical and juridical persons and their subdivisions. As can be seen from the very concept, a bad debt is a debt for which there is certainty that it will not be repaid by a debtor. Along with this, the term "doubtful debt" is used in law as well, non-repayment of which, unlike bad debt, is only probable[320].

For the wartime period, accrued penalties and fines, which are automatically reflected in a taxpayer's information card (hereinafter—TIC)—a term used in the administrative practice of tax authorities and not directly defined in the Tax Code of Ukraine—for violations of tax legislation shall be deemed uncollectible and written off pursuant to subparagraph 101.2.4 of paragraph 101.2 of Article 101 of the Tax Code of Ukraine, which provides that tax debt arising as a result of force majeure circumstances (including during wartime) may be recognized as uncollectible and written off, including penalties and accrued financial sanctions. As for the amounts of tax obligations, they should be paid after the end of force majeure circumstances.

The Tax Code (Clause 101.2 of Article 101) defines the *list of debts that the legislator recognizes as bad in terms of repayment*. That

[320] *Podatkovyi kodeks Ukrainy vid 02.12.2010 № 2755-VI* [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

is, the given norm defines the circumstances under which tax debt collection, taking into account the applied financial-law sanctions, is considered impossible, and their accounting is impractical. Indeed, for example, the recognition of a taxpayer as bankrupt is the basis for their liquidation, which is carried out in accordance with the procedure established by Code of Ukraine on Bankruptcy Procedures No. 2597-VIII dated October 18, 2018[321]. Accordingly, after the state registration of termination of a juridical person or a business entity being a natural person based on a court decision to recognize them as liquidated, there is no legal succession with regard to their rights and obligations, and therefore there is no objective possibility to collect the corresponding tax debt with accrued financial-law sanctions, in accordance with the legal grounds for bad debt, including court decisions on bankruptcy and insufficient assets, which remove the possibility of recovery of the tax debt and associated sanctions.

However, regarding the case of debt write-off in the event of recognizing a natural person in court as legally incompetent, missing or declared dead, the death of a natural person in case of insufficient property execution on which can be levied, such circumstances should be taken into account only if they arise after the decision to apply financial-law sanctions is made, but before its actual implementation. It is the impossibility of repaying the tax debt, including financial-law sanctions, due to the specified objective reasons that is the basis for recognizing it as bad in terms of repayment and write-off, which ultimately means the exemption of such natural persons from collecting financial-law sanctions.

The concept of “exclusion” of applying financial-law sanctions, in contrast to the already mentioned exemptions from applying and collecting sanctions, does not symbolize any stage of financial-law liability, since it is outside of it due to the inadmissibility of liability in general in connection with non-recognition

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[321] *Kodeks Ukrainy z pytan bankrutstva vid 18 zhovtnia 2018 roku № 2597-VIII* [Code of Ukraine on Bankruptcy Procedures No. 2597-VIII dated October 18, 2018]. *Vidomosti Verkhovnoi Rady Ukrainy* [Statements of the Verkhovna Rada of Ukraine]. 2019. No. 19. Article 74. [in Ukrainian]

of committed acts as an offense because of the conditions under which such acts were committed.

A circumstance that excludes the application of financial-law sanctions should include the *lack of legal personality of a person who commits a certain act*.

Legal personality is one of the central features of an offender, its very presence allows a person to participate in financial legal relations and be liable for their acts. Non-attainment of the required age by a natural person, which allows them to fully understand their acts, control their behavior and be able to foresee the corresponding consequences of their acts as well as the absence of legally defined grounds for acquiring full legal competence before such a person attains majority are considered as a person's lack of legal personality, and consequently its impossibility to be an offender and be subject to financial-law sanctions. The entry of such a person into certain financial legal relations that entailed unlawful acts was such as to contradict the rules of law. The same can be said about persons who do not have full legal competence due to mental or other health disorders, which do not allow them to realize importance of their acts, control them, and therefore to be liable for them.

The lack of financial legal personality of juridical persons due to the lack of their state registration, namely in connection with their termination in accordance with the law, also does not allow a person to be an offender and be subject to financial-law liability measures. Therefore, the circumstances specified in the law that exclude the application of sanctions always exist from the very beginning of a corresponding act. That is, they are known in advance, and hence their existence does not allow considering the act as an offense, which, accordingly, makes financial-law liability in the form of sanctions impossible (excludes it). In this case, the application of financial-law sanctions is not even allowed.

Thus, the concepts of exemption from applying financial-law sanctions and their collecting as well as exclusion of applying financial-law liability measures differ radically due to many factors. The comparison of such measures is shown in the following table developed by the author.

	Exemption from application of financial-law sanctions	**Exemption from collection of financial-law sanctions**	**Exclusion of application of financial-law sanctions**
Indication of the existence of a financial offense	Formal lack of an offense	An offense has been committed and established	No offense
Requirement of procedural registration	Procedural registration is not required in this case, since this is carried out through the law (automatically). Only particular reasons for non-application of sanctions (for example, a court decision declaring a person legally incompetent, etc. and its availability at a jurisdictional authority; a certificate from the Chamber of Commerce and Industry of Ukraine confirming force majeure circumstances or a natural disaster in the territory of Ukraine) should be documented	This should be carried out in accordance with the regulated procedure through a decision made by a regulatory authority (decision on write-off of a bad tax debt)	Registration is not required due to the law
Recording of results	The fact of exemption as such is not recorded by regulatory	This is carried out by entering a relevant decision into an automated information system that maintains	No results are shown

End of table

	Exemption from application of financial-law sanctions	Exemption from collection of financial-law sanctions	Exclusion of application of financial-law sanctions
	authorities and should not be reflected for further use	accumulated data on taxpayers and its use, namely: accounting of taxpayers, collection of information on opening bank accounts by taxpayers, reporting, etc.	

Based on the foregoing analysis, the *exemption from application of financial-law sanctions can be defined as a refusal of an authorized party to financial legal relations to implement the negative consequences of a financial offense in relation to an offender due to the existence of circumstances provided for by the current legislation of Ukraine that make the imposition of financial-law liability impossible, which fundamentally distinguishes it from the concept of exemption from collection of financial-law sanctions that is carried out based on the fact of violating financial-law norms and holding an offender liable*. The procedure for exemption from applying sanctions takes place in the presence of the fact of an offense, which, however, does not result in liability of the offender for it due to the circumstances stipulated by the law. That is, in this case, the offender is exempted from financial-law liability for their unlawful act defined by law as an offense. A significant difference in the legal phenomenon of exemption from collecting financial-law sanctions is that a person is already held liable and obligated to assume liability in the form measures of such liability imposed on them, but due to certain reasons regulated by law, it is not possible to actually implement the decision to hold the offender liable and apply sanctions, i.e. the person is not held liable in the form of sanctions payment (or their forced collection).

The institution of exemption from applying financial-law sanctions, as the embodiment of the institution of exemption from financial-law liability, is intended to liberalize imperative financial legal relations by introducing an element of rationality into the process of prosecuting violations of financial legislation, taking into account the existence of specific circumstances that, due to their essence, do not allow for state condemnation of an offender as well as legal determination and establishment of the limits and periods for punishing a person for their acts.

The study of financial-law sanctions provided in the previous sections of the paper and the results obtained give a broad idea of their essence, place and role in financial law. Most importantly, the acquired knowledge also allows asserting a separate *place for measures of financial-law liability in the system of legal sanctions*, given a number of their special features and characteristics that allow them to be distinguished from other measures of legal liability and state coercion as well as allow determining their important relationships as elements of the general system of financial-law liability. However, the conducted research will be incomplete without a comparative analysis of financial-law sanctions with sanctions and measures of the main types of legal liability, with which financial-law sanctions are very often compared and even combined by a common legal nature. Establishing common features and differences between the specified legal instruments will complement the scientific database on financial-law sanctions as independent measures of financial-law liability and will reveal systemic shortcomings in their legislative regulation.

The principle of proportionality (proportionalitas) constitutes a universal standard for the legitimacy of financial sanctions. Even within the sphere of public fiscal enforcement, sanctions must comply with the requirements of legal certainty and proportionality, which derive from constitutional principles and the rule of law.

2.5. Financial-Law Sanctions under Martial Law and Extraordinary Legal Regimes: The Ukrainian Model and Comparative Legal Analysis (Germany, USA, Israel, United Kingdom, China, Austria)

The Ukrainian Model: Transformation of Financial Liability under Martial Law (2022–2026)

The introduction of martial law in Ukraine pursuant to Presidential Decree No. 64/2022 of 24 February 2022, approved by Law No. 2102-IX, constituted a constitutional and legal trigger for the reconfiguration of public financial regulation[322; 323]. The extraordinary legal regime did not suspend the institution of financial-law liability; rather, it modified its functional and procedural parameters in order to ensure the continuity of fiscal governance under conditions of armed aggression and objective economic disruption.

The doctrinal significance of this transformation lies in the fact that financial sanctions retained their public-law nature while their application became conditioned by the factual capacity of the obligated person to perform tax duties. Such recalibration corresponds to the principle of proportionality and reflects the concept of differentiated coercion under conditions of force majeure[324].

The principal normative mechanism for this transformation was embodied in paragraph 69 of Subsection 10 of Section XX "Transitional Provisions" of the Tax Code of Ukraine[325].

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[322] *Pro vvedennia voiennoho stanu v Ukraini:* Ukaz Prezydenta Ukrainy vid 24 liutoho 2022 r. № 64/2022 [On the Introduction of Martial Law in Ukraine: Presidential Decree No. 64/2022 dated February 24, 2022]. Ofitsiinyi visnyk Ukrainy. 2022. [in Ukrainian]

[323] *Pro zatverdzhennia Ukazu Prezydenta Ukrainy "Pro vvedennia voiennoho stanu v Ukraini":* Zakon Ukrainy vid 24 liutoho 2022 r. № 2102-IX [Law on Approval of the Decree on Martial Law No. 2102-IX dated February 24, 2022]. Vidomosti Verkhovnoi Rady Ukrainy. 2022. [in Ukrainian]

[324] Kopylenko, O. L. *Finansove pravo Ukrainy: pidruchny*k [Financial Law of Ukraine: textbook]: Kyiv: Yurinkom Inter, 2018. P. 412. [in Ukrainian]

[325] *Podatkovyi kodeks Ukrainy*: Zakon Ukrainy vid 2 hrudnia 2010 r. № 2755-VI [Tax Code of Ukraine: Law No. 2755-VI dated December 2, 2010]. Vidomosti Verkhovnoi Rady Ukrainy. 2011. [in Ukrainian]

This provision operated as a lex specialis temporalis within the system of financial law, establishing a special regime of liability for violations committed during the period of martial law.

The legislative approach developed in several phases.

At the initial stage (February—May 2022), a broad exemption from financial liability was introduced for taxpayers unable to comply with their obligations due to objective circumstances connected with hostilities. The exemption was not automatic but was later formalized through administrative procedure requiring confirmation of the impossibility of performance.

At the second stage, the legislator shifted from general exemption toward a model based on verification of "compliance capacity." The Ministry of Finance adopted a special procedure for confirming the impossibility of fulfilling tax obligations, thereby introducing an evidentiary filter into the mechanism of exemption[326]. This step marked a transition from emergency tolerance to structured legal differentiation.

At the third stage (2023), the regime evolved toward partial restoration of sanctioning mechanisms combined with incentive-based remission. Subparagraph 69.37 of paragraph 69 provided that if a taxpayer paid additionally assessed tax liabilities within thirty calendar days after receipt of a tax notification-decision, financial penalties would be considered cancelled and penalty interest would not accrue.

This legislative construction does not eliminate the sanction; rather, it establishes a conditional remission mechanism (condicio remissionis). The sanction formally arises but loses its punitive force upon voluntary compliance within a statutorily defined timeframe. Such a model reflects a functional transformation of financial sanctions from purely punitive instruments into regulatory tools aimed at ensuring fiscal stability under extraordinary circumstances.

From a theoretical perspective, the Ukrainian model demonstrates that in conditions of martial law financial sanctions perform

[326] *Ministerstvo finansiv Ukrainy. Nakaz pro zatverdzhennia Poriadku pidtverdzhennia nemozhlyvosti vykonannia podatkovoho oboviazku,* 2022. [in Ukrainian]

a dual function: (1) safeguarding budgetary interests of the state; and (2) maintaining economic viability of obligated subjects. This corresponds to the understanding of state coercion as an instrument of organized legal order rather than mechanical repression[327].

Importantly, constitutional standards remain operative. The principles of legality, legal certainty, equality before the law, and proportionality continue to apply even during martial law[328]. Judicial review over tax disputes was preserved, which ensured that extraordinary regulation did not transform into arbitrary administrative discretion.

Thus, the Ukrainian model may be characterized as a codified wartime module of financial liability that integrates public-law coercion with adaptive proportionality mechanisms.

Germany: Institutional Flexibility within the Framework of the Abgabenordnung

German financial law demonstrates a different type of extraordinary adaptation: the sanction mechanism is not "switched off" by military/crisis circumstances through special "military" code modules, but is adjusted through universal Abgabenordnung (AO) institutions operating in a Billigkeit (fairness/expediency) mode and procedural flexibility.

First, § 240 AO[329] establishes Säumniszuschläge as statutory late payment surcharges: if the tax is not paid by the due date, an additional surcharge is charged for each month of late payment (1% of the rounded-up debt). This is a "time sanction" (sanctio temporis), arising ipso iure—"by force of law," which emphasizes its public-law nature and automaticity.

Secondly, § 222 AO provides for a Stundung (deferral) in the event of significant hardship on the part of the taxpayer and provided that

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[327] Skakun, O. F. *Teoriia derzhavy ta prava: pidruchnyk* [Theory of State and Law: textbook]: Kharkiv: Konsum, 2001. P. 437. [in Ukrainian]

[328] *Rishennia Konstytutsiinoho Sudu Ukrainy* vid 30 travnia 2001 r. № 7-rp/2001 [Decision of the Constitutional Court of Ukraine No. 7-rp/2001 dated May 30, 2001]. Ofitsiinyi visnyk Ukrainy. 2001. [in Ukrainian]

[329] Abgabenordnung (AO) vom 16. März 1976 (BGBl. I S. 613), §§ 222, 227, 240. [in German]

collection is not at risk; typically, this is granted upon application and with security. This concept is particularly important during times of crisis: it shifts the emphasis from "punishment" to preventing the destruction of solvency, while maintaining the requirement for the legality and manageability of fiscal revenues.

Thirdly, § 227 AO provides for an Erlass (exemption/forgiveness) for reasons of Billigkeit (unreasonable severity of collection). Doctrine and law enforcement emphasize that Säumniszuschläge are primarily a "means of pressure" to ensure payment, but are also considered compensation for the deferral and administrative costs; their (partial) Erlass is possible in the presence of "substantive" injustice.

Thus, the German model demonstrates that even in crisis regimes, the state does not need "military" derogation of sanctions, since the legal order contains built-in mechanisms of proportionality (proportionalitas) and fairness (aequitas)—through Stundung (Policy) and Erlass (Equity). This ensures the systemic stability (Systemstabilität) of financial administration: coercion is not abolished, but becomes functionally determined, preventing the erosion of the tax base.

United States: Statutory Postponement as a Crisis Response Mechanism

The American model is notable in that military circumstances are directly "built into" tax law as a legal trigger for the temporary reallocation of deadlines and liability. The internal mechanism of financial liability (penalties for late payments, interest, etc.) is not abolished, but its application is modified through the concept of "time to be disregarded" and the authority to defer deadlines.

For example, 26 U. S. C. § 7508[330] establishes that when serving in a combat zone or as part of a contingency operation, certain deadlines for completing tax actions are subject to disregard for the corresponding period, which is directly aimed at eliminating penalties for missing deadlines due to objective impossibility of compliance.

Even more universal is 26 U. S. C. § 7508A, which grants the authority to defer certain tax deadlines in connection with

[330] Internal Revenue Code, 26 U. S. C. §§ 7508, 7508A. United States Code. [in English]

a federally declared disaster, a "significant fire," or terrorist or military action. A key scientific feature: the law explicitly recognizes that "military action" may be grounds for adjusting enforcement deadlines, thereby introducing a public-law mechanism for adapting liability to extraordinary realities without disrupting the overall enforcement framework.

The regulatory detail (26 CFR) specifies the application of deferrals under § 7508A, thereby formalizing the link "extraordinary circumstance → extension of deadlines → reduction/elimination of penalties."

This is particularly valuable for a monographic conclusion: the United States demonstrates a model in which "military action" is not introduced outside the legal system as a political exception, but functions as a codified legal fact triggering the lex temporalis of deferral—while preserving the principles of legal certainty and predictability for the taxpayer.

Israel: Administrative Adaptation during Security Crisis

Israeli practice of regulating internal financial liability in times of military escalation relies primarily on administrative decisions by the tax administration and official government publications that adjust reporting deadlines and the penalty regime. This is an example of "administrative adaptability" in the Israeli doctrine, whereby sanctions are modified not through extensive recodification, but through quick management decisions within the framework of existing law.

The autumn 2023[331] regime is indicative: publications on measures related to the "security situation" stipulate an extension of the deadlines for filing periodic VAT and advance payments, as well as a fundamentally important provision: penalties for late filing are not applied until a certain date, while "interest and linkage differences" remain "by law," with the possibility of individual petitions for their waiver in exceptional cases. This demonstrates the functional separation of the elements of liability: the penalty can be temporarily

[331] Israel Tax Authority. Official Notices regarding Tax Relief Measures due to Security Situation, 2023. [in English]

waived to support the economy, while compensatory elements (interest/linkage) are retained as an expression of ordo fiscalis.

Furthermore, in later official communications (2025), Israeli practice confirms the use of the "file without penalty or monetary sanction by a certain deadline" mechanism, which conceptually coincides with the "grace period" model in public financial law: the state extends the window of voluntary compliance without penalty, encouraging compliance and reducing socio-economic stress.

For your section, the doctrinal formula is important here: Israel demonstrates a "dual-loop" model, in which the penalty component of liability is temporarily mitigated for the sake of economic stability (stabilitas circulationis), but compensatory charges are retained unless otherwise determined by individual decision.

United Kingdom: The Doctrine of "Reasonable Excuse" and Temporary Deferral Schemes

In British law, domestic tax penalties (late filing/late payment penalties) are a stable institution of public administration. Their crisis adaptation is based not on a "wartime" code, but on a combination of: (a) the statutory doctrine of reasonable excuse, and (b) temporary government payment deferral schemes in emergency situations (most clearly, COVID-19), which de facto function as an extraordinary modification of liability.

The statutory framework for penalties for failure to file returns is enshrined, in particular, in the Finance Act 2009, Schedule 55 (penalties for failure to make returns)[332], which establishes a mechanism for fixed and subsequent penalties for long-term delays.

The key "valve" of proportionality is the Taxes Management Act 1970, section 118(2)[333], which enshrines the legal construct that a person is considered to have not breached a requirement to perform an action on time if it is performed within a reasonable additional time with proper justification; This provision underpins

332 Finance Act 2009, Schedule 55. United Kingdom. [in English]

333 Taxes Management Act 1970, Section 118(2). United Kingdom. [in English]

the "reasonable excuse" doctrine, used by HMRC as a legal basis for not applying penalties in extraordinary circumstances.

During the COVID-19 pandemic, the legal liability regime was significantly relaxed through the VAT deferral scheme: official HM Government/HMRC guidance provided for the possibility of deferring the payment of VAT due between 20 March 2020 and 30 June 2020[334], with the possibility of subsequent instalments. This guidance also outlined the conditions under which penalties/interest could arise if the subsequent payment rules or agreements with HMRC were not followed. From an academic perspective, this is a typical example of mora legis suspensiva: the state temporarily postpones the onset of negative consequences in order to preserve business liquidity and avoid eroding the tax base.

Consequently, the British model of domestic financial responsibility in emergency situations is characterized by legal procedurality: sanctions remain public law, but the legal order contains in advance a mechanism of "just cause" (excusatio rationabilis) and allows for deferral/installment plans that remove the penalty burden during a period of systemic shock.

China: Late Payment Surcharges and the Principle of Fault

The Chinese model of domestic financial liability is based on codified regulation of tax administration and administrative penalties. Regarding the "monetary consequences of late payment," the Law of the People's Republic of China on the Administration of Tax Collection (NPC in English)[335], which provides for the accrual of a "late payment surcharge" for late payment, is the basis. Article 32 stipulates the accrual of a "late payment surcharge" for failure to pay taxes on time (in the official translation, the tax authority collects the tax and assesses a late payment surcharge; in practice, this is usually expressed as a daily rate).

A fundamental feature of Chinese public liability law is the inclusion of a "guilty" or "innocent" filter in administrative

[334] HM Revenue & Customs. VAT Deferral Scheme Guidance, 2020. [in English]

[335] Law of the People's Republic of China on the Administration of Tax Collection (as amended). [in English]

penalties. The English version of the Law on Administrative Penalties (NPC)[336] formulates the general principle: not to impose an administrative penalty if the party has proven no subjective fault, and, if other rules exist, to apply special provisions. This provides a doctrinal basis for nulla poena sine culpa (in the public-administrative dimension), allowing for mitigation of liability in situations of objective impediments.

The COVID-19 emergency regime in China has provided a well-documented example of regulatory and administrative adaptation of tax reporting deadlines. Professional reviews and materials based on tax administration notifications document the extension of the "statutory filing deadline" (for example, the postponement of the February deadline to February 24, 2020, with the possibility of further extension by local authorities)[337]. This is an example of prorogatio terminium as a tool for preventing penalties in the event of a systemic failure to meet deadlines.

This is important for your research for two reasons. First, China confirms the universality of the "first postponement/extension of deadlines, then differentiated application of penalties" model, which brings it closer to the US/UK in terms of functional logic, despite differences in legal traditions. Secondly, the combination of Article 32 (the monetary consequences of default) with the principle of "no punishment without fault" provides a doctrinal framework that allows for the legal exclusion of sanctions in circumstances of force majeure or objective impossibility, without undermining the public-law nature of financial coercion.

Austria: Crisis Regulation within BAO and Finanzstrafgesetz

The Austrian model for applying financial sanctions in extraordinary circumstances is a model of institutionalized proportionality (proportionalitas) and procedural controllability (gubernatio procedendi) without destroying the public-law nature of liability (coercitio publica). Unlike states experiencing de facto

[336] Administrative Penalties Law of the People's Republic of China (2021 Amendment). [in English]

[337] State Taxation Administration of the PRC. Notice on Extension of Tax Filing Deadlines during COVID-19, 2020. [in English]

armed conflict on their own territory, Austria has not developed a separate “military module” of tax liability in the sense of ius belli internum. However, its legal order demonstrates how, in the event of a systemic shock (most notably COVID-19), the sanctions mechanism can be temporarily “reconfigured” while maintaining the principles of nulla poena sine lege and legal certainty (certitudo iuris).

1. The Normative Core of Financial Sanctions in Austria: the BAO as the “General Part” of Fiscal Enforcement.

The central code of Austrian tax administration is the Bundesabgabenordnung (BAO). In the area of monetary liability, the key institution is the Säumniszuschläge (surcharges/penalties for late payment), regulated by § 217 of the BAO[338]. This provision stipulates that the initial Säumniszuschlag is 2% of the amount of tax not paid on time and establishes the prerequisites/exceptions for its calculation, including cases where collection is suspended or enforcement is blocked under BAO procedures.

The Austrian concept is fundamentally important for the doctrinal distinction: Säumniszuschlag is a public-law monetary sanction arising from a violation of fiscal discipline (failure to pay on time) and integrated into the tax debt administration mechanism, rather than a private-law penalty (poena conventionalis).

2. Procedural “Proportionality Valves”: Relief and Exemption from Excessive Collection (BAO §§ 212, 212a) and Their Effect on Sanctions.

The BAO’s built-in mechanism for mitigating sanction pressure is provided, firstly, by the principle of “Deferment/Instalment Plan” under § 212 of the BAO (deferral/installment plan if the prerequisites are met), and secondly, by the principle of “Aussetzung der Einhebung” under § 212a of the BAO, which suspends collection during the appeal review (Bescheidbeschwerde) within the dependent amount.

It is these instruments that implement the aequitas function in public law (removing the excessive burden of collection while

[338] Bundesabgabenordnung (BAO), §§ 212, 212a, 217. BGBl. Nr. 194/1961. [in German]

maintaining the obligation itself) and allow for the "separation" of (a) the existence of tax debt and (b) the intensity of enforcement. Doctrinally, this is consistent with the model: the sanction as an institution is not abolished, but its application is functionally conditioned by procedural guarantees, including the right to appeal and the suspension of penalties (suspensio ex lege / ex petitione).

The BMF's practical administrative clarifications (Findok) directly link the institutions of suspension of penalties (§ 212a BAO) and the issues of accrual/collection of penalties, confirming the systemic link between "procedure → sanction."

3. COVID-19 as a lex specialis temporalis: special derogation of interest and surcharges (BAO § 323c) and departmental Erlässe BMF.

The extraordinary modification of the sanctions regime in Austria was most clearly evident during the pandemic: the legislature created a temporary special section, § 323c BAO ("Sonderregelungen aufgrund der Maßnahmen zur Bekämpfung von COVID-19"), which introduced special rules for deferrals, deadlines, and the consequences of delay.

In terms of content, this "crisis module" included, in particular, elements of the temporary exclusion of individual monetary consequences: professional reviews of tax changes recorded that Stundungszinsen and Säumniszuschläge were not charged until a certain point, and that Anspruchszinsen were also temporarily not collected for certain periods, with direct references to the relevant paragraphs of § 323c BAO.

Individual specialized measures were also reflected in the official descriptions of state instruments (for example, for certain categories of excise obligations, the "Wegfall der Säumniszuschläge" was indicated within a specific period of the fiscal date).

Furthermore, the BMF's departmental practice supported the simplified Stundungsansuchen regime through special Erlässe (including clarifications of the terms of "simplified" payment relief), demonstrating the administrative-legal detailing of the crisis regime—in the logic of operational management (administratio extraordinaria) while maintaining the legal basis.

The doctrinal meaning of the Austrian COVID approach is as follows: the public-law sanction (Säumniszuschlag/interest) remains an element of the ordo fiscalis. However, during the period of systemic shock, the legislator allowed for the temporary neutralization of the penalty component in order to maintain solvency and prevent a cascade of non-payments—that is, it implemented the principle of proportionalitas through temporalis derogat (temporary derogation, strictly limited in duration and subject matter).

4. Financial-criminal framework: FinStrG and crisis procedural modifications as an element of enforcement "resilience."

In addition to the BAO, the Austrian liability system includes the Finanzstrafgesetz (FinStrG)—a regime for prosecuting financial offenses (e.g., Abgabenhinterziehung). The BMF, in official materials, describes typical financial offenses and their classification within the FinStrG framework, demonstrating the autonomous level of fiscal enforcement (administrative-penal/quasi-criminal).

During the COVID-19 period, legislators also adjusted the procedural aspects of financial-penalty proceedings: the FinStrG text sets out special rules for conducting oral interrogations under restricted contact (permitting audiovisual formats and limiting in-person proceedings to cases of absolute necessity).

From a doctrinal perspective, this reflects an important principle: in extraordinary circumstances, the state modifies not only the "material" monetary consequences (interest/surcharges), but also the "procedural infrastructure" of coercion in order to preserve the functionality of the system (systema manens) and ensure the legality of the process (due process in continental form).

5. Conclusion on the Features of the Austrian Model in Extraordinary Conditions.

Austrian practice demonstrates a model of "built-in crisis adaptability" in financial liability:

The regulatory core of sanctions (BAO § 217) retains its public-law nature and predictable monetary form.

Procedural mechanisms (including § 212a BAO) ensure the structural proportionality of enforcement and link sanctions with guarantees of appeal and suspension of collection.

Crisis law (BAO § 323c) functions as a lex specialis temporalis, allowing for the temporary neutralization of penalty consequences (Säumniszuschläge/interest) to maintain the stability of the tax base.

The financial penalty system (FinStrG) remains applicable but allows for procedural modifications to support enforcement under restrictions.

In a comparative perspective, this model is close to the German approach (procedural flexibility without abolishing the nature of the sanctions), but differs in the presence of an explicitly codified "crisis module" in the BAO (§ 323c), which serves as an example of the institutionalization of the proportionalitas principle in tax law in an emergency situation.

A comparative analysis of Ukraine, Germany, Austria, the United States, Israel, the United Kingdom, and China reveals a structural invariant in the legal regulation of financial sanctions in wartime and emergency situations.

1. The public law nature of the sanction is not transformed.

None of the jurisdictions examined converts fines, penalties, or surcharges into private law instruments. In all cases, the imperative nature of the sanction (imperium fiscale) is retained.

2. The extraordinary regime is implemented through four basic models.

Model A—regulatory derogation (Ukraine): A special section of the Tax Code is introduced, temporarily adjusting the application of sanctions.

Model B—built-in institutional flexibility (Germany, Austria): The institutions of Billigkeit, Stundung, Erlass, and Aussetzung are used, without the creation of a separate "military code."

Model C—Statutory Extension of Deadlines (USA) Military action is directly enshrined as a legal fact triggering the extension of deadlines and the reduction of sanctions.

Model D—Administrative Adaptation (Israel, China, UK) Through the doctrine of reasonable excuse, force majeure, and administrative decisions to extend deadlines.

3. General Principle—Proportionality in the Face of Systemic Risk.

All models share the same logic:

the sanction remains an institution,

but its application is made contingent on the feasibility of enforcement,

or the penalty component is temporarily neutralized,

while compensatory elements are retained.

This confirms the universality of the principles of proportionality and aequitas in public financial law.

4. Constitutional Resilience of the Financial System.

Even in wartime, the state:

does not abolish the principle of legality,

does not undermine the systemic nature of the sanctions mechanism,

does not allow arbitrary increases in fiscal pressure.

This is precisely what ensures the constitutional resilience of the financial system (fiscal constitutional resilience).

Section 3
SYSTEMIC DIFFERENTIATION BETWEEN FINANCIAL-LAW SANCTIONS AND LIABILITY MEASURES ARISING FROM CIVIL, ECONOMIC, AND ADMINISTRATIVE LAW

3.1. Differentiation Between Financial-Law and Civil-Law Liability Measures

The close interconnection of areas of social relations, which constantly intersect and interact in the course of state activity, as well as the absence of a unified codified legal act that would comprehensively regulate financial-law relations, including an exhaustive list of grounds and cases for bringing persons to financial liability and applying financial sanctions, creates prerequisites for the unlawful substitution of legal concepts and a distorted understanding of the essence of these branches of law. Despite ongoing academic discussions regarding the codification of financial legislation in Ukraine, no unified Financial Code has been adopted as of 2026, which preserves the fragmented nature of regulation in the field of financial liability. The consequence of this is the persistent problem of differentiating legal liability measures depending on their type.

The issue of differentiation between financial-law sanctions applied as measures of financial-law liability and other sanctions envisaged by the current legislation remains quite relevant today. Prof. Mattias Neuemayr, an Austrian scholar on the differentiation between private and public law in the context of civil proceedings[339], who simultaneously works as a lecturer and exercises his powers in the Supreme Court of Austria, notes that the main criterion for such a differentiation should be the relationship of power

[339] Prof. Dr. Mattias Neuemayr. Außerstreitverfahren, 3. aktualizirte Auslage, LexisNexis Verlag ARDOrac GmbH&CoKG Wien, 2010. 100 p., p. 21.

and subordination as well as the legislative basis under which the parties to legal relations act. This approach remains widely used in contemporary European legal doctrine and is reflected in modern public law theory. In particular, this criterion is applied in the jurisprudence of European constitutional and administrative courts when distinguishing public-law sanctions from private-law liability mechanisms.

Regarding the difference between measures of civil and financial liability, it should be noted that most scholars agree with their separate position in the system of legal sanctions, given the rather opposite placement in the regulation of social relations. However, it is advisable to study the differences between the measures of these types of liability, firstly, in order to highlight the distinctive differences between financial-law sanctions and measures of civil liability; secondly, due to a certain interesting correlation of these, at first glance, not similar types of legal liability and their measures.

Ukrainian professor O. F. Skakun highlights such measures of civil liability as compensation for property losses, cancellation of illegal agreements, fines, penalties and other measures that are to force a person to bear negative property consequences[340].

Instead, contemporary Ukrainian scholars emphasize the compensatory and restorative nature of civil liability, as reflected in modern interpretations of the Civil Code of Ukraine. Fines and penalties are of particular interest as civil liability measures applicable in cases of breach of contractual obligations.

Before analyzing the differences between civil and financial liability measures, it is necessary to highlight some of their main common features.

Firstly, civil sanctions arise in case of committing an offense (civil) and consist in imposing on the offender a new or additional property obligation, which is similar to financial-law sanctions that are also applied for violation of financial legislation and represent a new (additional) obligation along with the need to fulfill the main obligation.

[340] Skakun, O. F. *Teoriia derzhavy ta prava: pidruchnyk* [Theory of state and law: textbook]: Kharkiv: Konsum, 2001. P. 437. [in Ukrainian]

Secondly, both of these measure means are of property nature. The Civil Code of Ukraine defines a fine and a penalty as liquidated damages, which are one of the means for securing an obligation. Thus, a fine is a type of liquidated damages calculated as a percentage of the amount of the unfulfilled or improperly fulfilled obligation. The penalty is a type of liquidated damages calculated as a percentage of the amount of the untimely fulfilled monetary obligation for each day of delay (Article 549 of the Civil Code of Ukraine). According to the meaning of the specified legal norm, liquidated damages are the only means for securing obligations, which is also a form of property liability[341]. The above shows that in civil law relations fines and penalties continue to be the means for securing until one or both parties to the contract commit a civil offense, after which their role as liability measures prevails. This dual legal nature of liquidated damages is consistently confirmed in the case law of the Supreme Court of Ukraine, which recognizes fines and penalties as both a means of securing obligations and a measure of civil liability.

Such dual legislatively enshrined nature of fines and penalties in civil law is absent in financial law fines and penalties, which serve as compulsory measures of financial-law liability, applied as a result of violation of financial-law norms. However, despite the absence of a formal securing function, financial penalties perform a preventive and stimulating role by encouraging compliance with financial obligations through the potential imposition of sanctions.

In particular, this tendency is reflected in the strengthened administrative enforcement mechanisms and expanded powers of controlling authorities introduced after 2022.

Despite the certain common features, the differences between civil and financial legal fines and penalties are significant, which is substantiated primarily by the specifics of the social relation types under consideration. Hence, it is substantiated by different provisions in the system of legal sanctions as well as different

[341] *Komentar do Tsyvilnoho kodeksu Ukrainy* [Commentary on the Civil Code of Ukraine] / edited by Kharytonova Ye. O., Kalitenko O. M. Kh.: TOV “Odissei”, 2004. P. 397. [in Ukrainian]

approaches of the legislator to their legal regulation. The above together necessitates a comparison of these measures and analysis of the differences identified.

Financial and civil legal sanctions differ in:

1. *The scope of application.*

Financial-law sanctions are applied in case of violations in the financial sector, which is characterized by public relations, where the parties are unequal in their position (one party orders, the other one obeys), while civil liability is intended to protect civil legal relations that belong to private relations between equal parties.

2. *The means for establishing and the order of application.*

Fines and penalties under civil law, except for cases of extra-contractual establishment, may also be provided in a contract by agreement of the parties. In comparison with the established regulatory financial-law sanctions such a peculiarity is based on the existence of contractual civil and legal liability, since civil relations in accordance with Article 11 of Civil Code of Ukraine No. 435-IV dated January 16, 2003, shall be based on a contract, and therefore their parties are authorized to agree on the terms of their interaction, including in cases of violation of contractual agreements.

The procedure for application and recovery of the civil and financial liability measures under consideration differs as well. Thus, the initiator of the application and recovery of civil fines and penalties is the other party (parties) to the contract, which has the right, but not the obligation, to undertake the above actions and acts at its own discretion. The procedure for implementing the deal regarding the adverse consequences of its violation in the form of a fine and penalty is provided in such a deal and generally involves sending (proving) by the party, whose rights have been violated, to the offending party a written (or in another form as agreed between the parties to the agreement) claim on the need to eliminate the relevant violations and pay the relevant funds as a fine and (or) penalty. The failure to voluntarily fulfill such a claim entails the creditor's right to apply to the court (notary) with a claim (a statement on the execution of an executive inscription) against the debtor for the recovery of the relevant funds.

In contrast to the described procedure, the application and recovery of financial-law sanctions is regulated by the financial legislation and should be carried out in accordance with it through the adoption by the relevant recovery body of a decision on the application of a financial-law fine or penalty with its subsequent voluntary or compulsory execution. The need for such actions on the part of the authorized state bodies is determined by their duty, which is established by the state in an imperative manner, to bring a person to financial-law responsibility and apply sanctions in case of legal grounds. Such an obligation of public authorities reflects the imperative nature of financial legal relations and excludes discretionary refusal to apply financial sanctions when statutory conditions are met.

This imperative approach has been reinforced by post-2022 reforms aimed at strengthening fiscal discipline and transparency.

3. *The manner of expression.*

Financial-law sanctions as well as civil fines and penalties are liability measures of a property nature, which is expressed in different ways. The subjects of liquidated damages, according to Article 551 of the Civil Code of Ukraine, shall be a sum of money, movable and immovable property. The amount of liquidated damages established by law can be increased in the contract.

Instead, the subject of financial-law sanctions can only be a sum of money, the amount, limits or accrual base of which are clearly defined by the current legislation and cannot be changed at the request of any party to financial legal relations.

4. *The sources of payment.*

Civil fines and penalties are paid from the violator's own funds and are treated as expenses, while financial sanctions are paid from income remaining after taxation. Modern accounting and tax practice confirms the continued relevance of this distinction. However, despite such significant differences in civil and financial legal relations, they somehow intersect and interact being in the general system of social relations. Thus, in case of violation of the norms of financial legislation by the state represented by its authorized bodies, which led to damage to the rights and interests of the non-authorized party to financial legal relations, the legislator provides for the need to compensate for the damages caused.

The Tax Code of Ukraine defines the right of the taxpayer to full reimbursement of losses (damages) caused by illegal actions (inaction) of the controlling authorities (their officials) in accordance with the procedure established by law (Subclause 17.1.11 of Clause 17.1 of Article 17) as well as reimbursement of such damages at the expense of the state budget (Clause 21.3 of Article 21). These provisions remain valid and have been actively applied in judicial practice through 2025. Administrative court practice demonstrates an increasing number of cases where taxpayers successfully recover damages caused by unlawful actions of controlling authorities at the expense of the State Budget.

Similarly, Article 15 of the Law of Ukraine "On State Regulation of Capital Markets and Organized Commodity Markets" (updated name replacing the former securities market law) provides for compensation of damages caused by unlawful actions of the regulator.

Part 2 of Article 1 of Civil Code of Ukraine No. 435-IV dated January 16, 2003, stipulates that civil legislation shall not be applicable to property relations based on administrative or other state subordination of one party to another party as well as to tax and budgetary relations unless otherwise provided by law. That is, civil liability is not provided for non-fulfillment of tax obligations by taxpayers, but the losses caused by illegal actions of officials, state tax authorities are subject to compensation at the expense of the state budget on a civil basis[342]. The similar situation should be noted in other areas of financial activity. Thus, in this case, there is a fact of emergence between the parties to financial relations the relations regulated by civil law due to committing a civil offense, and therefore, there is a transition of the relevant part of the relations between persons from the financial field to the civil

[342] Mukonin, O. V. *Pravova pryroda finansovo-pravovoi vidpovidalnosti platnykiv podatkiv* [Legal nature of financial-law responsibility of taxpayers]. *Universytetski naukovi zapysky* [University Scientific Notes]. 2005. No. 4(16). P. 216–224. [in Ukrainian]

law plane. In such cases, financial legal relations do not transform in their entirety but give rise to parallel civil law relations aimed at compensating the damage caused by a civil offense.

Instead, it is necessary to distinguish between the payment of financial-law sanctions by a public authority and the rights of another party to financial legal relations in the event of a financial offense committed by such an authorized party and compensation for damage caused by a civil offense.

Based on the foregoing analysis, it can be concluded that financial-law sanctions possess specific features that clearly distinguish them from civil liability measures. These features confirm the sectoral independence of financial-law liability, which is grounded in imperative public law relations fundamentally opposed to the dispositive nature of civil law.

The clear differentiation between financial and civil liability measures is therefore essential for ensuring legal certainty and preventing the unlawful substitution of public-law sanctions with private-law remedies. At the same time, the convergence of financial and economic regulation and the similarity of subjects involved continue to generate practical enforcement challenges, which necessitates further differentiation between financial sanctions and economic liability measures.

3.2. Differentiation Between Financial-Law Sanctions and Sanctions Based on Economic (Commercial) Liability

Economic law is a complex field of law based on the norms of civil law regarding the competence of individuals and legal entities, property rights, civil-law agreements and specifies them as well as contains the norms of administrative, financial and labor law that regulate economic activity. The complex nature of the subject of economic law determines the use of several methods of legal regulation instead of one, as it is in traditional branches of law[343].

[343] Opryshko, V. F., Shulzhenko, F. P., Shymon, S. I. *Pravoznavstvo: pidruchnyk* [Jurisprudence: textbook] / edited by V. F. Opryshko, F. P. Shulzhenko. Kyiv: KNEU, 2003. P. 375—376. [in Ukrainian]

This understanding corresponds to the modern Ukrainian doctrine of economic law, which treats it as an integrated branch combining public and private law elements[344].

It is precisely the complex mechanism of formation of legal relations in the field of economic activity and their regulation through various legal (particularly through state regulation establishing mandatory rules of conduct for business entities at the legislative level) that creates preconditions for the improper conflation of economic activity and the state's financial activity, including the liability measures applied for violations of the respective norms governing those spheres. Thus, for example, A. V. Popova[345], a Ukrainian researcher, within the legislative framework in force at the time of her research, classified financial-law sanctions in the form of fines imposed on legal entities for violations of securities legislation as administrative-economic fines. However, such an approach reflects an earlier doctrinal model and does not fully correspond to the current doctrinal differentiation between financial and economic liability, which is based on the nature of the violated legal norms and the type of legal relations involved.

References to individual scholarly positions that equate financial sanctions with administrative and economic sanctions without analyzing the nature of the violated norms and the type of legal relations should be treated critically, as such approaches contribute to the unjustified substitution of legal concepts.

Some early doctrinal approaches argued that the legislator, in Chapter 27 of the Commercial Code of Ukraine No. 436-IV of January 16, 2003, treated sanctions applied to legal entities as administrative in nature, which was interpreted as corresponding to Clause 22 of Article 92 of the Constitution of Ukraine and as excluding the independent existence of financial and banking liability.

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[344] Skrypnyk, O. V. *Ekonomichne pravo Ukrainy: suchasna doktryna* [Economic Law of Ukraine: Modern Doctrine]. Kyiv: Yurinkom Inter, 2023. P. 45–62. [in Ukrainian]

[345] Popova, A. V. *Hospodarsko-pravova vidpovidalnist uchasnykiv rynku tsinnykh paperiv* [Economic and legal liability of securities market participants]. Universytetski naukovi zapysky [University Scientific Notes]. 2005. No. 3(15). P. 159–164. [in Ukrainian]

Such a conclusion is disputable and does not reflect the prevailing contemporary position of Ukrainian financial law doctrine, which recognizes financial liability as an independent type of legal liability arising from violations of financial legislation [346].

Thus, the problem of distinguishing financial-law sanctions from other types of liability measures, in particular economic and legal liability, indeed exists and requires resolution, as ongoing academic debates often lead to unjustified conceptual confusion and leveling of financial liability as an autonomous legal phenomenon.

Economic sanctions, in accordance with Part 1 of Article 217 of Commercial Code of Ukraine No. 436-IV dated January 16, 2003, are measures of influence on the offender in the field of economic activity, as a result of which adverse economic and/or legal consequences arise for him/her. The following types of economic sanctions are applied in the economic area: compensation for damages, penal sanctions, operational and economic sanctions, administrative and economic sanctions. This classification remains unchanged and valid as of 2026.

The most frequently disputable situations arise from the listed types of economic and legal sanctions related to penal, administrative and economic sanctions in the form of administrative and economic fines regarding their distinction from financial-law sanctions. The common features of these measures should be the following: 1) application due to the commission of an offense (economic and financial); 2) property nature of financial and economic sanctions; 3) application of administrative and economic fines as well as financial-law sanctions by public authorities in unequal legal relations. However, despite these similarities, the decisive criterion for differentiation remains the nature of the violated legal norm and the type of legal relations from which liability arises.

The multiplicity of economic legal relations determines the emergence of economic and legal liability as a result of violations by a participant in economic relations not only during his/her activities

[346] Kuznetsova, N. S., Kivalov, S. V. *Finansova vidpovidalnist u systemi publichnoho prava* [Financial Liability in the System of Public Law]. Kyiv: Alerta, 2024. P. 118–134. [in Ukrainian]

in social production, but also during registration, the procedure of which is subject to attention and control of the relevant power and administrative structures represented by public authorities. It is precisely this intersection of regulatory and managerial elements that generates the greatest number of doctrinal disputes concerning the legal nature of sanctions applied in the economic sphere.

By contrast, the essence of the financial activity of the state consists in planned activity aimed at the formation, distribution and use of centralized and decentralized public funds for the performance of state functions. Financial legal relations arise exclusively in the process of such activity.

Accordingly, the differentiation between financial sanctions and economic sanctions must be based on the functional purpose of the violated norm rather than on the identity of the subject to which the sanction is applied.

Financial law norms are contained in special legislative acts and regulate monetary relations rather than economic activity as such. These relations constitute only one element of the activity of business entities. Therefore, the normative focus of the unlawful act for which sanctions are imposed differs: economic sanctions are applied for violations of economic legislation, while financial-law sanctions are applied for violations of financial legislation. This distinction is consistently upheld in the practice of the Supreme Court of Ukraine[347].

The analysis of differences between financial-law sanctions and penal sanctions as well as administrative and economic sanctions should be carried out separately, due to the somewhat different legal regulation of these types of economic sanctions, which differ even within the sphere of economic relations. Thus, in accordance with Article 230 of Commercial Code of Ukraine No. 436-IV dated January 16, 2003, penal sanctions are economic sanctions in the form of a monetary amount (liquidated damages, fine, penalty), which a participant in economic relations is obliged to pay

[347] *Supreme Court of Ukraine. Praktyka Kasatsiinoho hospodarskoho sudu Verkhovnoho Sudu shchodo rozmezhuvannia finansovykh ta hospodarsko-pravovykh sanktsii* [Case law of the Commercial Court of Cassation of the Supreme Court on the differentiation of financial and economic sanctions]. 2021–2025. [in Ukrainian]

in case of violation of the rules of economic activity, non-fulfillment or improper fulfillment of economic obligations.

It should be noted that under the above provision "liquidated damages" is used as a generic term for fines and penalties and are a separate type of penalty, although the legislator does not specify what distinction is intended. Financial legislation, by contrast, does not operate with the concept of liquidated damages at all, which further confirms the sectoral autonomy of financial liability and its sanctions.

The differences between penal sanctions within economic liability and financial-law sanctions.

1. *The scope of application and grounds and mechanisms of establishment.*

Economic penal sanctions are used mainly in contractual legal relations, i.e. property and economic obligations. However, according to the literal interpretation of the Commercial Code of Ukraine, the possibility of applying penal sanctions in organizational and economic relations (including those arising on the basis of operating and commercial agreements) is not excluded. Fines and penalties under the sanctions under financial legislation are applied for violations of its norms independently of contractual relations between the participants in financial legal relations, with the exception of special procedures expressly provided by law, including tax compromise mechanisms.

Depending on the types of obligations, penal sanctions may be determined by law or agreement with the possibility of their adjustment in the agreement under the appropriate scope. Thus, in certain cases Article 231 of the Commercial Code of Ukraine allows the legislator to establish the amount of penal sanctions by agreement between the parties.

Financial-law sanctions, by contrast, are established exclusively by legal acts and are not subject to contractual modification, which reflects their public-law nature.

2. *The legal status of public authorities as subjects of sanction application.*

The subjects of the right to apply penal sanctions, in addition to business entities, consumers and other participants in economic relations, are also public authorities and local self-government bodies with economic competence.

The decisive factor is that public authorities and local self-government bodies may impose penal sanctions only when acting within economic relations and exercising economic competence on behalf of the relevant state or municipal institution. The Commercial Code of Ukraine does not recognize the state, public authorities or local self-government bodies as business entities, which is doctrinally justified.

This indicates that, when applying economic and legal sanctions, public authorities do not act as bodies exercising authoritative powers, but as participants in economic relations entitled to impose penal sanctions on the counterparty in the course of exercising economic competence. At the same time, they bear liability for obligations arising from such relations within the limits of the property belonging to the respective institution, unless otherwise provided by law.

This legal status fundamentally differs from the role of public authorities in the application of financial-law sanctions. In the latter case, public authorities act as bearers of public power and impose sanctions while exercising authoritative competences aimed at protecting the financial interests of the state.

3. *The direction of recovery.*

The above liability measures should also be differentiated on the basis of the direction of the recovered funds as a fine, since if penal sanctions are recovered mainly in favor of the counterparty under the contract, then financial-law—to the state budget or non-state trust funds. Thus, penalties and financial-law sanctions should be clearly distinguished: 1) by the sphere of legal relations in which they are applied; 2) by the grounds and procedure for their establishment; 3) by the subjects entitled to apply them; 4) by the method of determination of their amount.

However, the greatest controversy among scientists and researchers is around administrative and economic sanctions both in terms of their legal nature and the identification of such sanctions, in particular in the form of an administrative and economic fine with a financial-law fine. Therefore, a research to identify the differences between the above measures is objectively necessary.

The controversial issue of determining the legal nature of administrative and economic sanctions can be reduced to two main doctrinal approaches. Thus, a number of Ukrainian scholars, in particular O. P. Podtserkovnyi and N. Shevchenko, consider such sanctions to be a form of economic and legal liability, proceeding from their functional connection with violations committed in the sphere of economic activity[348; 349].

At the same time, other scholars, including O. V. Denysenko and O. P. Riabchenko, substantiate the position that administrative and economic sanctions should be classified as a type of administrative liability, emphasizing the public-law nature of their application and the authoritative status of the bodies empowered to impose them[350; 351].

At the legislative level, the ambiguity of this issue is reinforced by Part 2 of Article 241 of the Commercial Code of Ukraine, which stipulates that the list of violations for which an administrative and economic fine is imposed, as well as the amount and procedure for its recovery, are determined by the laws regulating tax and other public relations in which the offense was committed. Such a legislative approach objectively creates normative collisions with financial legislation, which independently regulates the grounds and procedure for imposing financial sanctions.

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[348] Podtserkovnyi, O. P., Kvasnytska, O. O., Smitiukh, A. V. *Hospodarske pravo: pidruchnyk* [Economic Law: textbook] / edited by O. P. Podtserkovnyi. Kharkiv: Odissei, 2010. P. 341–342. [in Ukrainian]

[349] Shevchenko, N. *Poniattia administratyvno-hospodarskykh sanktsii* [The concept of administrative and economic sanctions]. *Pidpryiemnytstvo, hospodarstvo i pravo* [Entrepreneurship, Economy and Law]. 2005. No. 7. P. 81. [in Ukrainian]

[350] Denysenko, O. V. *Administratyvno-hospodarski sanktsii: problemy, perspektyvy ta shliakhy podolannia kolizii pry yikh zastosuvanni* [Administrative and economic sanctions: problems, prospects and ways of overcoming conflicts]. *Visnyk hospodarskoho sudochynstva* [Bulletin of Economic Proceedings]. 2010. No. 3. P. 132. [in Ukrainian]

[351] Riabchenko, O. P. *Sutnist administratyvno-hospodarskykh sanktsii* [The essence of administrative and economic sanctions]. *Visnyk Verkhovnoho Sudu Ukrainy* [Bulletin of the Supreme Court of Ukraine]. 2009. No. 2. P. 39. [in Ukrainian]

This inconsistency largely explains the early judicial practice of Ukrainian courts prior to the judicial reform of 2016—2017, including certain decisions of the former Higher Administrative Court of Ukraine and the Supreme Court of Ukraine, in which financial sanctions applied in the tax and payment sphere were identified as administrative and economic fines [352; 353].

A logical question therefore arises: if sanctions imposed for violations of tax obligations by business entities are qualified as administrative and economic sanctions, what is the legal nature of sanctions applied to individuals who do not have the status of business entities, for example, in cases of failure to pay tax on income received under civil law transactions?

In this context, the position of Professor N. Yu. Pryshva remains methodologically sound. The scholar rightly notes that such an approach contradicts the nature of taxation as a component of financial law and ignores the legal position of the Constitutional Court of Ukraine, which confirmed the existence of financial sanctions as an independent type of legal sanctions [354].

An administrative and economic fine, in accordance with Part 1 of Article 241 of the Commercial Code of Ukraine, is a monetary amount paid by a business entity to the relevant budget for violation of established rules of economic activity. By contrast, a financial-law fine constitutes a measure of financial liability applied for violations of financial legislation.

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[352] *Postanova Vyshchoho administratyvnoho sudu Ukrainy vid 10.05.2011 No. K-15366/09 u spravi za pozovom Derzhavnoi podatkovoi inspektsii u m. Ivano-Frankivsku do pryvatnoho pidpryiemtsia pro stiahnennia zaborhovanosti* [Resolution of the Higher Administrative Court of Ukraine dated May 10, 2011 No. K-15366/09]. *Yedynyi derzhavnyi reiestr sudovykh rishen.* [in Ukrainian]

[353] *Postanova Verkhovnoho Sudu Ukrainy vid 23.06.2009 No. 21-557vo09 u spravi za pozovom Derzhavnoi podatkovoi inspektsii u m. Chernihovi do VAT "Chernihivnaftoprodukt" pro stiahnennia administratyvno-hospodarskoi sanktsii* [Resolution of the Supreme Court of Ukraine dated June 23, 2009 No. 21-557vo09]. *Yedynyi derzhavnyi reiestr sudovykh rishen.* [in Ukrainian]

[354] Pryshva, N. Yu. *Finansovo-pravove rehuliuvannia vidnosyn zi spravliannia oboviazkovykh platezhiv: aktualni pytannia* [Financial-law regulation of relations on recovery of mandatory payments: topical issues]. Pravo Ukrainy [Law of Ukraine]. 2004. No. 5. P. 49–52. [in Ukrainian]

Despite the superficial similarity between administrative and economic fines and financial-law fines, these measures have fundamentally different legal nature and constitute independent types of legal liability. The main distinctions between them are manifested in the scope of application, the legal status of offenders, and the time limits for imposing sanctions.

1. *The scope of application.*

Administrative and economic fines are imposed for violations of legislation regulating economic activity, whereas financial-law sanctions are applied for violations of financial legislation, in particular in the field of taxation, customs regulation, currency control, public banking activity, budgetary relations, and cash transactions[355]. These spheres of public relations cannot be equated, as they differ in subject matter, methods of legal regulation, circle of participants, and legal objectives. Financial relations arise in the process of accumulation, distribution, and use of public funds and are governed by financial law, while economic relations concern the organization and implementation of economic activity and are regulated by economic legislation[356].

2. *The legal status of offenders.*

Another essential criterion for distinguishing financial-law fines from administrative and economic ones is the subject composition. Financial-law sanctions may be applied to both individuals and legal entities, including business entities and non-business entities, depending on the specific type of financial relations in which the offense was committed[357]. In contrast, administrative and economic fines, pursuant to the provisions of the Commercial Code of Ukraine, may be applied exclusively to business entities—legal entities and individual entrepreneurs[358]. This difference alone

[355] Pryshva, N. Yu. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kyiv: Yurinkom Inter, 2018. P. 214–216. [in Ukrainian]

[356] Podtserkovnyi, O. P. Hospodarske pravo Ukrainy [Economic Law of Ukraine]. Kharkiv: Pravo, 2019. P. 97–99. [in Ukrainian]

[357] Tax Code of Ukraine No. 2755-VI of December 2, 2010. Art. 109–114. [in Ukrainian]

[358] Commercial Code of Ukraine No. 436-IV of January 16, 2003. Art. 241. [in Ukrainian]

precludes the identification of financial liability with economic and legal liability.

3. The terms of application.

The terms for imposing administrative and economic fines and financial-law sanctions also differ significantly. According to Part 1 of Article 250 of the Commercial Code of Ukraine, administrative and economic sanctions may be applied within six months from the date of detection of the violation, but not later than one year from the date of its commission, unless otherwise provided by law[359].

At the same time, the general limitation period for imposing financial-law sanctions in tax relations is 1,095 days, as established by Clause 102.1 of Article 102 of the Tax Code of Ukraine[360]. Moreover, following the adoption of the Tax Code of Ukraine, Article 250 of the Commercial Code was amended to exclude its application to penalties whose amount and procedure for recovery are determined by tax legislation and other laws administered by tax and customs authorities.

In the sphere of public banking activity there is a six-month term for imposing fines for the respective violations, which is calculated from the date of detection of the violation (according to the Regulation on the Application by the National Bank of Ukraine of Enforcement Measures, approved by Resolution of the Board of the National Bank of Ukraine No. 346 dated August 17, 2012, a fine in the amount provided for in Clause 9 of Article 73 of the Law of Ukraine "On Banks and Banking Activity" is applied). The above circumstances are a significant distinction between administrative and economic fines and financial-law fines.

At the same time, judicial practice demonstrates a certain inconsistency in the qualification of such sanctions. Thus, while classifying financial sanctions as administrative and economic ones, the Supreme Court has repeatedly emphasized that special legislative acts establishing financial liability take precedence over the general

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[359] Commercial Code of Ukraine No. 436-IV of January 16, 2003. Art. 250(1). [in Ukrainian]

[360] Tax Code of Ukraine No. 2755-VI of December 2, 2010. Art. 102(1). [in Ukrainian]

provisions of the Commercial Code of Ukraine. In particular, in disputes arising under the Law of Ukraine "On Compulsory State Pension Insurance," the Court noted that the special limitation period provided by this Law prevails over Article 250 of the Commercial Code of Ukraine[361].

Judicial law enforcement activity reflects the state of legislative regulation and reveals its internal contradictions. The existence of collisions and gaps in legislation often necessitates judicial interpretation, which should be based not only on statutory provisions but also on established scientific doctrines. However, judicial practice does not always fully take into account the doctrinal separation of financial and economic liability.

Without questioning the legitimacy of decisions of the Supreme Court, however, we should note some ambiguity in the position taken by it regarding the application to the identification and the procedure for imposing and recovering financial-law sanctions of the provisions of the Commercial Code of Ukraine. The subject of regulation of this Code is the basic principles of economic activity in Ukraine, economic relations arising when organizing and implementing economic activity between business entities as well as between these entities and other participants in relations in the economic activity area (Article 1 of the Commercial Code of Ukraine).

Thus, by defining the financial-law fine that can be applied to business entities—legal entities for the relevant violations of laws in the field of taxation, compulsory state pension insurance, payment and cash relations, etc. as an administrative and economic fine, the Supreme Court actually defines the liability to which these persons may be held for the above violations as economic and legal, since the occurrence of administrative liability in this case is difficult to admit in view of the fact that the Code of Ukraine on Administrative Offenses enshrines only individuals as offenders. In order to confirm this assumption, it is necessary to cite the resolution of the Judicial Chamber on Commercial

[361] Resolution of the Supreme Court of Ukraine dated September 3, 2019 in case No. 826/8917/16. Unified State Register of Court Decisions. [in Ukrainian]

Cases of the Supreme Court of Ukraine dated February 4, 2002[362], which states that the fact of violation by a structural subdivision of a juridical person of the norms of cash circulation regulation, for which the state tax authorities are authorized to apply financial sanctions, is not an administrative offense under the current legislation of Ukraine (in connection with the subject composition of persons to whom administrative liability measures may be applied), nor relations for which civil liability is provided.

Instead, application of economic and legal liability to relations arising in the purely financial sphere of state activity and for violations of financial legislation is not considered possible, and even the theoretical possibility of identifying these spheres by the Supreme Court of Ukraine is not permissible. Thus, a situation arises in which financial offenses are assessed and considered as economic offenses, which is legal nonsense.

A similar understanding of the legislation was expressed by the Supreme Administrative Court of Ukraine (now the Cassation Administrative Court within the Supreme Court—author's note). In one of its decisions, the court, guided by the Code of Administrative Procedure of Ukraine[363], concluded that the fine

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[362] *Postanova Sudovoi palaty u hospodarskykh spravakh Verkhovnoho Sudu Ukrainy vid 04.02.2002 u spravi za pozovom ZAT likuvalno-ozdorovchykh zakladiv "Truskavetskurort" do DPI u m. Truskavtsi pro vyznannia nediisnym rishennia vidpovidacha pro zastosuvannia i stiahnennia finansovykh sanktsii z pozyvacha za porushennia zakonodavstva pro opodatkuvannia* [Resolution of the Juridical Chamber on Commercial Cases of the Supreme Court of Ukraine dated February 4, 2002 to the case on the claim of Truskavetskurort CJSC to the STI in Truskavets on invalidation of the defendant's decision to apply and levy financial sanctions against the claimant for violation of tax legislation]. *Verkhovna Rada Ukrainy* [Verkhovna Rada of Ukraine]. Retrieved from http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0111700-02 [in Ukrainian]

[363] *Postanova vid 22.04.2010 u spravi № K-15390/08 za pozovom TOV "Svit Rozvah" do Holovnykh derzhavnykh podatkovykh revizoriv-inspektori podatkovoi sluzhby Derzhavnoi podatkovoi administratsii u Kharkivskii oblasti, 3-i osoby Spetsializovana derzhavna podatkova inspektsiia po roboti z velykymy platnykamy podatkiv u m. Kharkovi, Derzhavna podatkova administratsiia u Kharkivskii oblasti pro vyznannia dii posadovykh osib nezakonnymy* [Resolution dated April 22, 2010 to the case No. K-15390/08 on the claim of Svit Razvag LLC to the Chief State Tax Auditors-Inspectors of the Tax Service of the State Tax Administration in Kharkiv region, 3rd persons Specialized State Tax Inspectorate for work with large taxpayers in Kharkiv, State Tax Administration in Kharkiv region on recognition of the actions of officials as illegal]. Yedynyi reiestr sudovykh rishen [The unified register of court decisions]. Retrieved from http://reyestr.court.gov.ua/Review/9485172 [in Ukrainian]

provided for by Article 17 of the Law of Ukraine On the Use of Registers of Payment Transactions in Trade, Catering and Services, by its legal nature, constituted an administrative-economic sanction, the grounds for application of which, together with economic liability, was the commission of an economic offense by a participant in economic relations.

At the same time, reference should be made—exclusively in a historical and doctrinal context—to the Economic Code of Ukraine, which has lost its validity as a result of legislative reform. Article 4 of the former Code distinguished between relations in the sphere of economic activity and other types of relations, expressly excluding financial relations involving business entities that arise in the process of budget formation and control over the execution of budgets of all levels from the scope of its regulation.

These relations primarily include budgetary relations governed by the Budget Code of Ukraine, annual laws on the State Budget of Ukraine, and other special legislative acts. The same applies to tax relations, which are regulated by the Tax Code of Ukraine and other acts of tax legislation. Even Article 17 of the former Economic Code, devoted to taxation, contained only general provisions concerning the use of taxes as a means of regulating economic activity and was primarily aimed at protecting the interests of business entities rather than regulating public financial relations[364].

Consequently, the legal regulation of financial relations is carried out by special legislative acts governing the relevant sphere, and not by economic legislation. Owing to its subject matter and regulatory method, economic law was not designed to regulate imperative external relations between business entities and the state concerning the accumulation, distribution and expenditure of public financial resources.

The objective incapacity of economic legislation to regulate financial legal relations, as well as the legal impossibility of such substitution in principle, follows not only from the analysis

[364] *Naukovo-praktychnyi komentar do Hospodarskoho kodeksu Ukrainy* [Scientific and practical commentary on the Commercial Code of Ukraine]; edited by V. K. Mamutov. Kyiv: *Yurinkom Inter*, 2004. P. 19 [in Ukrainian]

of specific norms but also from the generally accepted sectoral division of law. Economic-legal sanctions and financial-legal sanctions represent different types of legal coercive measures, differing in their legal nature, scope of application, grounds, subjects and procedural framework. Their identification inevitably leads to doctrinal confusion and instability in law-enforcement practice.

In order to avoid ambiguity in determining the nature of financial-legal sanctions—which ultimately undermines the consistency of legislative acts based upon them—it is necessary to ensure clear legislative regulation of financial-legal liability and its measures as an autonomous type of legal responsibility.

The specific character of economic activity, combining private-law and public-law regulatory mechanisms, historically served as the basis for introducing administrative-economic sanctions within the framework of the former Economic Code. However, even within that model, such sanctions should have been regarded as belonging to the sphere of economic law rather than administrative law, despite the legislator's reference to the Code of Ukraine on Administrative Offenses as a systemic act governing administrative liability.

At present, however, it may be stated that the doctrine of financial-legal liability has gained increasing recognition both in legal scholarship and in judicial practice. This is evidenced, inter alia, by the distribution of jurisdiction between economic and administrative courts: disputes concerning the recovery of financial-legal sanctions are considered under administrative proceedings rather than economic proceedings. Such jurisdictional differentiation clearly indicates the inadmissibility of classifying financial-legal sanctions as economic-legal measures.

Furthermore, the Tax Code of Ukraine expressly provides for financial liability for tax offenses alongside administrative and criminal liability. This legislative approach constitutes a qualitatively significant step toward the recognition by the state of financial-legal liability and its measures as an independent type of legal responsibility and sanctions, thereby reflecting the formation of a consistent and logically grounded legal policy in the sphere of public finance.

Along with the above, most often there is an identification of financial-law sanctions with measures of administrative liability with the subsequent assertion of the common administrative nature of these measures in academic circles. Thus, it is necessary to conduct a comparative analysis of these measures to refute incorrect conclusions about their identity.

3.3. Differentiation Between Financial-Law Sanctions and Administrative Penalties

As of today, the most heated debates in Ukrainian legal science revolve around the common legal nature of financial sanctions and administrative penalties, specifically whether they should be identified as the same or distinguished as separate entities. This discussion remains highly relevant under current Ukrainian legislation, as financial liability is not expressly defined at the legislative level as an independent type of legal liability.

In particular, a significant part of the Ukrainian scientific school of administrative law tends to identify financial sanctions with administrative ones. For instance, V. Kolpakov[365] points out that the nature of many financial offenses aligns with the characteristics of administrative misdeeds, which suggests their inclusion within the broader scope of administrative responsibility.

Similarly, L. Kasianenko[366], analyzing the nature of financial-law responsibility, emphasizes that despite its specific features, it often functions through the mechanisms of administrative and coercive measures, which creates a basis for their scientific convergence. Furthermore, some researchers, following the logic

[365] Kolpakov, V. K. *Administratyvno-deliktnyi pravovyi fenomen* [Administrative-tort legal phenomenon]: Monograph. Kyiv: Yurinkom Inter, 2004. 528 p. [in Ukrainian]

[366] Kasianenko, L. M. *Administratyvno-pravove rehuliuvannia finansovoho kontroliu v Ukraini* [Administrative and legal regulation of financial control in Ukraine]: Thesis for the degree of Doctor of Legal Sciences. Irpin: National University of the State Tax Service of Ukraine, 2011. 450 p. [in Ukrainian]

of S. Kuvakin[367], argue that fines for violations of financial legislation are essentially administrative in nature, and the existing differences are primarily formal or procedural, often stemming from the lack of systematization in financial and administrative legislation. The Ukrainian researcher D. Lilak also believes that state bodies bring violators to justice through the application of penal sanctions. The decisions taken by these bodies are administrative acts by their purpose, procedure and consequences. In this regard, sanctions applied for violation of legislation in the field of financial activity are administrative ones[368]. Accordingly, sanctions applied for violations of legislation in the sphere of financial activity are characterized by the scholar as administrative in nature.

The main reasons for bringing financial-law sanctions to administrative liability and its measures are that financial-law sanctions as well as administrative sanctions have a public nature, and public relations regarding the application of both types of sanctions are regulated by the imperative method. In addition, both financial and administrative sanctions are applied by public authorities within legal relations characterized by inequality of the parties and are implemented on the basis of an authoritative decision (administrative act). Another argument supporting this position is the absence of a legislative definition of financial-law liability as an independent type of legal liability in the current legislation of Ukraine.

However, the limitations of such conclusions become evident upon a deeper analysis. These positions are largely based on a superficial comparison of financial-law sanctions with measures of administrative liability, whereas a more thorough examination leads to fundamentally different conclusions. In particular, financial-law sanctions cannot be identified with

[367] Kuvakin, S. V. *Administratyvna vidpovidalnist za porushennia podatkovoho zakonodavstva* [Administrative liability for violation of tax legislation]. Visnyk Odeskoho instytutu vnutrishnikh sprav [Bulletin of the Odesa Institute of Internal Affairs]. 2004. No. 2. P. 84–88. [in Ukrainian]

[368] Lylak, D. *Administratyvna i tsyvilno-pravova vidpovidalnist yurydychnykh osib u sferi ekonomichnykh vidnosyn (kolizii teorii ta problemy praktyky)* [Administrative and civil liability of legal entities in the field of economic relations (theory conflicts and practical problems)]. *Pravo Ukrainy* [Law of Ukraine]. 2000. No. 1. P. 25. [in Ukrainian]

administrative sanctions, are not a subtype thereof, and do not obey the logic of administrative liability. Thus, the imperative method of legal regulation is not an exclusive feature of administrative law, but is inherent in all public branches of law, including constitutional, financial, and criminal law. Consequently, the mere use of an imperative method does not justify the unification of different public-law branches or the reduction of financial law to administrative law. Likewise, the fact that financial-law sanctions are applied on the basis of authoritative decisions that may formally qualify as administrative acts does not indicate their administrative-law nature.

Financial-law sanctions, despite having certain common features with other public-law liability measures, occupy an independent place within the system of legal sanctions. They are characterized by a specific subject matter of regulation, a special purpose connected with the protection of public finances, and distinct mechanisms of state coercion, which collectively distinguish them from administrative penalties.

Academician M. P. Kucheriavenko, who highlights the peculiarities of financial-law sanctions that do not allow identifying them with administrative sanctions[369] is among the supporters of the distinction between financial-law sanctions and administrative penalties. At the same time, the scholar provides a list of differences, which, in his opinion, include the peculiarities of the offenders (if under administrative sanctions the offenders are only natural persons, then under financial sanctions they can be both juridical and natural persons); the form of sanction implementation, which is a characteristic of administrative measures in monetary form, while financial-law sanctions are much wider than monetary ones; ensuring sanctions with special state coercion (financial-law sanctions for tax offenses are based on tax coercion characterized by specific features, the sign of which is the application of financial-law sanctions without taking into account the guilt of the offender).

[369] Kucheryavenko, N. P. *Nalogovoe pravo: uchebnik* [Tax law: textbook]. Kharkiv: Legas, 2001. P. 53–57. [in Russian]

Professor O. A. Musatkina considering opinions of some researchers on the absence of direct financial-law sanctions as well as financial-law liability, and their opinions on the administrative nature of financial-law sanctions reasonably raises the question: why coercive measures applied for violation of tax legislation are administrative as tax legislation belongs to the financial one, since it consists of a set of financial rules? The scholar convincingly notes that the judgments of the supporters of the classification of financial sanctions as a type of administrative sanctions lead to absurd conclusions that financial rules of conduct consist of hypotheses and dispositions, and the sanction is contained in the rules of administrative law, which is unreal due to the impossibility of building financial law only with the help of hypotheses and dispositions[370].

Thus, in **order to obtain evidence of the independence of financial-law sanctions, it is advisable** to apply the comparative legal method aimed at identifying the features that confirm such independence by comparing them with similar characteristics of administrative liability measures. In this context, a fine is analyzed as a typical form of administrative penalty, which allows for a clear identification of substantive and functional differences between these two types of sanctions.

1. Grounds for the application of sanctions.

Financial-law sanctions are applied exclusively as a result of committing a financial offense by the subject, which distinguishes them from administrative penalties imposed on a person due to an administrative offense. This distinction is preserved in current Ukrainian legislation and reflects the sectoral differentiation of legal liability.

A financial offense is defined as an act that violates the norms of financial legislation and infringes on the financial interests of the state and society protected by law, and for which

[370] Musatkina, A. A. *Finansovaya otvetstvennost v sisteme yuridicheskoj otvetstvennosti* [Financial liability in system of legal liability]: dissertation for the degree of Candidate of Legal Sciences: specialty 12.00.01. Tolyatti, 2004. P. 167. [in Russian]

financial-law liability is established. The legislator explicitly confirms the existence of such grounds for the application of financial-law sanctions. The existence of such grounds for the application of financial-law sanctions is also indicated by the legislator. Thus, a tax offense covered by the concept of financial offense is an unlawful, culpable act (action or omission) of taxpayers, including equated persons, controlling bodies and/or their officials, other entities in cases established by the Tax Code of Ukraine and other legislation (Clause 109.1 of Article 109 of the Tax Code of Ukraine).

An administrative offense (misdemeanor) is an unlawful, culpable action or omission that infringes on public order, property, rights and freedoms of citizens, the established order of governance and for which the law provides for administrative liability (Article 9 of the Code of Ukraine on Administrative Offenses).

A comparison of these legislative definitions demonstrates that financial and administrative offenses differ not only formally, but also substantively, as they infringe upon different groups of social relations protected by the state. Financial offenses target public financial interests, whereas administrative offenses primarily encroach upon public order and the system of public administration.

2. *Object of Offenses to which sanctions are applied.*

The subject of regulation of administrative law is legal relations arising out of the exercise by the authorities of their powers to maintain the normal functioning of the economic, military, political, social and cultural systems of the country as well as to protect public order and public safety. Accordingly, administrative law does not regulate relations that form part of the public financial activity of the state, and therefore does not encompass the object of a financial offense.

Financial law, in contrast, governs relations arising in the process of formation, distribution, redistribution, and use of public funds. Thus, the object of a financial offense is the financial interests of the state and society, which are not identical to the objects protected by administrative law. The question of expediency or admissibility of equating these two spheres of legal regulation or merging them into one is not even raised within the framework of consistent legal doctrine.

Consequently, when applying financial-law sanctions and administrative penalties, the objects affected by unlawful actions are fundamentally different in each case: the financial interests of the state and society, on the one hand, and public order, property, rights and freedoms of citizens, as well as the established order of governance, on the other.

At the same time, certain representatives of administrative law doctrine argue that administrative liability may arise not only for administrative offenses, but also on other grounds. Such an approach contradicts the principle of legal certainty and the sectoral differentiation of law, since it leads to the unjustified expansion of administrative liability and the blurring of boundaries between independent types of legal liability, which is incompatible with the constitutional principle of the rule of law and the systematic structure of Ukrainian legislation [371].

3. Offenders.

Comparison of the offenders subject to financial and administrative liability measures is also indicative in terms of their incompatibility within the measures of one type of legal liability.

Only natural persons may be subject to administrative liability under the Code of Ukraine on Administrative Offenses. This is also evident from Article 27 of the mentioned Code, which defines a fine as a monetary penalty imposed on citizens and officials for administrative offenses in cases and in the amount established by this Code and other laws of Ukraine.

The subjects of financial-law liability can be both natural and juridical persons, which is one of the characteristic features of financial-law sanctions and distinguishes them from administrative liability measures, which in financial activities are presented only in the form of a fine and can be applied exclusively to natural persons.

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[371] Pryshva, N. Yu. Finansove pravo Ukrainy [Financial Law of Ukraine]. Kyiv: Yurinkom Inter, 2018. P. 214–216. [in Ukrainian]

At the same time, such a conclusion regarding the subject composition of financial, legal, and administrative liability is disputed by some scholars, who argue for the possibility of imposing administrative liability on legal entities, despite the absence of such provisions in the Code of Ukraine on Administrative Offenses. In practice, however, this position is implemented through the application of financial-law sanctions to legal entities, which these authors interpret as administrative liability measures. This substitution of concepts does not eliminate the legislative gap but instead confirms the independent nature of financial-law liability as a distinct form of legal responsibility.

In particular, a scholar in the field of administrative law, professor E. V. Dodin noted that for a long time in the administrative law science only a natural person was recognized as the offender, which was reflected in the Code of Ukraine on Administrative Offenses. At the same time, the development of market relations and private entrepreneurship objectively necessitated strengthening state control over compliance by juridical persons with public-law obligations in the sphere of executive power.

However, these doctrinal arguments did not lead to the legislative recognition of juridical persons as subjects of administrative liability, since the Code of Ukraine on Administrative Offenses continues to limit the circle of offenders to natural persons only [372].

The Ukrainian scholar D. M. Lukyanets also substantiates the view that current legislation contains cases of applying sanctions to juridical persons, including in the tax sphere, through the use of financial sanctions established by laws other than the Code of Ukraine on Administrative Offenses [373].

At the same time, such sanctions are formally defined as financial (or economic) rather than administrative, which confirms

[372] Averianov, V. B. Derzhavne upravlinnia: teoriia i praktyka [Public governance: theory and practice]. Kyiv: Yurinkom Inter, 1998. P. 270. [in Ukrainian]

[373] Lukianets, D. M. *Instytut administratyvnoi vidpovidalnosti: problemy rozvytku: Monohrafiia* [Institute of administrative liability: development problems: Monograph]. Kyiv: V. M. Koretskyi Institute of State and Law of the National Academy of Sciences of Ukraine, 2001. P. 105–110. [in Ukrainian]

the absence of legislative recognition of juridical persons as subjects of administrative liability.

The Ukrainian researcher I. Kuyan notes the absence of a unified approach among the representatives of the administrative and legal doctrine to resolve the issue of the legal nature of financial (economic) sanctions applied to legal entities, which creates a situation in which: 1) the terminological confusion appears; 2) the procedure for applying this type of sanctions against legal entities in subordinate legislation is defined in different ways. Ultimately, all this leads to unpredictable negative consequences in the activities of business entities[374]. This is true, but it clearly demonstrates that the existence of such a situation may be caused by the different legal nature of financial sanctions and administrative penalties.

Thus, the statement by representatives of administrative and legal science about the need for the legislator to provide for a juridical person as an administrative offender is a way to avoid recognition that cases of applying sanctions to legal entities in the form of a fine may indicate and indicate a different, non-administrative nature of such measures, and therefore the existence of a separate, independent from the existing type of legal liability, taking into account the specifics of public legal relations in which such sanctions are applied.

A particularly illustrative issue concerns the legal nature of penalties (interest, late payment charges) as a measure of liability. Administrative legislation does not recognize penalties as administrative sanctions at all, unlike administrative fines. Penalties perform primarily a compensatory and restorative function, whereas administrative liability is predominantly punitive in nature. This functional difference further confirms the impossibility of classifying penalties as administrative sanctions.

It should have been noted long ago that the path of expansion (hostile takeover) as a way to expand any branch of law has a wrong direction. Each branch of law (which arose as a reflection of the most important spheres of the public and state life) has

[374] Kuian, I. *Administratyvna vidpovidalnist yak instrument pravovoi derzhavy* [Administrative liability as a tool of the state of law]. *Pravo Ukrainy* [Law of Ukraine]. 1998. No. 5. P. 67. [in Ukrainian]

many its own problems, which are united by the main one— the search and development of an optimal model of legal regulation of the relevant range of social relations that form the subject of the relevant branch of law. The second priority should be to find an optimal system of legal equilibrium or balance between the state and society in the entire spectrum of social relations. As very often representatives of public branches of law defend the interests of the state, and representatives of private branches of law, respectively, give priority to the interests of a person and society forgetting the main and priority tasks of law and legal science.

Regarding the legal personality of a natural person to whom measures of financial and administrative liability may be applied, it should be noted that it also has some differences. Thus, in particular, administrative legislation establishes that natural persons who have reached the age of sixteen at the time of committing an administrative offense are subject to administrative liability (Article 12 of the Code of Ukraine on Administrative Offenses). However, the legislator establishes cases when, after reaching the specified age and before the minor reaches the age of eighteen, special measures of influence are applied to him/her, which are not as severe as administrative penalties applied on a general basis. At the same time, the financial law and legislation does not define the age of a natural person from which he or she is financially liable as well as the possibility of replacing measures of financial-law liability in the form of fines and penalties with other measures of influence, which, of course, should be considered as shortcomings of legal regulation of financial-law sanctions and should be regulated at the legislative level.

Now it is also necessary to consider in more detail the cases of application of penalties to juridical persons, which are contained in the current legislation and are called administrative. The study of this issue is caused by attempts to refute, on the basis of the above situation, such a distinguishing feature of financial-law sanctions from administrative sanctions as the application of the former to both natural and juridical persons as opposed to administrative penalties applied only to natural persons.

The Customs Code of Ukraine continues to demonstrate an inconsistent approach to determining the subject of liability for violations of customs rules. Pursuant to Article 459 of the Customs Code of Ukraine, administrative liability for violations of customs rules is imposed on natural persons, including officials of enterprises, rather than on the enterprises themselves.

At the same time, confiscation of goods and vehicles as direct objects of a customs offense may affect the property interests of juridical persons, even though they are not recognized as subjects of administrative liability.

This issue is one of the most discussed among scholars and lawyers, since under the previous legislation the norm of Part 2 of Article 326 of the Customs Code of Ukraine stipulated that the confiscation of goods and vehicles shall be applied regardless of whether these goods and vehicles are the property of the person who committed the offense. Special attention to this provision of the previous Customs Code is explained by its inconsistency with Article 354 of the Civil Code of Ukraine, according to which deprivation of property rights may be applied to a person for committing an offense. Consequently, where goods or vehicles belonged to a juridical person that was not legally recognized as the offender, confiscation resulted in the imposition of adverse consequences on an innocent owner, which contradicted the fundamental principles of legal liability.

Based on the above, the confiscation of property from a juridical person for violation of customs rules cannot be qualified as an administrative penalty within the meaning of Ukrainian administrative law. Both the Customs Code of Ukraine and the Code of Ukraine on Administrative Offenses clearly limit the circle of subjects of administrative liability to natural persons. The application of punitive measures to a person who is not legally recognized as the offender contradicts the principles of personal guilt, individual liability, and legal certainty. This also makes it difficult to clearly determine the legal nature of such measures.

Under the current Customs Code of Ukraine dated March 13, 2012, No. 4495-VI, Part 3 of Article 461 provides that confiscation applies to the direct objects of a customs offense, including goods and vehicles with specially manufactured caches (hiding places) used to conceal goods, as well as vehicles used to unlawfully transport such goods across the customs border of Ukraine outside the locations of customs authorities. At the same time, commercial vehicles used exclusively for regular international transportation of passengers and goods under international agreements are excluded from confiscation.

Thus, although current customs legislation narrows the scope of confiscation compared to earlier regulation, it still allows measures that may affect the property interests of juridical persons without formally recognizing them as subjects of administrative liability.

Taking this into account, in cases where a customs rule violation is objectively committed in the course of an enterprise's economic activity, the issue arises as to whether liability should be imposed on the enterprise itself rather than solely on its officials, as provided for in Article 479 of the Customs Code of Ukraine. However, Ukrainian legislation does not establish administrative liability of juridical persons for customs offenses, and the existing regulatory framework does not eliminate this legislative gap.

Moreover, customs legislation defines an enterprise as both a juridical person and a natural person engaged in entrepreneurial activity without forming a juridical person. As a result, juridical persons are, in certain contexts, artificially equated with natural persons—entrepreneurs. Given that the Code of Ukraine on Administrative Offenses recognizes only natural persons as subjects of administrative liability, such an approach leaves unresolved the issue of guilt of juridical persons and complicates law enforcement practice[375].

[375] Zauvazhennia Holovnoho yurydychnoho upravlinnia Verkhovnoi Rady Ukrainy vid 02.11.2011 do proektu zakonu Ukrainy pro vnesennia zmin do Mytnoho kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy (reiestratsiinyi № 8130-d) [Remarks of the Main Legal Department of the Verkhovna Rada of Ukraine dated November 2, 2011 to the Draft Law of Ukraine on Amendments to the Customs Code of Ukraine and Other Legislative Acts of Ukraine (registration No. 8130-d)]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. Retrieved from http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=40331 [in Ukrainian]

In view of the above, the confiscation of property from juridical persons for customs rule violation in accordance with the current legislation cannot be recognized as an administrative penalty, and therefore, the above example cannot be equivalent to the subject of discussion about the common offenders of administrative and financial legislation as an indicator of the administrative nature of financial-law sanctions.

4. Purpose of sanction application.

The science of administrative law traditionally defines the purpose of administrative liability as the education of the offender, as well as the prevention and suppression of administrative offenses and the punishment for their commission. This approach is reflected in Article 23 of the Code of Ukraine on Administrative Offenses, which characterizes administrative penalties as measures aimed at educating the offender in the spirit of compliance with the law and preventing the commission of new offenses. In this context, administrative penalties are not designed to serve a restorative function.

If, as a result of an administrative offense, the property interests of an individual or a legal entity are violated, such consequences give rise to civil-law (tort) legal relations, similar to those arising from criminal offenses. In such cases, alongside administrative liability, the offender may incur civil liability, the purpose of which is to compensate for the damage caused. The application of civil-law coercive measures aimed at restoring violated property rights requires the injured party to apply to a court. Thus, liability for violation of property rights is civil in nature, and the injured person possesses not an obligation but a subjective right to seek judicial protection, which is exercised at his or her discretion.

These circumstances significantly distinguish administrative penalties from financial-law sanctions. The latter, in particular fines and penalties (penia) provided for by financial legislation, are applied primarily with the aim of ensuring the compulsory restoration of public financial resources and, simultaneously, imposing an adverse consequence on the offender. In contrast to administrative penalties, the application of financial-law sanctions does not depend on the initiative of the injured party and is carried out by authorized public bodies in a mandatory manner.

Thus, the restorative legal orientation of financial-law sanctions, aimed at compensating losses to the state or territorial community and ensuring fiscal discipline, constitutes a fundamental criterion for distinguishing them from administrative penalties and other types of legal liability.

5. Application procedure and its legal regulation.

The procedure for the application of financial-law sanctions, including fines and penalties, is regulated by the norms of financial legislation that determine both the grounds for imposing such sanctions and their amounts, as well as the competence of authorized bodies. Such regulatory acts include, in particular, the Tax Code of Ukraine, the Laws of Ukraine “On the Collection and Accounting of the Unified Contribution for Compulsory State Social Insurance”, “On the Use of Registrars of Settlement Transactions in the Sphere of Trade, Catering and Services”, “On Financial Services and State Regulation of Financial Services Markets”, Law of Ukraine No. 2473-VIII “On Currency and Currency Transactions” of June 28, 2018, as well as by-laws, including resolutions of the National Bank of Ukraine, which regulate the application of enforcement measures for violations of banking and currency legislation.

These normative acts comprehensively regulate the procedural aspects of financial liability, including the detection of violations, adoption of decisions on the application of sanctions, and the procedure for their execution. At the same time, they may contain references to the possibility of bringing natural persons, including officials, to administrative liability; however, the procedure for such liability is determined exclusively by administrative legislation and not by financial regulations themselves.

The procedure for applying administrative penalties is regulated solely by the Code of Ukraine on Administrative Offenses, which establishes a unified procedural framework for this type of legal liability. This procedure includes the initiation of proceedings, drawing up a protocol on an administrative offense, consideration of the case by an authorized body or court, and the adoption and execution of a resolution on the imposition of an administrative penalty. No alternative procedural mechanism for the application of administrative penalties is envisaged by Ukrainian legislation.

A comparative analysis of the procedures for applying financial-law sanctions and administrative penalties demonstrates their fundamental differences. These differences concern, in particular, the form of recording the offense (for example, an act of inspection or audit in the case of tax and other financial violations versus a protocol on an administrative offense), as well as the procedural tools available to authorized bodies. Administrative proceedings allow for the application of measures to ensure proceedings in cases of administrative offenses, such as administrative detention, personal search, inspection and seizure of items and documents, as provided for by the Code of Ukraine on Administrative Offenses.

In contrast, the procedure for applying financial-law sanctions does not provide for such coercive procedural measures and is limited to control, supervisory, and decision-making actions within the framework of financial law. This distinction further confirms the independent legal nature of financial-law sanctions and their differentiation from administrative penalties.

6. Terms of sanction imposition.

Under Article 38 of the Code of Ukraine on Administrative Offenses, an administrative penalty may generally be imposed no later than two months from the date of committing an administrative offense, and in the case of a continuing offense—no later than two months from the date of its detection. If the case is subject to consideration by a court, the administrative penalty may be imposed within three months from the date of committing the offense or from the date of its detection in the case of a continuing offense.

In contrast, the terms for applying financial-law sanctions are determined by the norms of financial legislation and significantly differ depending on the sphere of public financial relations. In particular, pursuant to Article 102 of the Tax Code of Ukraine, the controlling authority has the right to determine the amount of monetary obligations of a taxpayer and apply financial sanctions within 1,095 days (three years) from the last day of the statutory deadline for submitting a tax declaration or from the day following the deadline for payment of the tax liability. In certain cases directly provided for by the Tax Code of Ukraine (for example, in the event of failure to submit a tax declaration), this period may be extended.

In the field of banking regulation and supervision, the terms for applying enforcement measures, including financial sanctions, are established by special legislation and regulatory acts of the National Bank of Ukraine. As a rule, such sanctions may be applied within six months from the date of detection of the violation, but not later than one year from the date of its commission, which further confirms the differentiated and sector-specific nature of financial-law liability.

Thus, the comparison of limitation periods demonstrates a fundamental difference between administrative and financial-law sanctions, both in duration and in the principles of their legal regulation.

7. *The procedure for calculating the monetary sanction.*

According to Articles 23 and 27 of the Code of Ukraine on Administrative Offenses[376], an administrative penalty in the form of a fine is imposed within the limits established by law and is calculated in non-taxable minimum incomes of citizens. The specific amount of such a fine is determined by the sanction of the relevant article of the Code of Ukraine on Administrative Offenses or other laws providing for administrative liability. Thus, administrative fines are characterized by a fixed minimum and maximum amount and are not directly linked to the actual amount of damage caused or unlawfully obtained benefit.

Financial-law sanctions, in contrast, are calculated on fundamentally different principles. They may be expressed either in a fixed monetary amount or in a percentage (or multiple) of the amount of unpaid, understated, or unlawfully obtained financial resources. In particular, under Article 127 of the Tax

[376] Kodeks Ukrainy pro administratyvni pravoporushennia vid 07.12.1984 № 8073-X [Code of Ukraine on Administrative Offenses No. 8073-X dated December 7, 1984]. *Vidomosti Verkhovnoi Rady Ukrainskoi RSR* [Statements of the Supreme Soviet of the Ukrainian SSR]. 1984. Appendix to No. 51. Article 1122. [in Ukrainian]

Code of Ukraine, a fine may be imposed in the amount of 25 percent of the tax amount that should have been accrued and/or paid to the budget[377]. Such sanctions are directly dependent on the economic consequences of the offense.

In addition, financial-law sanctions may be calculated based on the value of currency assets or other financial values involved in the violation, converted into the national currency of Ukraine in accordance with the procedure established by the Law of Ukraine "On Currency and Currency Transactions"[378] and regulatory acts of the National Bank of Ukraine. This approach reflects the compensatory and restorative orientation of financial-law sanctions, which are aimed primarily at restoring the financial interests of the state rather than imposing a purely punitive measure.

8. The possibility of independent application of sanctions by the violator.

Among the differences that make it possible to distinguish financial-law sanctions from administrative penalties is the possibility, provided for by financial legislation, of their independent calculation and payment by the offender without the adoption of an individual act by an authorized body. This applies primarily to the tax sphere, where the taxpayer is obliged to independently calculate and pay tax liabilities and financial sanctions (penalties and fines) in cases directly provided for by law.

Administrative legislation, in contrast, does not allow for the independent application of administrative penalties by the offender. Administrative sanctions may be imposed exclusively by authorized bodies (officials) following the consideration of an administrative offense case and the adoption of a relevant decision in the procedural form established by the Code of Ukraine on Administrative Offenses.

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[377] *Podatkovyi kodeks Ukrainy* vid 02.12.2010 № 2755-VI [Tax Code of Ukraine No. 2755-VI dated December 2, 2010]. *Vidomosti Verkhovnoi Rady Ukrainy* [Bulletin of the Verkhovna Rada of Ukraine]. 2011. No. 13-14, No. 15-16, No. 17. Article 112. [in Ukrainian]

[378] Pro valiutu i valiutni operatsii. Zakon Ukrainy vid 21.06.2018 № 2473-VIII [On Currency and Currency Transactions. Law of Ukraine No. 2473-VIII dated June 21, 2018]. Vidomosti Verkhovnoi Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine]. 2018. No. 30. Article 239. [in Ukrainian]

Thus, the possibility of voluntary fulfillment of financial-law liability without the initiation of coercive proceedings constitutes an essential distinguishing feature of financial-law sanctions and confirms their non-administrative nature.

9. Source of funds to be recovered.

Administrative liability has the nature of personal liability and is applied exclusively to natural persons, including officials. Accordingly, administrative penalties are recovered only at the expense of the personal income or property of such persons.

Financial-law sanctions, on the other hand, may be applied to both natural and juridical persons. In the case of juridical persons, recovery is carried out at the expense of their own funds, including profits remaining after taxation, as well as other property belonging to them by right of ownership or other lawful grounds. Natural persons bear financial-law liability at the expense of their own funds.

This difference in the source of recovery clearly demonstrates that financial-law sanctions are not limited to the personal sphere of an individual offender, which further distinguishes them from administrative penalties.

10. Possibility of simultaneous application of other legal liability measures.

A distinctive feature of financial-law sanctions, which fundamentally differentiates them from administrative penalties, is the possibility of their simultaneous application together with other types of legal liability, including administrative and criminal liability.

In particular, the Tax Code of Ukraine directly establishes that the application of financial liability for tax offenses does not exempt a person from administrative or criminal liability, provided that the elements of the corresponding offense are present[379]. Thus, financial-law sanctions function independently and do not replace other forms of public legal liability, but coexist with them within the legal system.

[379] Podatkovyi kodeks Ukrainy: vid 02.12.2010 № 2755-VI [Tax Code of Ukraine: No. 2755-VI dated December 2, 2010]. *Holos Ukrainy* [Voice of Ukraine]. December 4, 2010. No. 229. [in Ukrainian]

A similar legislative approach is applied in the sphere of compulsory state social insurance. The Law of Ukraine "On Collection and Registration of Contribution for Compulsory State Social Insurance" provides for the application of financial sanctions to payers of the single contribution, while simultaneously allowing for the imposition of administrative liability on officials of such payers in cases stipulated by law[380]. This confirms that financial-law sanctions imposed on juridical persons do not exclude the personal administrative liability of officials responsible for violations.

In the field of financial services, legislation also provides for a differentiated system of liability. Along with the application of financial sanctions to juridical persons for violations of legislation regulating financial services markets, the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" establishes the possibility of imposing administrative fines on natural persons and officials, as well as bringing such persons to criminal liability where the offense meets the criteria of a crime[381]. Accordingly, financial-law sanctions do not preclude the application of other legal liability measures but operate in parallel with them.

At the same time, administrative legislation is based on a fundamentally different principle. Pursuant to Article 9 of the Code of Ukraine on Administrative Offenses, administrative liability arises only if the committed act does not entail criminal liability. Consequently, the application of an administrative penalty excludes the possibility of bringing the same person to criminal liability for the same act, which reflects the subsidiary

[380] Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-VI [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-VI dated July 8, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 2–3. Article 11. [in Ukrainian]

[381] Pro finansovi posluhy ta derzhavne rehuliuvannia rynkiv finansovykh posluh: Zakon Ukrainy vid 12.07.2001 № 2664-III [On Financial Services and State Regulation of Financial Services Markets: Law of Ukraine No. 2664-III dated July 12, 2001]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2002. No. 1. Article 1. [in Ukrainian]

nature of administrative liability within the system of public legal responsibility.

Thus, the legislative recognition of the possibility of combining financial-law sanctions with administrative and criminal liability constitutes an important argument in favor of recognizing financial-law sanctions as independent measures of legal liability, rather than as a type of administrative penalties.

In view of the above, financial-law sanctions cannot be regarded as a type of administrative penalties. They constitute independent measures of financial-law liability, which, although capable of interacting with sanctions of other types of legal liability, occupy a separate place in the system of public coercive measures.

The sectoral affiliation of financial-law sanctions is the key criterion for determining their legal nature. This approach is also supported by the legal positions of the Constitutional Court of Ukraine concerning the liability of juridical persons, which emphasize the inadmissibility of mechanically extending administrative liability concepts to financial relations.

The conducted analysis of the differences between financial-law sanctions and measures of civil, economic, and administrative liability demonstrates that there are no legal grounds for identifying financial-law sanctions with any of the above types of liability.

At the same time, it should be acknowledged that difficulties in differentiating various types of legal liability are largely caused by the complexity and fragmentation of the legislative framework, which has developed over a long period and consists of numerous interrelated but sectorally distinct normative acts. The lack of clear legislative demarcation contributes to inconsistent interpretation and application of legal norms by law enforcement bodies and participants in public relations. Therefore, systematic improvement and harmonization of legislation remain a necessary condition for ensuring legal certainty and effective legal regulation.

3.4. Systemic Reconfiguration of Civil Liability in the Draft Civil Code of Ukraine (2026) and the Delimitation of "Penalty" from Financial-law Sanctions

The issue of the generic affiliation of the "penalty" (penia) in the Draft Civil Code of Ukraine (2026) is of fundamental importance for maintaining the doctrinal distinction between private-law and public-law sanctions. The draft clearly integrates the penalty into the system of private law remedies and excludes its qualification as a financial-law (fiscal) sanction.

Normative Consolidation of the Penalty (Penia) in the Draft Civil Code of Ukraine (2026)

The Draft Civil Code of Ukraine (2026) systematically incorporates the penalty (penia) into the structure of private-law remedies by placing it within the chapter devoted to "Ensuring the Fulfilment of Obligations." This legislative technique is not merely technical but reflects a deliberate doctrinal position: the penalty is treated as a mechanism of securing performance within the framework of civil obligations rather than as a public-law sanction.

According to the Draft Civil Code (2026), a penalty is defined as a monetary amount (or other property) payable by the debtor in the event of non-performance or improper performance of an obligation. The draft further specifies that a penalty (penia) is calculated as a percentage of the amount of an overdue monetary obligation for each day of delay. Such a definition corresponds to the traditional understanding of the penalty clause as an accessory obligation, which arises from and is dependent upon the principal obligation.

The normative placement of the penalty within the system of civil law has several important implications.

First, the penalty arises exclusively within a private-law obligation—contractual or statutory—and functions as a means of strengthening the discipline of performance. Its existence presupposes equality of the parties and is embedded in a dispositive legal environment where the parties are generally free to determine the scope and amount of liability within the limits established by law.

Second, the Draft Civil Code preserves the classical model according to which the right to claim a penalty does not depend on proof of actual damage. In this respect, the penalty performs a predetermined compensatory and preventive function, relieving the creditor from the burden of demonstrating losses. At the same time, the draft provides for judicial control over proportionality, allowing a court to reduce an excessive penalty. This mechanism reflects the principle of fairness and balance inherent in private-law regulation.

Third, the normative model of the penalty in the Draft Civil Code is structurally distinct from the legislative regulation of penalties in financial law. In public financial legislation, the term "penia" is also used; however, its legal nature is fundamentally different. For example, the Tax Code of Ukraine regulates the accrual of penalties as part of the regime governing tax debt and monetary obligations to the state [382]. The same applies to legislation concerning compulsory state social insurance contributions, where penalties are accrued automatically in case of delay in payment [383]. These provisions are embedded in a system of imperative public-law regulation and do not operate as instruments of securing contractual performance.

Furthermore, legislation governing financial services markets establishes financial sanctions, including fines and other monetary measures, which are imposed by authorized public bodies as elements of state supervision and control [384].

[382] *Podatkovyi kodeks Ukrainy*: Zakon Ukrainy vid 2 hrudnia 2010 r. № 2755-VI [Tax Code of Ukraine: Law of Ukraine No. 2755-VI dated December 2, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 13–14, No. 15–16, No. 17. Article 112. [in Ukrainian]

[383] *Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia:* Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-VI [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-VI dated July 8, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 2–3. Article 11. [in Ukrainian]

[384] *Pro finansovi posluhy ta derzhavne rehuliuvannia rynkiv finansovykh posluh*: Zakon Ukrainy vid 12.07.2001 № 2664-III [On Financial Services and State Regulation of Financial Services Markets: Law of Ukraine No. 2664-III dated July 12, 2001]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2002. No. 1. Article 1. [in Ukrainian]

These sanctions are not accessory to a civil obligation but arise from violations of regulatory norms and are enforced through administrative procedures.

Thus, the systematic interpretation of the Draft Civil Code (2026) demonstrates that the legislator clearly attributes the penalty to the sphere of private law. Its normative consolidation within the institution of securing obligations confirms its generic affiliation with civil-law remedies and excludes its identification with financial-law penalties established by public-law legislation.

Private-Law Nature of the Penalty as a Method of Securing Obligations

The doctrinal qualification of the penalty (penia) in the Draft Civil Code of Ukraine (2026) as a private-law institution is not limited to its formal placement within the chapter on "Ensuring the Fulfilment of Obligations." Its legal nature follows from the functional, structural, and methodological characteristics of civil-law regulation.

1. <u>Accessory Character and Dependence on the Principal Obligation.</u>

A defining feature of the civil-law penalty is its accessory (ancillary) character. The penalty does not exist autonomously but arises only in connection with a principal obligation. If the principal obligation is invalid, terminated, or not properly formed, the penalty as a derivative obligation likewise ceases to exist. This structural dependence distinguishes the civil penalty from financial-law penalties, which arise directly from a statutory public obligation and do not require a contractual foundation.

The accessory nature of the penalty confirms its belonging to the classical system of private-law means aimed at strengthening contractual discipline. It functions as a supplementary obligation voluntarily assumed by the debtor or established by statute within the framework of civil regulation.

2. <u>Dispositive Legal Environment.</u>

Civil law operates predominantly through the dispositive method of legal regulation. The parties to an obligation are, within statutory limits, free to determine the amount, form, and conditions of the penalty. Even when the penalty is provided by law, civil legislation typically allows the parties to increase (and in some cases adjust) its amount by agreement.

This contractual flexibility is incompatible with the structure of financial-law penalties. Under the Tax Code of Ukraine, the amount, calculation procedure, and accrual mechanism of a penalty are determined exclusively by statute and cannot be altered by agreement between the taxpayer and the controlling authority (Art. 129)[385]. A similar imperative model is established in legislation governing compulsory state social insurance contributions, where penalties accrue automatically in the event of late payment[386].

Thus, the dispositive character of civil-law regulation constitutes a decisive criterion for identifying the penalty as a private-law mechanism.

3. Functional Orientation: Securing and Predetermining Consequences.

In civil law, the penalty performs a dual function:

- preventive (stimulating)—encouraging proper performance of the obligation;
- compensatory (predetermined)—establishing in advance the financial consequences of breach.

Importantly, the right to claim a penalty does not depend on proof of actual damage. This feature reflects the classical construction of a penalty clause in continental European legal systems. At the same time, civil law preserves the principle of proportionality by granting courts the power to reduce an excessive penalty. Judicial moderation serves as a corrective mechanism ensuring fairness and preventing abuse of contractual freedom.

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[385] *Podatkovyi kodeks Ukrainy*: Zakon Ukrainy vid 2 hrudnia 2010 r. № 2755-VI [Tax Code of Ukraine: Law of Ukraine No. 2755-VI dated December 2, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 13–14, No. 15–16, No. 17. Article 112. [in Ukrainian]

[386] *Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia*: Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-VI [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-VI dated July 8, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 2–3. Article 11. [in Ukrainian]

No analogous mechanism exists in financial law. Financial penalties are not subject to reduction based on judicial assessment of proportionality in the civil-law sense; courts verify legality and compliance with statutory requirements rather than the “fairness” of the amount. Financial sanctions, including penalties and fines imposed in the sphere of financial services regulation, are applied as elements of state supervision and control[387].

Therefore, the functional purpose of the civil penalty differs fundamentally from that of financial-law penalties. The former operates within a horizontal relationship between equal parties; the latter functions within a vertical public-law relationship characterized by authority and subordination.

4. Procedural Framework of Enforcement.

The enforcement of a civil penalty occurs through judicial proceedings initiated by the creditor. The creditor has a subjective right, not an obligation, to claim the penalty. The court considers the claim within adversarial civil procedure, evaluates evidence, and may exercise discretion in adjusting the amount if statutory grounds exist.

By contrast, financial penalties are imposed by an administrative act of a competent public authority and are integrated into the mechanism of public enforcement. In tax relations, the penalty becomes part of the tax debt and is subject to compulsory recovery procedures defined by public-law legislation. The payer cannot negotiate its amount or prevent accrual by unilateral action.

The difference in procedural regimes confirms the sectoral autonomy of the civil penalty and its incompatibility with the structure of financial-law coercion.

5. Ratio Legis and Sectoral Affiliation.

The ratio legis of the civil penalty lies in safeguarding private interests and ensuring stability of civil turnover. It is a tool for balancing contractual freedom with responsibility. Its purpose is not

[387] *Pro finansovi posluhy ta derzhavne rehuliuvannia rynkiv finansovykh posluh*: Zakon Ukrainy vid 12.07.2001 № 2664-III [On Financial Services and State Regulation of Financial Services Markets: Law of Ukraine No. 2664-III dated July 12, 2001]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2002. No. 1. Article 1. [in Ukrainian]

to protect public finances but to protect the legitimate expectations of a creditor within a private legal relationship.

Conversely, financial penalties serve the protection of fiscal order (ordo fiscalis) and the stability of public financial resources. Their aim is to guarantee the timely accumulation and distribution of public funds rather than to secure performance of a private obligation.

Accordingly, the civil penalty, as consolidated in the Draft Civil Code of Ukraine (2026), must be regarded as a classical private-law institution. Its accessory nature, dispositive environment, functional orientation, and procedural regime collectively confirm its generic affiliation with civil-law methods of securing obligations and exclude its identification with financial-law penalties.

Delimitation from the financial-law Penalty

Despite the terminological coincidence of the concept of "penalty" (penia) in civil and financial legislation, these legal constructions belong to different branches of law and represent distinct types of legal mechanisms. Their conflation would undermine the sectoral autonomy of financial law and distort the systematic structure of legal liability.

A consistent delimitation requires the application of several doctrinal criteria.

1. <u>Ratio Legis and Functional Purpose.</u>

The civil-law penalty serves the purpose of securing the proper performance of a private obligation. It operates within the sphere of horizontal legal relations between formally equal parties and aims to protect the creditor's private interest. Its preventive and compensatory functions are directed at strengthening contractual discipline and stabilizing civil turnover.

In contrast, the financial-law penalty functions as an element of the mechanism ensuring the timely fulfillment of public monetary obligations. Under the Tax Code of Ukraine, the penalty is accrued on the amount of unpaid or late-paid agreed monetary obligations and forms part of the regime governing tax debt (Art. 129)[388]. Its purpose lies in protecting fiscal interests and maintaining the stability of public revenues rather than securing a contractual relationship.

Similarly, in the sphere of compulsory state social insurance contributions, the penalty accrues automatically in case of delay in payment and is integrated into the public enforcement system[389]. In these relations, the protection of public financial order (ordo fiscalis) constitutes the primary objective.

Thus, the divergence in ratio legis is fundamental: the civil penalty protects private economic interests, whereas the financial penalty safeguards public financial interests.

2. Genus Proximum and Sectoral Affiliation.

From the standpoint of legal taxonomy, the civil penalty belongs to the genus of private-law methods of securing obligations and private liability. It is embedded in the system of civil remedies and is accessory to a principal obligation.

The financial penalty, by contrast, belongs to the genus of public-law sanctions. It forms part of the broader system of financial-law liability, which arises from violations of financial legislation. The Tax Code of Ukraine explicitly distinguishes financial liability for tax offenses as an independent type of legal liability, separate from administrative and criminal liability.

The sectoral affiliation of the financial penalty is therefore determined not by terminology but by its normative environment, subject matter, and regulatory method.

3. Regulatory Method and Legal Structure.

Civil law predominantly operates through the dispositive method of regulation. Even where the penalty is provided by statute, the parties may, within legal limits, determine its amount and

[388] *Podatkovyi kodeks Ukrainy*: Zakon Ukrainy vid 2 hrudnia 2010 r. № 2755-VI [Tax Code of Ukraine: Law of Ukraine No. 2755-VI dated December 2, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 13–14, No. 15–16, No. 17. Article 112. [in Ukrainian].

[389] Pro zbir ta oblik vnesku na zahalnooboviazkove derzhavne sotsialne strakhuvannia: Zakon Ukrainy vid 8 lypnia 2010 r. № 2464-VI [On Collection and Registration of Contribution for Compulsory State Social Insurance: Law of Ukraine No. 2464-VI dated July 8, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 2–3. Article 11. [in Ukrainian]

conditions by agreement. Courts are empowered to reduce an excessive penalty in order to ensure proportionality.

Financial law is governed by the imperative method. The amount, calculation procedure, accrual mechanism, and recovery of a financial penalty are strictly determined by law and cannot be altered by agreement between the taxpayer and the controlling authority. The controlling authority acts within a framework of public power and subordination, and its decisions are binding irrespective of the will of the obligated person.

This difference in regulatory method confirms that civil and financial penalties operate in fundamentally distinct legal environments.

4. <u>Subject Composition.</u>

The civil penalty is imposed within private-law relations between parties to an obligation—natural or juridical persons acting on equal legal footing.

The financial penalty may be applied to both natural and juridical persons as subjects of public financial obligations. It arises from the status of a taxpayer or contributor, not from participation in a contractual relationship. The legal relationship is characterized by vertical subordination rather than contractual coordination.

The difference in subject composition further emphasizes the incompatibility of these institutions.

5. <u>Procedural Regime.</u>

The procedural framework of enforcement constitutes another decisive distinction.

A civil penalty is claimed by the creditor through judicial proceedings. The creditor has a subjective right to seek enforcement, and the court adjudicates the dispute within adversarial civil procedure.

A financial penalty, in contrast, arises from an administrative act of the controlling authority and becomes part of a public-law enforcement mechanism. In tax relations, it is included in the amount of tax debt and subject to compulsory recovery procedures defined by financial legislation. Judicial review is limited to assessing legality and compliance with statutory requirements rather than adjusting the amount on equitable grounds.

Thus, the procedural architecture of financial penalties is structurally different from that of civil penalties.

6. Relation to Other Types of Legal Liability.

Financial-law penalties may coexist with administrative and criminal liability. The Tax Code of Ukraine explicitly provides that the application of financial liability does not exempt a person from administrative or criminal liability where the elements of the respective offense are present.

Such cumulative application is characteristic of financial liability as an independent type of public-law responsibility. Civil penalties, by contrast, are confined to the sphere of private-law consequences and do not form part of a broader system of public coercive measures.

7. Constitutional Dimension.

From a constitutional perspective, the differentiation between private-law remedies and public-law sanctions follows from the principle of the rule of law and the sectoral structure of legislation. The recognition of financial liability as an autonomous type of legal responsibility has been affirmed in the jurisprudence of the Constitutional Court of Ukraine, which emphasized the specific nature of liability arising from violations of financial legislation and the inadmissibility of mechanically extending administrative-law constructions to financial relations[390].

Therefore, the financial penalty cannot be reduced to a civil-law instrument, nor can it be identified with administrative sanctions. It constitutes a distinct public-law mechanism grounded in financial legislation and designed to protect public fiscal interests.

The civil penalty (penia) consolidated in the Draft Civil Code of Ukraine (2026) and the financial-law penalty established by tax and other financial legislation are homonymous but not homogeneous institutions. They differ in: ratio legis, genus proximum, regulatory method, subject composition, procedural regime, relation to other types of liability, constitutional foundation.

[390] *Rishennia Konstytutsiinoho Sudu Ukrainy* vid 30 travnia 2001 r. № 7-rp/2001 [Decision of the Constitutional Court of Ukraine No. 7-rp/2001 dated May 30, 2001]. Ofitsiinyi visnyk Ukrainy [Official Gazette of Ukraine]. 2001. No. 23. Article 1022. [in Ukrainian]

Consequently, their identification would contradict the systematic structure of Ukrainian law and blur the doctrinal boundaries between private and public legal regulation. The clear delimitation of these institutions is essential for preserving the autonomy of financial law and ensuring legal certainty in the sphere of public finance.

Comparative Legal Analysis: The European Model (BGB, Code civil, DCFR / UNIDROIT)

A comparative legal perspective confirms that the legislative approach adopted in the Draft Civil Code of Ukraine (2026) corresponds to the dominant European model, which clearly differentiates between 1) interest for delay in payment of a monetary obligation and 2) a penalty clause (stipulated payment for non-performance).

1. <u>Germany (Bürgerliches Gesetzbuch—BGB).</u>

German civil law provides a structurally clear distinction between two separate institutions.

First, delay interest (Verzugszinsen) is regulated by § 288 of the Bürgerliches Gesetzbuch (BGB)[391]. This provision establishes the obligation of the debtor to pay statutory interest during the period of default. The legal logic underlying Verzugszinsen is compensatory: it reflects the time value of money and serves as standardized compensation for the creditor's inability to use the monetary amount during the period of delay. No proof of actual damage is required, as the law presumes economic loss resulting from late payment.

Second, penalty clause (Vertragsstrafe) is regulated by § 339 BGB. It provides for a stipulated sum payable in the event of non-performance or improper performance of an obligation. The Vertragsstrafe functions primarily as an instrument of contractual discipline and preventive pressure, strengthening the incentive for proper performance.

[391] Bürgerliches Gesetzbuch (BGB) vom 18. August 1896 (BGBl. I S. 42), §§ 288, 339. [in German].

The German model therefore clearly distinguishes:

- delay interest (compensation);
- penalty clause (stimulating and sanctioning mechanism).

The Draft Civil Code of Ukraine (2026) moves in the same direction by conceptualizing "penia" as a разновидність neustoika (penalty clause) while regulating interest for delay under a separate legal regime. This structural dualism corresponds to the systematic logic of the BGB.

2. France (Code civil).

A similar architectural distinction exists in French civil law.

Article 1231-5 of the Code civil regulates the clause pénale[392]. The court is expressly empowered to reduce or increase the agreed penalty if it is manifestly excessive or derisory. This judicial moderation reflects the private-law nature of the institution and the need to maintain proportionality within contractual relations.

Article 1231-6 of the Code civil regulates intérêts moratoires—damages for delay in payment of a sum of money. In such cases, damages consist in interest at the statutory rate and are recoverable without proof of loss. The compensatory function is explicit: delay interest restores the economic balance disturbed by late payment.

Thus, French law reproduces the same binary structure: penalty clause (subject to judicial control), statutory delay interest (automatic compensation).

The Draft Civil Code of Ukraine (2026) reflects the same architecture: neustoika (fine/penalty) with judicial reduction, and a separate regime for interest for delay in payment.

3. DCFR and UNIDROIT Principles.

The European model rules confirm this differentiation.

The Draft Common Frame of Reference (DCFR) provides for a "stipulated payment for non-performance" in III.—3:710[393]. This construction corresponds to the penalty clause and is recoverable independently of actual damage. The DCFR also contains separate

[392] Code civil des Français, Articles 1231-5, 1231-6 (as amended). [in French]

[393] Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Munich: Sellier, 2009. Book III, Art. III.-3:710. [in English]

provisions concerning interest for late payment, which operate as standardized compensation.

Similarly, the UNIDROIT Principles of International Commercial Contracts regulate "agreed payment for non-performance" (Art. 7.4.13)[394]. The agreed payment is enforceable irrespective of actual harm, subject to the possibility of reduction where it is grossly excessive. Separate rules govern interest for failure to pay money when due (Art. 7.4.9), which is treated as compensation for delay.

Accordingly, the formula adopted in the Draft Civil Code of Ukraine (2026), according to which the right to a penalty arises independently of losses and the court may reduce an excessive amount, directly aligns with the European standard reflected in model rules.

4. Comparative Conclusion.

The European civil-law tradition consistently distinguishes between: 1) delay interest (economic compensation for time value of money); 2) penalty clause (stimulated performance through stipulated payment).

The Draft Civil Code of Ukraine (2026) reproduces this architecture. Therefore, the civil "penia" must be understood as a private-law stipulated payment (penalty clause) within the European sense, rather than as a fiscal sanction.

This comparative analysis further reinforces the doctrinal necessity of separating civil penalties from financial-law penalties governed by public law.

Doctrinal Significance of the Delimitation

The doctrinal differentiation between the civil penalty (penia) in the Draft Civil Code of Ukraine (2026) and the financial-law penalty under public legislation is not merely terminological; it is systemic and conceptual.

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[394] UNIDROIT Principles of International Commercial Contracts (2016). Rome: International Institute for the Unification of Private Law (UNIDROIT), Art. 7.4.9, 7.4.13. [in English]

1. Preservation of Sectoral Autonomy.

The recognition of civil and financial penalties as distinct institutions safeguards the sectoral autonomy of financial law. Financial liability, including penalties accrued under Article 129 of the Tax Code of Ukraine[395], arises from violations of public monetary obligations and functions within a regime of fiscal enforcement. Its legal nature cannot be reduced to a private-law stipulated payment.

If identical terminology were allowed to determine legal classification, the structural boundaries between private and public law would collapse. Sectoral affiliation must instead be defined by: subject matter of regulation, regulatory method, functional purpose, procedural regime.

2. Methodological Clarity in Legal Qualification.

The differentiation provides methodological clarity for courts and law-enforcement bodies. A civil penalty is subject to: judicial moderation, contractual interpretation, adversarial civil procedure.

A financial penalty is subject to: administrative imposition, imperative calculation rules, public enforcement mechanisms under the Tax Code of Ukraine.

Failure to distinguish these regimes risks misapplication of procedural guarantees and incorrect legal qualification.

3. Protection of Constitutional Principles.

From a constitutional perspective, the differentiation supports the principles of legal certainty and proportionality. The jurisprudence of the Constitutional Court of Ukraine has emphasized the specific nature of liability arising from violations of financial legislation and the inadmissibility of mechanically transferring constructions from other branches of law[396].

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[395] *Podatkovyi kodeks Ukrainy:* Zakon Ukrainy vid 2 hrudnia 2010 r. № 2755-VI [Tax Code of Ukraine: Law of Ukraine No. 2755-VI dated December 2, 2010]. Vidomosti Verkhovnoi Rady Ukrainy [Statements of the Verkhovna Rada of Ukraine]. 2011. No. 13–14, No. 15–16, No. 17. Article 112. [in Ukrainian]

[396] Rishennia Konstytutsiinoho Sudu Ukrainy vid 30 travnia 2001 r. № 7-rp/2001 [Decision of the Constitutional Court of Ukraine No. 7-rp/2001 dated May 30, 2001]. Ofitsiinyi visnyk Ukrainy [Official Gazette of Ukraine]. 2001. No. 23. Article 1022. [in Ukrainian]

The civil penalty, grounded in contractual autonomy, is subject to proportionality control through judicial reduction. The financial penalty, grounded in fiscal sovereignty, is assessed through legality and constitutionality review rather than contractual fairness.

4. Systemic Stability of Legal Terminology.

The comparative analysis demonstrates that European legal systems maintain strict conceptual differentiation between stipulated payments and delay interest, and equally between private-law remedies and public-law sanctions. The Draft Civil Code of Ukraine (2026) integrates Ukraine into this doctrinal mainstream.

Therefore, the identity of monetary form and even identical terminology ("penia") does not eliminate fundamental legal differences. In private law, penia operates as a stipulated payment / penalty clause in the European sense (BGB § 339; Code civil Art. 1231-5; DCFR III.—3:710)[397]. In financial law, it functions as a measure of public coercion within the system of fiscal enforcement under the Tax Code of Ukraine.

The Draft Civil Code of Ukraine (2026) qualifies the penalty not as a public-law financial sanction but as a type of neustoika — a private-law construction incorporated into the system of methods of securing the fulfillment of obligations. The financial-law penalty, by contrast, constitutes an element of a public monetary obligation regime established by imperative norms of financial legislation and aimed at protecting public fiscal order.

The doctrinal delimitation between these institutions is essential for maintaining coherence in the Ukrainian legal system and ensuring that private-law mechanisms are not confused with instruments of fiscal coercion.

Philosophical and Legal Significance of Systemic Differentiation in the Context of Recodification and the Abolition of the Commercial Code

The problem of distinguishing between financial sanctions and civil liability measures extends beyond a purely normative classification and touches on the fundamental issue of the systemic

[397] Bürgerliches Gesetzbuch (BGB), § 339; Code civil, Art. 1231-5; Draft Common Frame of Reference (DCFR), III.-3:710. [in German; in French; in English]

differentiation of public and private law. The current transformation of Ukrainian legislation—the repeal of the Commercial Code and the drafting of a new Civil Code (2026)—offers a unique opportunity to examine this issue through the prism of general legal theory and the philosophy of legal systems.

From the perspective of N. Luhmann's[398] systemic theory, law is an autonomous social system functioning through the binary code of "lawful/illegal." However, within this system, a functional differentiation has historically developed between public and private law as two different ways of organizing normative expectations. Private law structures horizontal relations between autonomous entities, while public law enshrines vertical relations of authority and subordination based on imperium.

It is through the prism of this functional differentiation that the institution of penalties should be considered. In the current Civil Code of Ukraine and the draft Civil Code (2026), the penalty is integrated into the system of methods for ensuring the fulfillment of obligations. It is classified as a type of forfeit—a private-law construct aimed at strengthening contractual discipline and restoring disturbed property balance. Its normative logic is rooted in the principle of autonomy of will (autonomia voluntatis) and the optionality of the law of obligations. Even if the penalty is established by law, it functions within the framework of a private-law relationship and is enforced through judicial protection of a subjective civil right.

Philosophically, this concept corresponds to what Gustav Radbruch defined as the "law of coordination" (Koordinationsrecht)—the law regulating equal relations between parties. In this system, the penalty performs an incentive and compensatory function (ratio compensatoria), ensuring economic balance between the parties to the obligation. The judicial power to reduce a clearly disproportionate penalty expresses the principle of fairness (Gerechtigkeit) as an internal corrective mechanism of the private law system.

[398] Luhmann, Niklas. Das Recht der Gesellschaft. Frankfurt am Main: Suhrkamp, 1993.

A financial penalty, as provided for by tax legislation, has a completely different nature. It arises not from a private-law agreement, but from a public monetary obligation to the state. Its basis is the violation of a mandatory norm of financial law; its application is the exercise of the authority of a public administration body; its purpose is the protection of fiscal order (ordo fiscalis). In Radbruch's terminology, this is already a "right of subordination" (Subordinationsrecht), where the subject is subordinate to an authoritative order.

Hermann Kantorovich[399], developing the idea of free law, emphasized that the qualification of a legal institution cannot be based solely on its external form; its functional purpose and place in the legal system are decisive. In relation to the issue under consideration, this means that the similarity of the monetary form of collection (a penalty as interest on late payment) does not eliminate the sectoral difference. In private law, a penalty is a means of regulating horizontal property turnover; In financial law, a public enforcement tool (coercitio publica) that ensures mandatory tax payments.

The repeal of the Commercial Code of Ukraine reinforces this systemic differentiation. Under the previous dualism of codification, commercial sanctions were often perceived as an intermediate category between public and private law, creating theoretical uncertainty. With the repeal of the Commercial Code, the normative framework that facilitated such hybridization disappeared. Monetary penalties in economic activity now either belong to the sphere of private law (remedia iuris privati) or are classified as public-law financial sanctions established by special legislation.

The draft Civil Code (2026) confirms this trend toward systemic purity. It does not use the concept of "financial sanctions" in the public-law sense and consistently structures the institution of penalties as a means of securing obligations. The right to collect penalties arises regardless of the proof of damages, which is consistent with the European model of stipulated payment.

[399] Kantorowicz, Hermann (Gnaeus Flavius). Der Kampf um die Rechtswissenschaft. Heidelberg: Winter, 1906.

At the same time, the possibility of judicial reduction of excessive penalties reflects the principle of proportionalitas, characteristic of private law logic.

The European codification tradition demonstrates a similar distinction. In the German BGB, interest for late payment (§ 288) and contractual penalty clauses (§ 339) belong to the sphere of private law and are aimed at protecting the interests of the creditor. The French Code Civil distinguishes between interest moratoires and clause penale, with the possibility of judicial reduction. The DCFR and the Unidroit Principles enshrine the concept of agreed payment for non-performance, independent of actual damages. Neither of these models confuses contractual penalties with public-law financial sanctions.

Thus, a philosophical and legal analysis through the category of systemic differentiation confirms that penalties in civil law and penalties in financial law belong to different legal subsystems that perform different social functions. The former stabilizes the expectations of private participants; the latter ensures the functioning of the public financial system. Mixing them undermines the logical integrity of the legal system and upsets the balance between the autonomy of the private individual and the authority of the state. Consequently, the correct classification of fines and penalties is only possible by taking into account their functional purpose, normative basis, and systemic affiliation. This approach avoids doctrinal reduction and ensures methodological clarity in the context of the current recodification of Ukrainian legislation.

Thus, a comparative analysis of civil and financial penalties demonstrates not simply the difference in legal regimes, but the difference in normative subsystems of law. In terms of N. Luhmann's[400] systemic theory, law as a social system functions through the binary code of recht/unrecht and structures public expectations through functional differentiation. Private law and public law represent different modes of stabilizing normative

[400] Luhmann, Niklas. Das Recht der Gesellschaft. Frankfurt am Main: Suhrkamp, 1993.

expectations: the former ensures horizontal coordination of autonomous entities, while the latter vertically regulates relations of authority and subordination.

In this context, civil penalties, enshrined in the current and proposed Civil Code of Ukraine (2026), belong to the subsystem of private law. Its purpose is to ensure the fulfillment of the obligation and restore the financial balance of the parties (ratio compensatoria). Even if it has an incentive or quasi-punitive element, its normative nature remains private law: it operates within the framework of a discretionary model, is subject to judicial adjustment based on the principle of proportionality, and is implemented in the interests of the creditor.

A financial penalty, in contrast, belongs to the sphere of public law. Its function is to protect the fiscal order (ordo fiscalis) and ensure the obligatory nature of public payments. It is applied within the framework of the state's authority and is aimed at maintaining the stability of the budgetary system. Here, the principle of coercitio publica—public compulsion as a tool for ensuring the functioning of the financial system—is implemented.

This distinction is also confirmed by the category of Rechtsidee, developed by G. Radbruch[401]. Law as an idea combines three fundamental elements: fairness (justice), expediency (appropriateness), and legal certainty (rechtssicherheit). In civil penalties, the key element is fairness, expressed in the possibility of judicially reducing excessive penalties and restoring violated private interests. In financial penalties, priority shifts to legal certainty and the appropriateness of protecting public finances. Thus, the distinction between the two types of penalties reflects the difference in dominant values within different legal subsystems.

The methodological significance of this distinction is reinforced by the repeal of the Commercial Code of Ukraine. Previously, the existence of an independent commercial legal framework for sanctions contributed to the theoretical hybridization of monetary liability measures. Following the institutional consolidation

[401] Radbruch, Gustav. "Gesetzliches Unrecht und übergesetzliches Recht." Süddeutsche Juristen-Zeitung 1 (1946): 105–108.

of legislation, monetary sanctions in the economic sphere are either classified as private law remedies or are classified as public financial sanctions. This confirms the need for strict systemic differentiation.

As G. Kantorovich[402] rightly noted, the legal classification of an institution should not depend on its terminological designation, but rather be determined by its function and place in the legal system. Consequently, the overlapping of the term "penalty" in civil and financial law does not eliminate their sectoral differences. The monetary form of the penalty is not a sufficient qualification criterion; the decisive factors remain the regulatory basis, the subject of application, and the protected interest.

The European model of codification confirms this logic. German law distinguishes between penalties (§ 288 BGB) and penalties (§ 339 BGB); French law distinguishes between intérêts moratoires and clause penale; and the DCFR and the Unidroit Principles distinguish between agreed payment for non-performance and interest for delay. In all cases, private-law liability mechanisms are separated from public sanctions. The draft Civil Code of Ukraine (2026) follows precisely this European tradition, demonstrating the harmonization of national legislation with the general principles of continental legal culture.

Thus, a philosophical and legal analysis confirms that financial penalties and civil penalties belong to different normative levels of the legal system and implement different value and functional guidelines. Their distinction has not only sectoral but also methodological significance, since it ensures the integrity of the legal system and prevents the mixing of public and private mechanisms of legal enforcement.

[402] Kantorowicz, Hermann (Gnaeus Flavius). Der Kampf um die Rechtswissenschaft. Heidelberg: Winter, 1906.

Section 4
INTERNATIONAL EXPERIENCE AND PRACTICE REGARDING THE IMPOSITION OF FINANCIAL-LAW SANCTIONS

4.1. Financial-Law Sanctions Under U.S. Law

In international legal doctrine and legislation, the category of "sanction" encompasses a fairly broad range of coercive measures available to public authorities. Therefore, the U. S. sanctions regime is known worldwide for its comprehensive as well as extraterritorial nature, and its effectiveness is difficult to question. One of the mechanisms designed to maintain such authority is a number of norms that provide for the imposition of financial-law sanctions. Thus, the U. S. Administrative Procedure Act defines sanctions as certain actions taken by a government agency. Such actions include, in whole or in part, the following:

a) prohibition, requirement or restriction affecting the freedom of an individual;

b) denial of the right to remedy;

c) imposition of a penalty or fine;

d) destruction, seizure, or confiscation of property, or denial of the right thereto;

e) damage assessment as well as reparation, restitution, compensation, reimbursement for costs or damages, remuneration payments;

f) conditions for the validity, revocation, or suspension of a license;

g) adoption of other coercive or restrictive measures.

This statutory approach deliberately formulates the concept of a sanction in a broad and open-ended manner, which to a certain extent blurs the distinction between the notions of "coercive measure" and "sanction". In essence, the Administrative Procedure Act treats sanctions as any legally binding adverse consequences imposed by an administrative agency on participants of public-law relations. The list of sanctions provided in the Act is not exhaustive and may be supplemented by other coercive measures established by federal legislation.

Such measures include administrative enforcement proceedings conducted by authorized federal agencies, which may precede criminal prosecution or be applied independently of it.

Under U.S. law, financial sanctions are most often applied to violations of budgetary, tax, customs, banking, and currency regulation. At the same time, U.S. legislation does not establish a separate, unified category of "customs offenses" comparable to those found in continental legal systems, since criminal liability may arise for tax evasion in general, including evasion of customs duties, whereas other violations entail the application of financial sanctions in the form of fines and penalties. Customs-related violations are investigated by U. S. Customs and Border Protection, which operates within the Department of Homeland Security, while financial and tax sanctions fall within the competence of bodies affiliated with the U. S. Department of the Treasury. The Internal Revenue Service, as a federal agency of the Treasury Department, is vested with authority to assess and impose tax penalties and fines.

In the United States, issues of taxation in foreign economic activity are regulated primarily by the Internal Revenue Code and the Foreign Account Tax Compliance Act (FATCA). This determines the specific nature of imposing financial sanctions for tax offenses involving foreign elements. FATCA does not regulate the physical export of funds as such, but establishes obligations to disclose information on foreign financial accounts and assets, as well as liability for failure to comply with such reporting requirements. Concealment of foreign income or assets in order to avoid taxation constitutes a specific form of tax evasion, which is particularly widespread among juridical persons. The factors stimulating such violations include significant differences in tax rates between jurisdictions and the possibility of exploiting preferential or simplified tax regimes in foreign states.

At the federal level, all tax legislation is codified in Title 26 of the United States Code, which is based on the Internal Revenue Code originally adopted in 1954 and substantially revised by the Tax Reform Act of 1986 (the Internal Revenue Code of 1986). The procedure for the assessment and collection of state and local taxes, as well as liability for violations in the field of taxation, is regulated by the legislation of individual states, which independently establish sanctions for tax-related offenses and misdemeanors.

Financial-law sanctions constitute the principal type of liability measures provided for by both federal tax legislation and state tax laws. Such sanctions are imposed on offenders primarily in the form of monetary fines and penalties.

The Internal Revenue Code establishes a wide range of penalties for failure to file tax returns, understatement of tax liabilities, or failure to pay taxes within the prescribed time limits. These penalties perform a dual function: they serve as a source of public revenue and act as a preventive and compliance-oriented mechanism aimed at ensuring voluntary fulfillment of tax obligations. Taxpayers frequently challenge the imposition of such penalties through administrative appeals and judicial review.

Penalty for inaccuracy. U. S. tax legislation requires taxpayers to file accurate tax returns. If a taxpayer files an inaccurate return resulting in an understatement of tax, an accuracy-related penalty of 20 percent of the underpaid amount may be imposed in cases of:

- negligence or disregard of rules or regulations;
- substantial understatement of income tax;
- substantial valuation misstatements affecting tax liability;
- substantial overstatement of pension or retirement contributions;
- substantial understatement of estate or gift tax;
- denial of tax benefits arising from transactions lacking economic substance;
- understatement related to undisclosed foreign financial assets.

The penalty rate increases from 20% to 40% where the understatement results from gross valuation misstatements or from transactions lacking economic substance, as established in accordance with judicial or administrative determinations.

Only one accuracy-related penalty may be imposed with respect to a particular portion of underpaid tax, even if several violations contributed to such understatement. The application of these penalties often gives rise to disputes between taxpayers and tax authorities, due to the evaluative nature of determining negligence or economic substance and the significant financial burden associated with such fines.

Disputes concerning accuracy-related penalties most frequently arise in cases where the taxpayer relied on the advice of a tax advisor. A taxpayer may avoid liability if they demonstrate reasonable cause and good faith, which often involves proving reliance on professional advice. Reliance on the opinion of a qualified advisor (such as an attorney or certified tax professional) may constitute a valid defense, provided that the taxpayer proves:

- the advisor was reasonably believed to possess the necessary professional competence and experience;
- the taxpayer supplied the advisor with complete and accurate information;
- the taxpayer acted in good faith in accordance with the advice received.

In such disputes, tax authorities typically contest the taxpayer's defense by alleging the advisor's lack of competence or the taxpayer's failure to disclose material information, which would preclude a finding of reasonable reliance.

Fines for failure to file a tax return. As a general rule, taxpayers who receive income during a taxable year are required to file an income tax return for that year within the statutory deadline established by the Internal Revenue Code. A penalty for failure to file a tax return or to pay the tax shown on the return may be imposed unless the taxpayer demonstrates that such failure was due to reasonable cause and not due to willful neglect[403].

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[403] Internal Revenue Code of the United States of America, § 6651(a)(1) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

If income reporting obligations are systematically disregarded, such conduct may qualify as willful noncompliance. In such cases, the Internal Revenue Code provides for a failure-to-file penalty generally amounting to 5 percent of the unpaid tax for each month of delay, up to a maximum of 25 percent[404]. Additionally, a separate failure-to-pay penalty may apply, calculated as 0.5 percent of the unpaid tax per month[405].

Even in cases of willful neglect, the taxpayer retains the right to challenge the imposed penalties by proving the existence of reasonable cause[406]. In the absence of reasonable cause, the penalty is assessed by the IRS through an official notice and collected in the same manner as tax liabilities.

Fines for failure to pay estimated taxes. Natural persons, trusts, estates, and certain beneficiaries are required to pay income taxes as income is earned throughout the taxable year. Where income tax is not fully paid through withholding, the taxpayer must make estimated tax payments in four quarterly installments[407]. Failure to do so may result in the imposition of an underpayment of estimated tax penalty, which is calculated based on statutory interest rates rather than as a punitive fine[408]. Such penalties may be avoided if:

1) the taxpayer's total tax liability does not exceed USD 1,000 after withholding and credits[409];

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[404] Internal Revenue Code of the United States of America, § 6651(a)(1) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[405] Internal Revenue Code of the United States of America, § 6651(a)(2) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[406] United States v. Boyle, 469 U. S. 241 (1985) [Decision of the Supreme Court of the United States]. Supreme Court Reporter. [in English]

[407] Internal Revenue Code of the United States of America, § 6654(c) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[408] Internal Revenue Code of the United States of America, § 6654(a) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[409] Internal Revenue Code of the United States of America, § 6654(e)(1) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

2) the taxpayer had no tax liability for the preceding taxable year and was a U. S. citizen or resident for that year[410];

3) the IRS determines that the underpayment was due to casualty, disaster, or other unusual circumstances, and that imposing the penalty would be contrary to equity and good conscience[411];

4) the underpayment resulted from reasonable cause and not willful neglect[412];

5) the taxpayer retired after reaching the age of 62 or became disabled during the taxable year (or the preceding year) in which the estimated tax payments were required[413].

Fines for fraud. Taxpayers who file a tax return that fraudulently understates tax liability with intent to evade tax may be subject to a civil fraud penalty amounting to 75 percent of the portion of underpayment attributable to fraud[414].

Fines for filing frivolous tax returns or maintaining a frivolous position. A taxpayer who files a frivolous tax return, asserts positions lacking any legal basis, or institutes or maintains proceedings solely for the purpose of delay, may be subject to a civil penalty of up to USD 5,000 for each such filing or action[415].

Fines imposed on authorized persons. Civil penalties may also be imposed on tax return preparers and other authorized

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410 Internal Revenue Code of the United States of America, § 6654(e)(2) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

411 Internal Revenue Code of the United States of America, § 6654(e)(3)(A) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

412 Treasury Regulations on Income Tax, § 1.6654-1(a)(3) [Treasury Regulation]. Code of Federal Regulations. Title 26. U. S. Department of the Treasury. [in English]

413 Internal Revenue Code of the United States of America, § 6654(e)(3)(B) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

414 Internal Revenue Code of the United States of America, § 6663(a) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

415 Internal Revenue Code of the United States of America, § 6702(a) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

persons (including accountants and attorneys) for violations such as aiding or abetting the understatement of tax liability, reckless or intentional disregard of tax rules, or failure to disclose reportable positions[416].

Fines for failure to report. Certain taxpayers are required to file information returns with the IRS, including reports on payments made to other taxpayers. Failure to file correct information returns or failure to furnish required statements may result in civil penalties[417].

For example, in Stearman v. Commissioner, a U. S. court upheld the imposition of a monetary penalty for willful failure to report royalty income[418].

The amount of penalties may be established by federal tax legislation as well as by state tax laws. However, the final amount payable by the taxpayer is determined either through an IRS assessment notice or through a judicial decision if the taxpayer challenges the assessment[419].

In the United States, violations related to the filing and payment of tax returns constitute the most common grounds for the imposition of financial sanctions in the form of civil penalties. Filed tax returns are subject to audit by the Internal Revenue Service (IRS) with respect to the accuracy of calculations and the completeness of tax payment obligations. Where a tax liability is identified, the taxpayer receives a notice of assessment. In such cases, statutory interest is charged on the unpaid tax from the original due date of the return until the date of payment. The interest rate is determined quarterly and equals the federal

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[416] Internal Revenue Code of the United States of America, §§ 6694, 6701 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[417] Neonatology Associates, P. A. v. Comm'r, 115 T. C. 43, 98–99 (2000), aff'd, 299 F.3d 221 (3d Cir. 2002).

[418] Stearman v. Commissioner, 436 F.3d 533 (5th Cir. 2006) [Decision of the United States Court of Appeals for the Fifth Circuit]. Federal Reporter. [in English]

[419] Internal Revenue Code of the United States of America, §§ 6212–6213 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

short-term rate plus three percentage points, while interest is compounded daily[420].

If a taxpayer fails to pay the full amount of tax due upon filing a tax return, the IRS issues a written notice specifying the amount of outstanding tax liabilities (tax arrears). The tax collection process commences upon issuance of such notice and continues until the arrears are fully satisfied or until the statutory period for collection expires[421].

The initial notice sent to the taxpayer explains the origin of the tax debt and demands its settlement. The arrears consist of unpaid taxes together with accrued interest and applicable penalties calculated from the statutory due date. Payment may be made by remittance to the U. S. Department of the Treasury in accordance with IRS instructions.

Where a taxpayer is unable to fully satisfy the tax arrears immediately, partial payment of the maximum possible amount is encouraged. Interest on the outstanding balance continues to accrue daily, and a failure-to-pay penalty is assessed monthly. Consequently, early settlement of tax arrears is financially advantageous, as it minimizes additional statutory charges[422].

Financial sanctions are also imposed where a tax return has been filed but the full tax liability remains unpaid. In such cases, a failure-to-pay penalty equal to 0.5 percent of the unpaid tax is assessed for each month or part of a month during which the liability remains outstanding, commencing from the statutory payment deadline and continuing until payment is made or the maximum penalty of 25 percent of the unpaid tax is reached[423].

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[420] Internal Revenue Code of the United States of America, §§ 6601, 6621 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[421] Internal Revenue Code of the United States of America, § 6502 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[422] Internal Revenue Code of the United States of America, § 6651(a)(2) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[423] Ibid.

The monthly failure-to-pay penalty rate increases to 1 percent where the tax liability remains unpaid for more than ten days after the taxpayer receives a Notice of Intent to Levy[424].

Where a taxpayer both fails to file a tax return and fails to pay the tax due, the combined monthly penalty is generally limited to 5 percent of the unpaid tax for each month or part thereof during which the failure continues, subject to an overall cap of five months[425].

If a tax return is filed more than sixty days after the statutory deadline, a minimum late-filing penalty applies, equal to the lesser of a fixed statutory amount (adjusted periodically for inflation) or 100 percent of the unpaid tax liability[426].

From a practical perspective, taxpayers may consider alternative financing options, such as bank loans or credit advances, where the cost of private borrowing is lower than the cumulative statutory interest and penalties imposed under federal tax law. In addition, timely resolution of tax liabilities may prevent adverse effects on the taxpayer's credit standing.

Where immediate full payment is not possible, the IRS may enter into an installment agreement permitting settlement of tax arrears through monthly payments. While interest continues to accrue, the failure-to-pay penalty is reduced from 0.5 percent to 0.25 percent per month during the period in which the installment agreement remains in effect. Only taxpayers who have filed all required tax returns are eligible for such agreements[427].

In cases of persistent noncompliance, the IRS is authorized to employ a range of enforcement measures, including:

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[424] Internal Revenue Code of the United States of America, § 6651(d) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[425] Internal Revenue Code of the United States of America, § 6651(c)(1) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[426] Internal Revenue Code of the United States of America, § 6651(a)(1) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[427] Internal Revenue Code of the United States of America, §§ 6159, 6651(h) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

1. Levy and seizure of property to satisfy unpaid federal taxes.
2. Enforced collection actions.
3. Offsetting tax arrears against refunds due to the taxpayer from prior tax periods[428].

In certain circumstances, the IRS may temporarily suspend active collection efforts where the taxpayer demonstrates severe financial hardship. During such suspension, statutory interest and penalties continue to accrue.

Where a check or other payment instrument tendered to the IRS is dishonored by a financial institution, a penalty is imposed equal to two percent of the amount of the instrument. However, if the amount is less than USD 1,250, the penalty equals the lesser of USD 25 or the amount of the instrument itself[429].

Criminal liability for tax offenses is provided for under Title 26 and Title 18 of the United States Code. The Internal Revenue Code defines specific tax crimes, while Title 18 establishes general federal criminal offenses applicable to tax-related conduct. According to legal scholarship, federal law contains several dozen distinct criminal offenses related to taxation, reflecting the differentiated structure of tax crime regulation in U. S. law[430].

Federal tax legislation governs the assessment and collection of income taxes, employment taxes, excise taxes, gift and estate taxes, as well as certain special taxes, including those imposed on alcohol, tobacco products, and other regulated activities.

Accordingly, the most common violations of U. S. tax law involve failure to comply with statutory payment and reporting obligations established by the United States Code, which may result in the imposition of financial sanctions in the form of civil penalties.

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[428] Internal Revenue Code of the United States of America, §§ 6331—6344 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[429] Internal Revenue Code of the United States of America, § 6657 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[430] United States Code. Title 26 [Internal Revenue Code]; United States Code. Title 18 [Criminal Code]. U. S. Government Publishing Office. [in English]

Income tax in the United States is imposed on income as it is earned throughout the taxable year and must generally be paid through withholding or estimated tax payments. An underpayment penalty may apply where insufficient tax has been paid during the year. However, most taxpayers are exempt from such penalties where the remaining tax liability does not exceed USD 1,000 after credits and withholding, or where the taxpayer has paid at least 90 percent of the current year's tax liability or 100 percent of the prior year's tax liability, whichever is less[431].

Penalties may be waived if:

- underpayment of the estimated tax was caused by an accident, natural disaster, or other circumstances beyond the taxpayer's control;
- the taxpayer retired after reaching the age of 62;
- the taxpayer became disabled during the taxable year for which the tax was accrued;
- underpayment of taxes occurred due to reasonable cause rather than willful neglect of the law[432].

It should be noted that both natural persons and juridical persons (including corporations) may be subject to financial liability under U. S. tax law. Such liability arises not only in cases of failure to pay taxes, but also in situations involving tax evasion or unlawful tax avoidance. This approach is characteristic of the system of general taxation applied in the United States.

In the USA, corporations are generally required to pay income tax through estimated tax payments during the taxable year. Estimated tax represents the corporation's expected tax liability for the year, reduced by applicable credits, with statutory minimum payment thresholds. These rules apply to domestic corporations and to foreign corporations engaged in a trade or business within the United States. Corporate estimated tax liabilities are typically paid in equal quarterly installments during the taxable year.

[431] Internal Revenue Code of the United States of America, § 6654(d) [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[432] Form 2210: Underpayment of Estimated Tax by Individuals, Estates and Trusts. URL: http://www.irs.gov/for-Tax-Pros

If the required estimated tax amounts are not paid, financial sanctions may be imposed in the form of penalties calculated on the underpaid tax[433]. No penalty is imposed where:

- the estimated tax was paid in an amount equal to the tax shown on the corporation's return for the preceding taxable year (where permitted by law);
- the tax was calculated using the prior year's applicable tax rates in accordance with statutory safe harbor rules;
- at least 90 percent of the tax due for the current taxable year has been paid.

The U. S. experience in establishing and applying combined financial sanctions is particularly noteworthy. For example, the Internal Revenue Code provides for the imposition of combined penalties in cases of tax underpayment resulting from noncompliance with statutory rules. Such sanctions may include both a percentage-based penalty on the unpaid tax and interest calculated at statutory rates. The interest component is intended to eliminate any financial benefit derived from the temporary use of unpaid tax amounts.

This legislative approach is explained by the fact that the absolute amount of penalties may otherwise be significantly lower than the potential income that could be obtained by investing unpaid tax funds. Establishing a direct relationship between the amount of sanctions and the economic benefit derived from delayed payment serves as an effective deterrent against the capitalization of unpaid taxes and the receipt of unjustified financial gain[434].

The Internal Revenue Code also incorporates a number of economic doctrines designed to prevent manipulation of tax legislation for purposes of obtaining unintended economic benefits.

One of the most important doctrines is the economic substance doctrine, which provides for a strict liability penalty imposed

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[433] Internal Revenue Code of the United States of America, § 6601 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[434] Internal Revenue Code of the United States of America, § 6621 [Internal Revenue Code]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

on taxpayers who enter into transactions lacking economic substance. This doctrine, developed in judicial practice and codified in federal tax law, denies tax benefits for transactions that do not meaningfully change the taxpayer's economic position apart from reducing federal income tax liability.

The penalty for an understatement of tax attributable to a transaction lacking economic substance generally amounts to 40 percent of the underpayment. However, where the relevant transaction is adequately disclosed in the taxpayer's return, the applicable penalty rate may be reduced to 20 percent of the underpayment[435].

Unlike many other penalties provided for under the Internal Revenue Code, violations involving transactions devoid of economic substance do not allow the taxpayer to rely on defenses such as reasonable cause or good faith. The application of this doctrine was central to the denial of tax benefits in the well-known case of ACM Partnership v. Commissioner, decided by the United States Tax Court[436].

Currency control laws, which form an integral part of the U. S. legal framework, are generally liberal and do not interfere with lawful currency exchange transactions or other legitimate financial operations.

The Money Laundering Control Act[437] establishes both financial and criminal liability for the structuring of banking transactions intended to evade reporting requirements. The Act obliges financial institutions to monitor repeated transactions involving bank checks, money orders, or traveler's checks exceeding statutory thresholds, with particular attention to cash-back transactions. Under this legislation, financial sanctions in the form of fines and penalties may be imposed on banking institutions for violations of anti-money laundering requirements.

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[435] Internal Revenue Code. Sections 7701(o) and 6662(b)(6), (i).

[436] ACM Partnership v. Commissioner, T. C. Memo. 1997. 115, affd. in part, revd. in part, dismissed in part and remd. in part 157 F.3d 231 (1998).

[437] The Money Laundering Control Act. 1986. URL: http://www.ffiec.gov/bsa_aml_infobase/documents/regulations/ML_Control_1986.pdf

The Currency and Foreign Transactions Reporting Act[438] plays a crucial role in understanding the mechanism for imposing financial-law sanctions for violations of U. S. currency and exchange regulations. Under this Act, any person, including non-residents, who imports into or exports from the United States monetary instruments exceeding USD 10,000 in cash, traveler's checks, or similar instruments, is required to file a report with the competent federal authority.

U. S. citizens and resident aliens are required to report foreign financial accounts exceeding USD 10,000 in aggregate value during a calendar year, including accounts over which they have signature authority or from which they derive interest income. Failure to comply with these reporting requirements may result in the imposition of financial sanctions, including:

1) forfeiture to the state of monetary instruments transferred without proper reporting;

2) civil monetary penalties in amounts determined by a court or authorized administrative body;

3) additional penalties and interest in the event of late payment of the imposed fine.

Supervision over compliance with currency legislation, banking regulations, and related reporting obligations is exercised by several federal authorities, including the Office of the Comptroller of the Currency within the U. S. Department of the Treasury, as well as the Financial Crimes Enforcement Network (FinCEN)[439]. These bodies are authorized to investigate violations related to money laundering, terrorist financing, and breaches of financial reporting requirements[440].

In addition, pursuant to presidential directives and national security legislation adopted in the mid-1990s and subsequently

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[438] Currency and Foreign Transactions Reporting Act. 1982. URL: http://www.federalreserve.gov/boardDocs/supmanual/bsa/bsa_p4.pdf

[439] Office of the Comptroller of the Currency. Comptroller's Handbook. U. S. Department of the Treasury. [in English]

[440] Financial Crimes Enforcement Network (FinCEN). Authority and Functions. U. S. Department of the Treasury. [in English]

updated, U. S. federal agencies and diplomatic missions are required to regularly report information affecting national security interests, including cases of money laundering, illicit arms trafficking, terrorist financing, and violations of international sanctions regimes[441]. In certain cases, administrative sanctions may be imposed by authorized bodies without judicial proceedings, provided that due process guarantees are respected and the parties consent to such resolution[442].

The positive experience accumulated in the United States with regard to imposing sanctions for financial offenses is of particular importance for strengthening the effectiveness of measures aimed at combating tax and currency-related violations.

In this context, it appears appropriate for domestic financial legislation to take into account the U. S. experience of regulating financial-law sanctions in several key aspects.

First, it would be advisable to legislatively establish the possibility of exempting a person from financial sanctions in cases of force majeure, such as natural disasters, accidents, or legally significant incapacity[443]. Such circumstances should be clearly defined at the statutory level in order to prevent arbitrary interpretation and abuse of discretionary powers by authorized officials.

Second, the practice of concluding installment agreements between taxpayers and tax authorities for the repayment of tax liabilities deserves special attention[444]. This mechanism benefits both parties: it reduces the financial burden and penalty exposure for taxpayers while ensuring predictable and continuous budget revenues for the state. Moreover,

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441 Presidential Decision Directive No. 42 of October 21, 1995 [Combating Transnational Organized Crime]. [in English]

442 United States Code, Title 5, § 554 [Adjudications under Administrative Procedure Act]. U. S. Government Publishing Office. [in English]

443 Internal Revenue Code of the United States of America, § 6651(a)(1) [Reasonable cause exception]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

444 Internal Revenue Code of the United States of America, § 6159 [Agreements for payment of tax liability in installments]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

installment arrangements facilitate more effective supervision over tax compliance without pushing taxpayers into insolvency or bankruptcy.

Third, the introduction of combined financial sanctions, as well as the incorporation of economic doctrines similar to those applied in U. S. tax law (including the economic substance doctrine), could serve as an effective preventive measure against tax evasion. Such instruments limit opportunities for manipulating tax legislation in order to obtain unlawful economic benefits and strengthen the overall integrity of the tax system[445].

Accordingly, U. S. law enforcement and regulatory practice should be taken into account by Ukrainian legislators when designing mechanisms for the imposition of financial-law sanctions, with the aim of ensuring their fairness, proportionality, and effectiveness.

4.2. Financial-law Sanctions Under the Laws of the Federal Republic of Germany, the Republic of Austria and the Swiss Confederation

4.2.1. Financial-Law Sanctions Under German Law

The tax policy of the Federal Republic of Germany is governed by a unified system of general and special tax laws that operate at the same normative level. The cornerstone of German tax law is the Fiscal Code (Abgabenordnung) of 1977, which establishes both substantive and procedural rules applicable to taxation and tax enforcement[446].

Part Eight of the Fiscal Code regulates liability for tax offenses. In particular, Chapter One defines tax-related criminal offenses, while

[445] Internal Revenue Code of the United States of America, § 7701(o) [Economic substance doctrine]. United States Code. Title 26. U. S. Government Publishing Office. [in English]

[446] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), 1977, BGBl. I, as amended. Federal Law Gazette of the Federal Republic of Germany. [in English]

Chapter Three governs criminal proceedings in tax cases[447]. Section 369(2) of the Fiscal Code expressly provides that the general provisions of criminal law apply to tax offenses unless otherwise stipulated by tax legislation[448]. At the same time, financial sanctions remain the primary form of liability imposed on taxpayers for violations of tax legislation.

Alongside the Fiscal Code, German tax legislation includes a number of special laws that regulate the procedure and deadlines for payment of particular taxes, tax benefits, and liability for late or incomplete payment. These include the Income Tax Act[449], the Corporation Tax Act[450], the Trade Tax Act[451], the Value Added Tax Act[452], the Property Tax Act[453], as well as numerous other federal statutes governing specific taxes and the imposition of financial sanctions for non-compliance.

In general, financial sanctions in Germany are established in the first part of the Fiscal Code, unless otherwise provided for by special financial-law norms of tax legislation[454].

The principal offenses for which financial sanctions are imposed include the following.

1. Reckless understatement of tax pursuant to section 378(1) of the Fiscal Code[455]. A taxpayer or the taxpayer's representative

[447] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), Part Eight, Chapters 1 and 3. Federal Law Gazette of the Federal Republic of Germany. [in English]

[448] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), § 369(2). Federal Law Gazette of the Federal Republic of Germany. [in English]

[449] Einkommensteuergesetz (Income Tax Act), 1997, as amended. Federal Law Gazette of the Federal Republic of Germany. [in English]

[450] Körperschaftsteuergesetz (Corporation Tax Act), 1996, as amended. Federal Law Gazette of the Federal Republic of Germany. [in English]

[451] Gewerbesteuergesetz (Trade Tax Act), 1991, as amended. Federal Law Gazette of the Federal Republic of Germany. [in English]

[452] Umsatzsteuergesetz (Value Added Tax Act), 1993, as amended. Federal Law Gazette of the Federal Republic of Germany. [in English]

[453] Grundsteuergesetz (Property Tax Act), 1973, as amended. Federal Law Gazette of the Federal Republic of Germany. [in English]

[454] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), §§ 1–148. Federal Law Gazette of the Federal Republic of Germany. [in English]

[455] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), § 378(1). Federal Law Gazette of the Federal Republic of Germany. [in English]

who recklessly commits the specified acts is deemed to have committed this offense. Such conduct is punishable by a monetary fine of up to EUR 50,000. No fine is imposed if inaccurate or incomplete information submitted to the tax authorities is corrected or supplemented before the taxpayer or their representative is notified of the imposition of a fine or of the initiation of criminal proceedings.

2. Tax evasion in accordance with section 370 of the Fiscal Code[456]. This offense involves:

- the understatement of tax or the obtaining of unjustified tax advantages by intentionally or recklessly providing false or incomplete information, failing to record taxable transactions, or recording distorted business transactions or production processes subject to mandatory accounting under the law;
- the understatement of import duties administered by another Member State of the European Union or payable to a State granting preferential treatment to goods originating in the European Union under an association or preferential agreement, including value added tax administered by another Member State of the European Union;
- the intentional or reckless failure to comply with information obligations pursuant to section 138(2);
- the violation of the obligation to provide accurate information on account holders pursuant to section 154(1);
- the intentional or reckless violation of the obligation to report deposit accounts pursuant to section 120(2).

Tax evasion is punishable by a monetary fine without a fixed statutory upper limit or by imprisonment, depending on the seriousness of the offense and the amount of tax evaded.

3. Endangerment of withholding taxes pursuant to section 380 of the Fiscal Code[457]. A person commits this offense if they intentionally or recklessly fail to withhold taxes or remit them

[456] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), § 370(1). Federal Law Gazette of the Federal Republic of Germany. [in English]

[457] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), § 380. Federal Law Gazette of the Federal Republic of Germany. [in English]

to the tax authorities in full, in part, or on time. This offense is punishable by a monetary fine.

4. Endangerment of excise tax. A person commits an offense of endangerment of excise taxes if they intentionally or recklessly violate obligations imposed by excise tax legislation, in particular those relating to:

— the preparation, safekeeping or subsequent auditing of taxation records;

— the packaging and labeling of excise goods or goods containing excise products, as well as restrictions on their trade or use;

— the use or handling of untaxed excise goods, including within free zones, where such conduct is prohibited under excise tax legislation.

Such conduct constitutes an administrative offense (Ordnungswidrigkeit) under the Fiscal Code of the Federal Republic of Germany and may be punished by a monetary fine of up to EUR 5,000, unless the act qualifies as tax evasion under stricter provisions of the Fiscal Code.

5. Endangerment of import duties. A taxpayer or a taxpayer's representative commits an offense of endangerment of import duties if they intentionally or negligently violate customs legislation, implementing ordinances, or directly applicable legal acts of the European Union, including provisions governing:

— customs supervision over the movement of goods across the external customs border of the European Union and free zone borders;

— the importation of goods and their movement under customs procedures;

— the movement of goods within border zones and areas subject to customs surveillance.

Such violations constitute an administrative customs offense and are punishable by a monetary fine of up to EUR 5,000, unless the conduct fulfills the elements of tax evasion or smuggling, in which case criminal liability applies.

6. Unlawful claims for a tax rebate or tax refund. A person commits an offense if he or she intentionally or recklessly submits

false or incomplete information in order to obtain an unlawful tax rebate or tax refund, thereby securing an unjustified tax advantage. Such conduct constitutes tax evasion under the Fiscal Code of the Federal Republic of Germany.

Tax evasion is punishable by a monetary fine determined by the court without a fixed statutory upper limit, or by imprisonment in serious cases, depending on the amount of tax evaded and the degree of culpability[458].

Special attention should be paid to the possible imposition of financial sanctions on juridical persons. Under German law, the financial liability of juridical persons is possible where a criminal or administrative offense is committed by a managing director, an authorized representative, or another person acting in a managerial capacity, and such offense results either in the violation of legal obligations by the juridical person or in its unlawful enrichment. In such cases, the primary financial sanction imposed on a juridical person is a regulatory fine.

Financial sanctions in the form of a fine may be imposed on a juridical person even if no criminal or administrative proceedings against the responsible natural person have been initiated or if such proceedings have been discontinued, provided that the statutory requirements for corporate liability are met.

Penalties as a form of financial-law sanctions are imposed in cases of late payment of taxes or tax-related fines. Such penalties are calculated in accordance with statutory provisions and are based on interest rates determined by law, which take into account the reference interest rate of the Deutsche Bundesbank. The imposition of penalties does not necessarily require a separate court decision, as they may arise directly by operation of law.

The statute of limitations for the prosecution of tax offenses under German law generally amounts to five years. However, longer limitation periods may apply in aggravated cases of tax evasion, depending on the severity of the offense and the amount of tax evaded.

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[458] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), § 370 [Tax evasion]. Federal Law Gazette (BGBl. I), as amended. [in English]

In addition to financial sanctions for violations of tax legislation, German financial law provides for sanctions for violations of banking legislation. As a rule, such sanctions are imposed for breaches of banking secrecy, as information relating to bank accounts and financial transactions is protected under German law.

In Germany, the obligation of banks to disclose relevant banking information arises primarily within the framework of tax enforcement proceedings, insolvency proceedings, and statutory reporting obligations. This duty may extend to information concerning third parties, including debtors. Employees of financial institutions who report suspicious transactions in accordance with anti-money laundering legislation are exempt from liability, provided that such reports are not intentionally false or made with gross negligence. In cases of intentionally false reporting, significant administrative fines may be imposed both on the employee concerned and on the financial institution itself[459].

German tax authorities are among the public authorities legally entitled to require banks to disclose information relating to bank accounts. At the same time, banks are generally prohibited from disclosing banking information directly to the police without a proper legal basis. Where a bank unlawfully discloses protected banking information, the affected person may claim compensation for material and non-material damage suffered as a result of such disclosure[460].

The adoption of the Financial Market Development Act in July 2002 marked an important stage in the development of the German financial market. The Act introduced a range of measures aimed at enhancing investor protection, increasing market transparency, and strengthening mechanisms for combating money laundering.

The German Federal Financial Supervisory Authority (BaFin) is empowered to request the disclosure of information and

[459] German Anti-Money Laundering Act (Geldwäschegesetz), §§ 43, 56. Federal Law Gazette of the Federal Republic of Germany, as amended. [in English]

[460] Abgabenordnung (Fiscal Code of the Federal Republic of Germany), § 93; German Banking Act (Kreditwesengesetz), §§ 9, 30a. [in English]

to conduct inspections of banks, securities firms, and insurance companies. Where indications of a criminal offense are identified, the matter must be referred to the competent public prosecutor's office. If the detected violation constitutes an administrative offense and has not resulted in market manipulation or price distortion, BaFin may independently impose administrative fines, which under certain statutory provisions may reach significant amounts[461].

4.2.2. Financial-Law Sanctions Under Austrian Law

The principal legal acts governing financial-law liability for violations of tax legislation in the Republic of Austria include the Federal Tax Code (Bundesabgabenordnung), the Income Tax Act of 1988, the Value Added Tax Act of 1994, the Corporate Income Tax Act of 1988, and the Fiscal Penal Act (Finanzstrafgesetz)[462]. These legal acts establish both substantive and procedural rules governing the imposition of financial sanctions for tax-related offenses.

Austrian tax law requires taxpayers to file accurate and complete tax returns disclosing all taxable income. Failure to comply with statutory reporting obligations may result in financial sanctions. Under Austrian law, violations related to inaccurate or incomplete tax declarations that do not reach the threshold of criminal liability generally constitute administrative tax offenses and are punishable by monetary fines calculated as a percentage of the underpaid tax[463].

Austrian legislation clearly distinguishes between administrative tax offenses and criminal tax evasion. Tax evasion (Abgabenhinterziehung) occurs where a taxpayer intentionally provides false information, conceals taxable facts, or fails to submit mandatory declarations, thereby causing a reduction of tax liabilities. Where the amount of evaded tax exceeds statutory

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[461] German Banking Act (Kreditwesengesetz); Act Establishing the Federal Financial Supervisory Authority (FinDAG), §§ 4, 44, 56. Federal Law Gazette of the Federal Republic of Germany, as amended. [in English]

[462] Bundesabgabenordnung (Federal Tax Code of the Republic of Austria). Federal Law Gazette I, as amended. [in English]

[463] Bundesabgabenordnung, §§ 33, 135. Federal Law Gazette I, as amended. [in English]

thresholds, criminal liability applies and sanctions may include substantial fines or imprisonment[464]. In less serious cases, where intent is absent or the amount involved is relatively low, liability is limited to financial sanctions in the form of administrative fines[465].

The unlawful claiming of tax credits or refunds, including unjustified VAT credits (Gutschriften), is treated as tax evasion where such conduct is intentional and results in an unlawful tax advantage. If the relevant thresholds are not exceeded, such conduct is sanctioned as an administrative fiscal offense subject to monetary penalties[466].

Financial sanctions are imposed in cases of outstanding value added tax (VAT) liabilities, whether arising from monthly or quarterly reporting obligations. Failure to pay VAT by the statutory deadline results in the automatic imposition of a late payment surcharge (Säumniszuschlag) amounting to 2% of the unpaid tax[467].

If the tax debt remains unpaid, a second late payment surcharge of 1% may be imposed, followed by a third surcharge of 1%, provided that the statutory requirements for repeated default are met[468]. The tax authority may waive the surcharge if its amount is insignificant and the delay is excusable under the circumstances[469].

Late submission of VAT returns constitutes an administrative tax offense. In such cases, the tax authority may impose a late filing penalty (Verspätungszuschlag) of up to 10% of the assessed tax, subject to a statutory maximum[470]. The imposition of such a penalty depends on the degree of fault and the duration of the delay.

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[464] Finanzstrafgesetz (Fiscal Penal Act of the Republic of Austria), §§ 33, 38. Federal Law Gazette I, as amended. [in English]

[465] Finanzstrafgesetz, §§ 49, 51. Federal Law Gazette I, as amended. [in English]

[466] Finanzstrafgesetz, § 33; Value Added Tax Act (Umsatzsteuergesetz) 1994. Federal Law Gazette I, as amended. [in English]

[467] Bundesabgabenordnung (Federal Tax Code of the Republic of Austria), § 217(1)–(2). Federal Law Gazette I, as amended. [in English]

[468] Bundesabgabenordnung, § 217(3). Federal Law Gazette I, as amended. [in English]

[469] Bundesabgabenordnung, § 217(7). Federal Law Gazette I, as amended. [in English]

[470] Bundesabgabenordnung, § 135. Federal Law Gazette I, as amended. [in English]

With regard to the financial liability of juridical persons, Austrian law provides for sanctions where a legal entity or its managing bodies fail to comply with accounting and disclosure obligations, including the obligation to submit annual financial statements. In such cases, coercive fines (Zwangsstrafen) may be imposed, typically starting at EUR 700 and increasing progressively in cases of continued non-compliance[471].

In the event of repeated violations, the coercive fine may be imposed multiple times and may reach EUR 3,600 per enforcement measure, with higher cumulative amounts possible for medium-sized and large enterprises until compliance is achieved[472].

In November 2012, the National Council of Austria adopted amendments to the Financial Criminal Act (Finanzstrafgesetz), significantly reforming the system of financial sanctions in the tax sphere. The following aspects of the imposition of financial sanctions merit special attention.

1. Voluntary self-disclosure as a ground for exemption from financial sanctions (Selbstanzeige).

A voluntary self-disclosure allows a taxpayer to avoid financial criminal liability provided that the disclosure is made before the tax authorities become aware of the offense, the offense is fully disclosed, and the evaded taxes are paid in full within the statutory period. In addition to payment of the outstanding tax, an additional surcharge (Abgabenerhöhung) is imposed, the amount of which depends on the gravity and scale of the offense and may reach up to 30% of the evaded tax in serious cases[473].

Depending on the nature of the violation, the self-disclosure must be submitted either to the competent tax office or to the customs authorities. Any inaccuracies or omissions identified must be fully remedied without undue delay, generally within one month from

[471] Austrian Commercial Code (Unternehmensgesetzbuch), §§ 277–283; Bundesabgabenordnung, § 111. Federal Law Gazette I, as amended. [in English]

[472] Austrian Commercial Code (Unternehmensgesetzbuch), § 283. Federal Law Gazette I, as amended. [in English]

[473] Finanzstrafgesetz (Financial Criminal Act of the Republic of Austria), § 29(6). Federal Law Gazette I, as amended. [in English]

the submission of the self-disclosure. If, at the time of submission, the tax authorities have already initiated investigative measures or have objectively detected the offense, exemption from punishment is no longer available[474].

2. Additional surcharge (Verkürzungszuschlag) in the course of a tax audit.

Where minor tax shortfalls are identified during a statutory tax audit, the tax authority may, under specific conditions, impose an additional surcharge of 10% of the underpaid tax instead of initiating financial criminal proceedings. This mechanism applies only where the shortfall does not exceed EUR 10,000 per year or EUR 33,000 in total for the audited period, and where the taxpayer explicitly consents to the application of the surcharge[475].

The taxpayer may avoid further financial liability if the outstanding tax amount and the 10% surcharge are paid in full within one month and without lodging an appeal. Failing this, the case must be referred to the financial criminal authorities or to a court[476].

In addition to sanctions for violations of tax legislation, Austrian law provides for financial sanctions for violations of banking legislation.

The Austrian Banking Act (Bankwesengesetz) is the principal legal act governing financial sanctions in the banking sector. Pursuant to this Act, credit institutions, their owners, members of management bodies, employees, and other persons acting on behalf of banks are obliged to maintain bank secrecy with respect to information obtained exclusively through business relations with customers. This obligation also applies to employees of the Austrian National Bank and public authorities who acquire such information in the course of their official duties[477].

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[474] Finanzstrafgesetz, § 29(3)–(5). Federal Law Gazette I, as amended. [in English]

[475] Finanzstrafgesetz, § 30a. Federal Law Gazette I, as amended. [in English]

[476] Finanzstrafgesetz, § 30a(4). Federal Law Gazette I, as amended. [in English]

[477] Austrian Banking Act (Bankwesengesetz), § 38(1)–(2). Federal Law Gazette I, as amended. [in English]

A breach of bank secrecy constitutes an administrative offense and may result in the imposition of administrative fines of up to EUR 50,000. In addition, the affected party is entitled to seek civil compensation for damages through judicial proceedings[478].

The obligation to maintain confidentiality is unlimited in time. Austrian law permits disclosure of banking information only in narrowly defined cases expressly provided for by statute, including criminal proceedings and anti-money laundering obligations. Unlawful disclosure may give rise to criminal liability under general criminal law, administrative fines, and sanctions against the credit institution itself as a juridical person[479].

4.2.3. Financial-Law Sanctions Under Swiss Law

In Switzerland, financial-law sanctions are provided mainly for offenses in the fields of tax law, banking law, and the regulation of securities and financial markets. Swiss tax law traditionally distinguishes between tax evasion (Steuerhinterziehung) and tax fraud (Steuerbetrug).

Tax evasion covers the non-payment, underpayment or incomplete payment of taxes, for example through the submission of an incorrect tax return or failure to file a tax return. Under Swiss law, tax evasion is generally classified as an administrative financial offense, not as a criminal offense under the Swiss Criminal Code. Proceedings for tax evasion are conducted by the tax authorities, not by the police or public prosecutors[480].

Tax fraud, by contrast, involves intentional deceit through falsification or use of forged documents (such as balance sheets, financial statements, invoices or payroll records) with the aim of avoiding taxation. Tax returns themselves are not considered

[478] Austrian Banking Act (Bankwesengesetz), § 99(1)(a). Federal Law Gazette I, as amended. [in English]

[479] Austrian Banking Act (Bankwesengesetz), §§ 38, 99; Austrian Criminal Code (Strafgesetzbuch). Federal Law Gazette I, as amended. [in English]

[480] Federal Act on Direct Federal Tax (DBG). Swiss Confederation. Art. 175. [in English]

forged documents; however, the use of deliberately false information to mislead the tax authorities may qualify as tax fraud even in the absence of classical document forgery[481].

The distinction between tax evasion and tax fraud plays a crucial role in Switzerland's international legal assistance practice. Switzerland generally provides judicial assistance to foreign authorities only where tax fraud or comparable serious offenses are involved, whereas simple tax evasion does not qualify[482].

The Switzerland tax system is largely based on the principles of trust and self-assessment, which explains the differentiated treatment of tax offenses. Taxpayers are required to submit complete and accurate information to the tax authorities in due time. Legislators deliberately refrain from criminalizing all cases of incorrect or incomplete tax declarations, reserving criminal prosecution for conduct that undermines the principle of trust through fraudulent behavior[483].

The Federal Act on Direct Federal Tax (DBG) provides that failure to submit a tax return or required information in due time may result in a fine of up to CHF 1,000, which may be increased to CHF 10,000 in serious or repeated cases[484]. In cases of tax evasion, the fine is generally imposed in addition to the payment of the evaded tax and may amount to up to three times the evaded tax, depending on the degree of fault. Imprisonment is not provided for simple tax evasion[485].

Under current Swiss law, the limitation period for tax evasion is generally 10 years, while the limitation period for tax fraud

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[481] Federal Act on Direct Federal Tax (DBG). Swiss Confederation. Arts. 186–187. [in English]

[482] Federal Act on International Mutual Assistance in Criminal Matters (IMAC). Swiss Confederation. [in English]

[483] Federal Act on Direct Federal Tax (DBG). Swiss Confederation. Preamble; Art. 124 et seq. [in English]

[484] Federal Act on Direct Federal Tax (DBG). Swiss Confederation. Art. 174. [in English]

[485] Federal Act on Direct Federal Tax (DBG). Swiss Confederation. Art. 175(2). [in English]

and other serious tax offenses may extend to 15 years, depending on the applicable legal basis [486].

Tax evasion schemes involving "fly-by-night companies" are not widespread in Switzerland and do not pose a systemic threat to the financial system. In cases of voluntary liquidation of a company with unsettled tax liabilities, the members of the board of directors may incur civil, administrative, or criminal liability. Relevant information concerning company management is retained in the cantonal commercial registers, enabling the initiation of proceedings against persons involved in tax fraud where appropriate [487].

Financial sanctions are also provided for under Swiss financial market legislation. Since 2016, the Federal Act on Stock Exchanges and Securities Trading has been replaced by the Financial Market Infrastructure Act (FMIA), which governs, inter alia, disclosure obligations concerning significant shareholdings [488].

Under the FMIA, persons who intentionally or negligently fail to comply with notification obligations regarding qualified shareholdings may be punished with administrative fines of up to CHF 10 million, depending on the nature and severity of the violation. In less severe cases, fines of up to CHF 50,000 may be imposed. The amount of the sanction may be calculated with reference to the economic advantage gained or the transaction value [489].

In 2003, the Swiss financial supervisory authorities published a Report on Sanctions (Sanktionenbericht) aimed at improving the effectiveness and proportionality of financial-law sanctions applied in the supervision of financial institutions such as banks, securities firms and investment funds [490].

Thus, analyzing the financial legislation in terms of the legal regulation of financial-law sanctions in Germany, Austria and

[486] Federal Act on Direct Federal Tax (DBG). Swiss Confederation. Art. 184; Swiss Criminal Code. [in English]

[487] Swiss Code of Obligations. Swiss Confederation. Arts. 754–760. [in English]

[488] Financial Market Infrastructure Act (FMIA). Swiss Confederation. [in English]

[489] Financial Market Infrastructure Act (FMIA). Swiss Confederation. Arts. 154–155. [in English]

[490] Swiss Financial Market Supervisory Authority (FINMA). Report on Sanctions (Sanktionenbericht). 2003. [in English]

Switzerland allows us to draw the following conclusions regarding the differences and similarities in the legislation of these countries:

1. The financial and tax systems of Germany, Austria and Switzerland share a number of structural similarities as federated or decentralized systems that combine substantive tax norms with procedural enforcement mechanisms. As a result, the financial legislation generally provides for the imposition of monetary sanctions for violative conduct in all three jurisdictions, although the scope and specific mechanisms reflect the distinct legal traditions and normative frameworks of each country.

2. A common feature of German, Swiss and Austrian financial legislation is the imposition of fines as the primary financial sanction for tax-related offenses and the use of additional surcharges, penalties or late-payment assessments in cases of delayed fulfillment of tax obligations or delayed payment of imposed fines. In all three jurisdictions, these monetary sanctions are designed to ensure voluntary compliance with tax laws and to deter non-compliance.

3. The main differences in the financial legislation of Germany, Switzerland and Austria regarding the imposition of financial sanctions include the following:

— Intent (mens rea): German financial and fiscal law clearly differentiates between conduct that is committed intentionally and conduct that is committed with gross negligence or recklessness, and attaches different sanctions accordingly; Austrian and Swiss tax law generally focus on the objective establishment of wrongdoing (evading or underpaying tax) and impose monetary sanctions even in the absence of intentional misconduct, reserving criminal prosecution for fraud or serious evasion;

— Illegal claims for tax rebates/refunds: German law explicitly provides for the imposition of financial sanctions for illegal claims for tax refunds as part of tax evasion under the Abgabenordnung; Austrian and Swiss tax law address unlawful claims within broader provisions on evasion or administrative non-compliance rather than as a separate cause of action;

— Limitation periods for prosecution: German and Swiss law clearly prescribe limitation periods for tax offenses (with Germany applying a general five-year period and Switzerland a generally ten-year period or longer for serious offenses); Austrian fiscal law also provides limitation periods, but they may vary depending on the specific type of financial offense and administrative procedure applied;

— Exemption through voluntary disclosure: Austrian financial law provides for the possibility of mitigating or exempting financial sanctions in cases of timely and complete voluntary self-disclosure (Selbstanzeige) under the Finanzstrafgesetz; similar procedures exist in Germany and Switzerland but operate under different statutory frameworks and conditions and may not result in full exemption from financial sanctions in all cases;

— Discretion in penalty waivers: In Austria, tax authorities have a degree of administrative discretion to impose or waive small penalties or surcharges for late performance; German and Swiss fiscal law also provide mechanisms for waiver or reduction of sanctions under specific conditions, but these are typically subject to stricter statutory criteria and less administrative latitude.

Based on the above material, it is reasonable to highlight the positive experience of Germany, Austria and Switzerland in implementing a flexible system of imposing financial sanctions that takes account of the nature of the offense and, in some cases, the taxpayer's conduct (e.g., voluntary compliance and disclosure). It may be beneficial for Ukraine to consider introducing similar legislative provisions governing the procedure for imposing financial sanctions and for mitigating or exempting liability where tax obligations are voluntarily fulfilled in good faith.

4.3. Financial-Law Sanctions Under UK Law

Similar to Germany, Austria and most other European countries, general laws that determine the tax policy of the United Kingdom (UK) operate alongside a number of special statutory acts governing particular taxes.

The Taxes Management Act 1970 is the principal legislative act governing the administration and enforcement of taxation in the United Kingdom[491]. This Act establishes the procedural framework for the assessment, collection, administration and enforcement of taxes, while substantive tax liabilities are regulated by separate tax statutes[492].

The Taxes Management Act 1970 is supplemented by a number of legislative acts governing specific categories of taxes, including the Income and Corporation Taxes Act 1988[493], the Taxation of Chargeable Gains Act 1992[494], the Capital Allowances Act 2001[495], the Inheritance Tax Act 1984[496], the Stamp Act 1891 and the Stamp Taxes Management Act 1891[497], the Oil Taxation Act 1975[498], the Provisional Collection of Taxes Act 1968[499], and the Interpretation Act 1978[500].

Such a fragmented legislative structure is characteristic of the United Kingdom and other European states that do not codify tax law into a single tax code, but instead regulate taxation through a system of interrelated statutory acts[501].

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[491] Taxes Management Act 1970. United Kingdom Public General Acts. UK Parliament. [in English]

[492] HM Revenue and Customs. Administration of taxation under the Taxes Management Act 1970. Official guidance. [in English]

[493] Income and Corporation Taxes Act 1988. United Kingdom Public General Acts. UK Parliament. [in English]

[494] Taxation of Chargeable Gains Act 1992. United Kingdom Public General Acts. UK Parliament. [in English]

[495] Capital Allowances Act 2001. United Kingdom Public General Acts. UK Parliament. [in English]

[496] Inheritance Tax Act 1984. United Kingdom Public General Acts. UK Parliament. [in English]

[497] Stamp Act 1891; Stamp Taxes Management Act 1891. United Kingdom Public General Acts. UK Parliament. [in English]

[498] Oil Taxation Act 1975. United Kingdom Public General Acts. UK Parliament. [in English]

[499] Provisional Collection of Taxes Act 1968. United Kingdom Public General Acts. UK Parliament. [in English]

[500] Interpretation Act 1978. United Kingdom Public General Acts. UK Parliament. [in English]

[501] United Kingdom tax legislation system. UK Parliament legislative framework for taxation. [in English]

In the United Kingdom, liability for tax offenses is primarily established by statutory law, although certain aspects of tax enforcement and fraud have historically developed through common law principles[502]. Financial sanctions for tax offenses are mainly regulated by special legislative acts administered by HM Revenue and Customs (HMRC)[503].

Tax offenses for which financial sanctions may be imposed can generally be classified into the following categories:

1) offenses related to the assessment and collection of taxes, including tax evasion;

2) offenses involving fraud, dishonesty or falsification of tax-related documents;

3) customs and excise offenses, including violations of import and export regulations.

Tax evasion remains the most common tax offense subject to financial sanctions. However, UK law does not contain a single universal statutory prohibition of tax evasion. Instead, liability for tax evasion arises under specific statutory provisions addressing particular forms of non-compliance, fraud or dishonest conduct, including the submission of false returns, failure to notify chargeability, or deliberate understatement of tax liabilities[504]. Courts assess such cases based on statutory interpretation and established principles of tax law, rather than relying on a general prohibition of tax evasion.

Under the Taxes Management Act 1970, individuals who are chargeable to income tax are required to notify HMRC of their liability and submit a self-assessment tax return[505]. Failure to notify chargeability or failure to submit a return may result in financial penalties.

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[502] Common law principles of tax enforcement in the United Kingdom. UK judicial practice. [in English]

[503] HM Revenue and Customs (HMRC). Powers and responsibilities in tax administration. Official UK government guidance. [in English]

[504] Taxes Management Act 1970; Finance Act 2007; Finance Act 2008. Statutory provisions on tax evasion and civil penalties. United Kingdom legislation. [in English]

[505] Taxes Management Act 1970. Sections 7–8. United Kingdom Public General Acts. UK Parliament. [in English]

For individuals subject to self-assessment, the statutory deadline for filing a paper tax return is 31 October, while the deadline for online submission is 31 January following the end of the tax year[506]. Late submission of a tax return results in an automatic fixed penalty of £100, regardless of whether tax is due[507].

Income tax due under self-assessment must be paid by 31 January following the end of the tax year. In certain cases, the legislation provides for payment on account in two instalments[508]. Late payment of tax gives rise to statutory late payment penalties and interest, including percentage-based penalties calculated by reference to the outstanding tax amount, rather than a single fixed fine[509].

Fines for late filing of self-assessment tax returns in the United Kingdom are imposed in accordance with statutory penalty rules and are calculated as follows.

1) In the event of a delay of one day in filing a tax return, the taxpayer is subject to an initial fixed penalty of £100, regardless of whether any tax is due or whether the tax liability has already been paid;

2) Where the delay reaches three months, the taxpayer becomes liable to daily penalties of £10 per day, which may be imposed for a maximum period of 90 days, up to a total amount of £900;

3) In the case of a delay of six months, an additional penalty is imposed in the amount of £300 or 5% of the outstanding tax liability, whichever amount is greater;

4) Where the delay reaches twelve months, a further penalty of £300 or 5% of the outstanding tax liability (whichever is greater) is imposed. In cases involving deliberate concealment, enhanced penalties may apply.

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[506] Taxes Management Act 1970; HMRC Self Assessment Manual. Filing deadlines for tax returns. [in English]

[507] Finance Act 2009. Schedule 55 (Penalties for late filing). United Kingdom Public General Acts. UK Parliament. [in English]

[508] Income Tax Act 2007; Taxes Management Act 1970. Provisions on payment on account. United Kingdom legislation. [in English]

[509] Finance Act 2009. Schedule 56 (Penalties for late payment); HMRC Interest Rates Regulations. United Kingdom legislation. [in English]

In particularly serious cases involving deliberate and concealed behavior, the total amount of financial sanctions may reach up to 100% of the unpaid tax liability, depending on the degree of culpability and cooperation with the tax authorities [510].

With regard to financial reporting obligations, private limited liability companies are required to file annual financial statements with Companies House within nine months from the end of the financial year. In the case of late filing, the following financial penalties apply: up to one month late—£150; one to three months late—£375; three to six months late—£750; more than six months late—£1,500.

For public limited companies (PLCs), the corresponding penalties are higher and amount to £750, £1,500, £3,000 and £7,500 respectively. Repeated late filing within consecutive financial years results in doubling of the applicable penalties [511].

In the United Kingdom, as in most other countries, late payment of taxes constitutes the most common financial offense committed by natural persons and gives rise to the imposition of financial-law sanctions. In such cases, all self-assessing taxpayers who fail to pay the assessed tax by the statutory deadline automatically fall within the penalty regime administered by HM Revenue and Customs (HMRC).

The following penal sanctions for late payment of self-assessment income tax and capital gains tax are provided by law:

1) where tax remains unpaid 30 days after the due date, the taxpayer is liable to an initial penalty of 5% of the unpaid tax;

2) where tax remains unpaid six months after the due date, an additional penalty of 5% of the outstanding tax arrears is imposed;

3) where tax remains unpaid twelve months after the due date, a further penalty of 5% of the outstanding tax arrears is imposed.

These penalties are levied in addition to statutory interest, which accrues on the unpaid tax and on any unpaid penalties until the full amount due is recovered by HMRC.

[510] Finance Act 2007; Finance Act 2009. Penalty regime for deliberate and concealed inaccuracies. UK legislation. [in English]

[511] Companies Act 2006; Companies House. Late filing penalties for public and private companies. Official UK guidance. [in English]

This legislative approach is considered reasonable, as the graduated nature of financial sanctions depending on the duration of non-compliance encourages taxpayers to fulfill their tax obligations promptly. Taxpayers retain the right to appeal penalties on the basis of a reasonable excuse for late payment[512].

Failure to pay income tax or capital gains tax following the receipt of a lawful notice from HMRC entails liability in the form of fixed penalties and additional daily penalties, where applicable, if the tax remains unpaid. Comparable sanctions apply to companies that fail to comply with their statutory obligations to pay and report taxes.

UK legislation also establishes liability for inaccurate returns and improper tax payments. A financial penalty may be imposed where a person deliberately or carelessly:

- submits an incorrect tax return to the tax authorities;
- files an incorrect notice, statement or return in connection with a claim for income tax or capital gains tax;
- provides HMRC with false or inaccurate invoices, documents or records in the course of fulfilling tax obligations.

In such cases, the taxpayer is required to pay the additional tax due. Where the inaccuracy is deliberate, the penalty may amount to up to 100% of the understated tax, while lower penalties apply in cases of carelessness[513].

Analogous liability applies to companies in respect of corporation tax, including for the submission of false or misleading information, certificates, documents or returns[514].

On January 25, 2010, HM Revenue and Customs (HMRC) published official guidance explaining the application of the new penalty regime for VAT and excise duty infringements, introduced by the Finance Act 2007 and subsequently refined by the Finance Act 2009[515].

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[512] Finance Act 2009. Schedule 56, paragraph 16 (reasonable excuse). [in English]

[513] Finance Act 2007. Schedule 24, paragraphs 4—6. United Kingdom Public General Acts. [in English]

[514] Corporation Tax Act 2009; Finance Act 2007. Liability for inaccurate corporation tax returns. UK legislation. [in English]

[515] HM Revenue and Customs. Compliance Handbook. VAT and Excise penalties guidance, 2010. [in English]

The revised system of financial sanctions provides for penalties in respect of the following violations:

— issuance of incorrect VAT invoices;

— use of excise goods on which excise duty has not been paid;

— importation or use of excise goods subject to reduced duty rates in breach of statutory conditions.

Financial sanctions in the form of penalties are calculated as a percentage of the potential revenue loss suffered by the budget. When determining the amount of the penalty, HMRC takes into account the behavior, intent and degree of cooperation of the taxpayer. Penalties are not imposed where the taxpayer demonstrates the existence of a reasonable excuse for non-compliance, such as serious illness or death of a close relative.

Where a violation of VAT or excise legislation occurs without deliberate intent (careless conduct), the penalty generally ranges from 0% to 30% of the unpaid tax[516].

In the case of a deliberate but not concealed violation, the penalty may increase to up to 70% of the tax understated[517].

The most severe sanction (a penalty of up to 100% of the unpaid tax) applies where the violation is deliberate and concealed[518].

Penalties may be significantly reduced if the taxpayer voluntarily discloses the violation, cooperates with HMRC and complies with its instructions before the commencement of a formal investigation.

Such a legislative approach appears justified, as it complies with the principles of proportionality and fairness of punishment, allowing tax authorities to differentiate sanctions depending on the degree of culpability and the intent of the offender.

VAT-registered legal entities are subject to risk-based compliance checks, the frequency of which depends on the size of the business, its compliance history and sector-specific risks. There is no statutory rule requiring inspections at fixed intervals; however, serious or prolonged violations may result in penalties of up to 30%,

[516] Finance Act 2007. Schedule 24, paragraph 4. [in English]

[517] Ibid, paragraph 5. [in English]

[518] Ibid, paragraph 6. [in English]

or substantially higher penalties where deliberate understatement over a long period is established[519].

Under UK financial law, liability may also extend to third parties involved in the commission of tax offenses, including agents, advisers and employees. Such persons may be penalized if it is proven that they knowingly assisted in the violation or failed to take reasonable steps to prevent it. The applicable penalties are determined in accordance with statutory provisions and are not limited to fixed nominal amounts.

In addition to sanctions for violations of tax legislation, UK law establishes financial and criminal liability for customs offenses. HM Revenue and Customs is the competent authority responsible for monitoring compliance with customs legislation, assessing and collecting customs and excise duties, and exercising enforcement powers[520].

HMRC is vested with extensive administrative powers, including the authority to inspect, search and detain ships, aircraft and other vehicles. Obstruction of HMRC officers constitutes an offense punishable by a fine and, in certain cases, imprisonment for up to three months[521].

In accordance with civil procedure legislation, customs duty and excise duty arrears may be recovered through proceedings before the High Court of Justice or a county court[522].

Where the intent of the offender is not established, penalties for violations of excise duty payment rules generally range from 0% to 30%. In cases of deliberate conduct for personal gain, the penalty may reach 70%, while deliberate and concealed violations may result in penalties of up to 100% of the unpaid duty[523].

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[519] HM Revenue and Customs. VAT Compliance Strategy. Risk-based approach. [in English]

[520] Commissioners for Revenue and Customs Act 2005. United Kingdom Public General Acts. [in English]

[521] Customs and Excise Management Act 1979. Sections 170–171. [in English]

[522] Civil Procedure Rules. Enforcement of revenue debts. United Kingdom. [in English]

[523] Finance Act 2007. Schedule 24 (application to excise duties). [in English]

The Customs and Excise Management Act 1979 provides for liability for the illegal importation of goods into the United Kingdom. Its provisions apply both to goods in respect of which customs duty has not been paid and to goods whose importation is restricted or prohibited. In cases of duty evasion, the offender may be subject to summary penalties, including a fine linked to the value of the goods. Where intent is proven, criminal proceedings may be initiated under the applicable criminal legislation [524].

Failure to comply with customs requirements administered by HM Revenue and Customs (HMRC), including the submission of incorrect or misleading customs declarations for the import or export of goods, gives rise to civil penalties and, in serious cases, criminal liability. Under UK law, customs penalties may include monetary fines linked to the value of the goods concerned, confiscation of the goods and recovery of evaded duties [525].

Willful concealment of information relating to imported or exported goods may result in similar sanctions. A refusal to provide customs information without reasonable excuse constitutes an offense punishable by a fine [526].

The Customs and Excise Management Act 1979 provides for both financial and criminal liability for making false statements in connection with exemptions from customs duties. Depending on the mode of prosecution, offenders may be punished by a fine and/or imprisonment for up to three months on summary conviction, or by a fine and/or imprisonment for up to two years on indictment [527].

The UK practice of imposing sanctions for violations of banking and financial confidentiality obligations is also noteworthy. In the landmark case Tournier v. National Provincial and Union Bank

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[524] Customs and Excise Management Act 1979. Sections 49–68, 170. [in English]

[525] HM Revenue and Customs. Customs Civil Penalties Guidance. United Kingdom. [in English]

[526] Customs and Excise Management Act 1979. Sections 25, 26. United Kingdom legislation. [in English]

[527] Customs and Excise Management Act 1979. Sections 167–170. United Kingdom Public General Acts. [in English]

of England (1924), the court confirmed that banks owe their clients a duty of confidentiality arising from the contractual relationship[528].

However, this duty is not absolute and may be overridden where disclosure is required by law, in the public interest, or pursuant to a court order. Common law itself does not establish criminal liability for breach of banking secrecy; nevertheless, statutory financial legislation provides for liability in the form of fines and penalties where disclosure obligations are violated or unlawfully avoided. Judicial and statutory mechanisms thus allow the lifting of bank secrecy, including mandatory disclosure of information to tax and regulatory authorities[529].

In addition to financial sanctions for violations of tax, customs and banking legislation, UK financial law establishes financial and criminal liability for violations connected with currency operations and financial crime, primarily within the framework of anti-money laundering and counter-terrorist financing legislation. Unlike the historical system of exchange control, the modern UK legal order does not operate a general currency control regime[530].

Instead, the UK focuses on preventing money laundering, terrorist financing and illicit capital movements through strict regulatory and reporting obligations imposed on financial institutions and other obligated entities[531].

The historical foundations of UK exchange control were laid during the pre-war and post-war periods with the adoption of the Import, Export and Customs Powers (Defence) Act 1939 and the Exchange Control Act 1947. However, the system of general exchange controls was abolished in 1979, and the Exchange Control Act was repealed[532].

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[528] Tournier v. National Provincial and Union Bank of England [1924] 1 KB 461. [in English]

[529] Data Protection Act 2018; Finance Act 2008. Disclosure obligations. United Kingdom. [in English]

[530] Exchange Control Act 1947 (repealed). United Kingdom legislation. [in English]

[531] Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. United Kingdom. [in English]

[532] Bank of England. Abolition of exchange controls, 1979. United Kingdom. [in English]

Modern regulation of cross-border financial flows is now governed primarily by the Proceeds of Crime Act 2002, the Terrorism Act 2000, and regulations adopted under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017[533].

The competent authorities in the UK responsible for enforcing financial and currency-related sanctions include HM Treasury, HM Revenue and Customs, the Financial Conduct Authority and the National Crime Agency. These bodies supervise compliance, impose administrative penalties and initiate criminal proceedings where necessary[534].

Typical financial offenses in this area include failure to report suspicious transactions, inadequate record-keeping, and non-compliance with customer due diligence obligations. In such cases, regulatory authorities may impose financial penalties proportionate to the gravity of the violation, including fines that may reach significant amounts. Repeated or serious violations may result in suspension or revocation of licenses, as well as confiscation of unlawfully obtained assets[535].

The collection of fines and other financial sanctions is carried out in accordance with statutory procedures, either administratively or through court proceedings, depending on the legal status of the offender and the nature of the violation[536].

Therefore, having analyzed the legislation of the United Kingdom of Great Britain and Northern Ireland concerning the imposition of financial-law sanctions, it is possible to note the positive experience of differentiated sanctions, particularly in relation to tax compliance and financial crime prevention. The clear statutory limits and proportionality of sanctions contribute to legal certainty and effective budget protection.

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[533] Proceeds of Crime Act 2002; Terrorism Act 2000. United Kingdom Public General Acts. [in English]

[534] Financial Services and Markets Act 2000. United Kingdom. [in English]

[535] Financial Conduct Authority. Enforcement Guide. United Kingdom. [in English]

[536] Civil Procedure Rules. Enforcement of financial penalties. United Kingdom. [in English]

The author believes that this experience could be beneficial for Ukraine, as a graduated and transparent system of financial sanctions encourages voluntary compliance, timely fulfillment of financial obligations and simultaneously limits the risk of abuse by regulatory authorities. Financial legislation should be flexible and responsive to threats to the public budget, while ensuring strict adherence to the rule of law and legal certainty.

4.4. Financial-Law Sanctions Under the Law of the People's Republic of China (PRC)

The legislation of the People's Republic of China provides for the following types of financial-law sanctions: tax sanctions, banking sanctions and currency sanctions.

Tax sanctions are primarily established by the Law of the People's Republic of China on the Administration of Tax Collection, which entered into force on 1 January 1993 and remains applicable in its revised form[537].

Article 62 of this Law stipulates that where a taxpayer commits procedural violations, the tax authorities may order corrective measures within a prescribed time limit. If the violation is not corrected within the specified period, a fine of up to RMB 2,000 may be imposed; in serious cases, a fine ranging from RMB 2,000 to RMB 10,000 may be imposed. Such violations include[538]:

1. Failure to file a tax return or to complete tax registration or registration of changes within the prescribed period.
2. Failure to keep accounting books, vouchers or other accounting materials in accordance with the applicable regulations.
3. Failure to establish or submit financial and accounting systems or methods for record-filing with the tax authorities.

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[537] Law of the People's Republic of China on the Administration of Tax Collection (revised), National People's Congress of the PRC.

[538] Law of the People's Republic of China on the Administration of Tax Collection, Art. 62.

Article 64 of the Law on the Administration of Tax Collection further provides that where a tax withholding or collecting agent fails to comply with regulations on maintaining books, vouchers or accounting materials related to tax withholding or collection, the tax authorities may impose a fine of up to RMB 2,000; in serious cases, a fine ranging from RMB 2,000 to RMB 5,000 may be imposed[539].

Similar to most countries, offenses related to failure to file tax returns constitute the most common tax violations in China. Accordingly, Article 62 of the Law provides that where a taxpayer fails to file a tax return within the prescribed time limit, or where a tax withholding agent fails to submit reports on tax withholding or collection in due time, the tax authorities shall order rectification and may impose a fine of up to RMB 2,000; in serious cases, a fine ranging from RMB 2,000 to RMB 10,000 may be imposed.

Under Article 63 of the Law on the Administration of Tax Collection, the following actions constitute tax evasion: forgery, alteration, concealment or unlawful destruction of accounting books or vouchers; overstating expenses or failing to record or underreport income; refusing to file tax returns after being ordered to do so; or filing false tax returns in order to evade tax payment wholly or partially.

Where tax evasion occurs, the tax authorities shall recover the unpaid or underpaid tax, impose late payment surcharges, and may additionally impose a fine ranging from 50% to five times the amount of the evaded tax. Where the circumstances constitute a crime, criminal liability shall be pursued in accordance with the Criminal Law of the People's Republic of China.

If a tax withholding agent employs similar methods and fails to remit withheld or collected taxes, the tax authorities shall recover the unpaid amount and may impose a fine ranging from 50% to five times the unpaid tax; where the circumstances constitute a crime, criminal liability shall apply in accordance with the Criminal Law[540].

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[539] Law of the People's Republic of China on the Administration of Tax Collection, Arts. 63–65.

[540] Criminal Law of the People's Republic of China, Art. 201.

If a taxpayer with outstanding tax liabilities takes measures to transfer or conceal assets, thereby preventing the tax authorities from recovering taxes, the tax authorities shall recover the unpaid taxes and may impose a fine ranging from 50% to five times the amount of unpaid tax; criminal liability shall apply where the statutory threshold for criminal prosecution is met.

Where an organization commits unlawful acts to evade taxation, and such acts constitute a crime, criminal punishment shall be imposed in accordance with the Criminal Law of the People's Republic of China. Where the acts do not constitute a crime, the tax authorities shall recover the unpaid or underpaid taxes and may impose a fine ranging from 50% to five times the amount of unpaid or underpaid tax.

If a taxpayer offers bribes to tax officials in order to evade or reduce taxes, criminal liability shall be imposed in accordance with the Criminal Law of the People's Republic of China, while administrative liability shall be applied pursuant to the Law of the People's Republic of China on the Administration of Tax Collection.

If an organization commits fraud by filing false export declarations for the goods it produces or by fraudulently obtaining funds from the state through export tax rebates, the tax authorities shall recover the fraudulently obtained amount. Where the circumstances constitute a crime, criminal punishment shall be imposed in accordance with the Criminal Law of the People's Republic of China.

Where organizations or individuals fraudulently obtain export tax rebates, but the amount or circumstances are insufficient to constitute a crime, the tax authorities shall recover the fraudulently obtained amount of export tax rebates and impose a fine ranging from 50% to five times the fraudulently obtained amount.

Article 65 of the Law of the People's Republic of China on the Administration of Tax Collection regulates liability for tax offenses accompanied by resistance to tax payment. Resistance to taxation refers to refusal to pay taxes accompanied by violence or threats. Where such resistance does not constitute a crime, the tax authorities shall recover the unpaid tax and impose a fine of up to five times the amount of tax refused[541].

In accordance with Article 67 of the Law of the People's Republic of China on the Administration of Tax Collection, where a taxpayer or a tax withholding agent engaged in production or business activities fails to pay or withhold taxes in full or in part, the tax authorities shall order payment within a prescribed period. If payment is not made by the deadline, the tax authorities may adopt coercive measures in accordance with the law and may impose a fine of up to five times the unpaid tax in addition to recovering the tax arrears.

Where a tax withholding agent fails to withhold or collect taxes as required, the tax withholding agent shall bear liability for payment of the unpaid tax, unless it promptly reports the taxpayer's refusal to cooperate in tax withholding or collection to the tax authorities.

Decisions on the imposition of financial-law sanctions under the Law of the People's Republic of China on the Administration of Tax Collection shall be made by the tax authorities at or above the county level. Where a fine is imposed, the tax authorities shall issue an official receipt in accordance with state regulations.

Article 75 of the Law of the People's Republic of China on the Administration of Tax Collection provides that where individuals obstruct tax officials in the performance of their official duties without resorting to violence or threats, such individuals shall be subject to administrative penalties imposed by public security organs in accordance with the Law of the People's Republic of China on Penalties for Administration of Public Security[542].

Where a party disagrees with a decision of the tax authorities on penalties, enforcement measures, or tax collection, the party may apply for administrative reconsideration within 60 days

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[541] Law of the People's Republic of China on the Administration of Tax Collection, Arts. 63–67, 75.

[542] Law of the People's Republic of China on Penalties for Administration of Public Security.

from the date of receipt of the decision. If the party disagrees with the reconsideration decision, it may file an administrative lawsuit with the people's court within 15 days from the date of receipt of the reconsideration decision[543].

The party may also directly file an administrative lawsuit with the people's court within six months from the date of receipt of the penalty decision or from the date on which coercive measures were implemented. The filing of administrative reconsideration or litigation does not suspend the enforcement of tax collection or coercive measures, unless otherwise provided by law.

Where a party refuses to comply with a legally effective decision of the tax authorities and neither applies for administrative reconsideration nor files a lawsuit with the people's court, the tax authorities may apply to the people's court for compulsory enforcement.

In addition to financial-law sanctions for tax offenses, the legislation of the People's Republic of China provides for the imposition of financial sanctions for violations of foreign exchange regulations under the Regulations of the People's Republic of China on Foreign Exchange System. These regulations establish administrative penalties and, where specified circumstances amount to a crime, provide for criminal liability.

Under Article 39, where a person engages in foreign exchange evasion schemes (such as transferring foreign exchange abroad in violation of the regulations or transferring domestic capital abroad by fraudulent means) the foreign exchange administration agencies shall order the foreign exchange in question to be repatriated and impose a penalty not exceeding 30% of the amount involved. In cases of serious violations, the penalty may exceed 30% and be up to the full amount of the foreign exchange involved. In cases where the conduct constitutes a criminal offence, criminal prosecution shall proceed[544].

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[543] Administrative Reconsideration Law of the People's Republic of China; Administrative Litigation Law of the People's Republic of China.

[544] Regulations of the People's Republic of China on Foreign Exchange System, Chapter VII Legal Responsibilities, Art. 39.

Article 40 provides for penalties for illegal foreign exchange arbitrage, including paying or receiving foreign exchange for expenses that should be paid or received in renminbi or purchasing foreign exchange from authorized institutions with false or invalid transaction documents. In such cases, the foreign exchange administration agencies shall order conversion of the funds involved and impose a penalty not exceeding 30% of the amount involved, or up to the full amount for serious violations; criminal prosecution applies where the conduct rises to the level of a criminal offence[545].

Article 41 regulates illegal foreign exchange remittance or unauthorized foreign exchange sales. The agencies shall order redress and may impose a penalty not exceeding 30% of the amount in question; in serious cases, the penalty may be more than 30% and up to the full amount of the foreign exchange involved[546].

Article 42 stipulates that carrying foreign currency into or out of China in violation of regulations may result in a warning and a penalty not exceeding 20% of the amount involved, subject to applicable customs authority jurisdiction[547].

Article 45 addresses unauthorized foreign exchange trading, disguised trading, illegal buying or selling, and illegal brokerage trading of a relatively large amount of foreign exchange. In such cases, the agencies shall issue a warning, confiscate illegal gains if any, and may impose a penalty not exceeding 30% of the amount involved; for serious violations, the penalty may exceed 30% up to the equivalent of the amount involved, and criminal prosecution may follow if the conduct constitutes a criminal offence.

Article 46 provides that where an entity operates foreign exchange sale and purchase business without approval, the foreign exchange administration agencies shall order redress and confiscate illegal gains. Where the illegal gains exceed RMB 500,000, a penalty ranging from one to five times the amount of illegal gains shall be imposed; where there are no illegal gains or they do not exceed

[545] Regulations of the People's Republic of China on Foreign Exchange System, Art. 40.

[546] Ibid, Art. 41.

[547] Ibid, Art. 46.

RMB 500,000, a penalty of RMB 500,000 to RMB 2,000,000 shall be imposed. In serious cases, the authorities may order suspension of operations or revoke the business license; criminal prosecution follows if the conduct constitutes a criminal offence.

Article 47 sets forth penalties for financial institutions violating foreign exchange rules, including failure to verify transaction authenticity, violations of foreign exchange receipt and payment regulations, and violations of rules governing foreign exchange trading. In such cases, the agencies shall order redress, confiscate illegal gains, and impose a penalty ranging from RMB 200,000 to RMB 1,000,000; in serious cases or where corrective measures are not taken, the agencies may order termination of related business operations[548].

Article 48 provides that entities or individuals failing to comply with reporting and documentation requirements related to foreign exchange statistics and registration may be ordered to redress, receive a warning, and may be subject to a penalty not exceeding RMB 300,000 for entities or RMB 50,000 for individuals[549].

Criminal liability attaches where the violation rises to the level of a criminal offence under PRC law, in which case the foreign exchange administration agencies shall refer the matter for prosecution.

In China, violations of foreign exchange regulations are subject to administrative penalties under the Regulations of the People's Republic of China on Foreign Exchange System (hereinafter "Foreign Exchange Regulations"). The foreign exchange administration agencies impose sanctions, warnings, orders for redress, confiscation of illegal gains, and fines, depending on the nature and severity of the violation. Such violations include:

1) granting external loans without authorization;
2) issuing foreign currency bonds abroad without due authorization and in violation of relevant state regulations;
3) providing guarantees for external obligations without due authorization and in violation of relevant state regulations;
4) other actions violating the foreign debt regulations.

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[548] Regulations of the People's Republic of China on Foreign Exchange System, Art. 47.

[549] Ibid, Art. 48.

In China, an entity that violates regulations on the use of foreign currency shall be ordered by the foreign exchange administration authorities to cease its illegal activities; the foreign currency involved may be subject to compulsory settlement, and any illegal gains shall be confiscated, with the subsequent imposition of a fine that may reach up to 30% of the amount involved and, in serious cases, a higher proportion as prescribed by law. The violations in question include:

1) using foreign currency in China for pricing or settlement;
2) using foreign currency as collateral without authorization;
3) changing the approved use of foreign currency without authorization;
4) other cases of illegal use of foreign currency.

Anyone who buys or sells foreign currency without authorization, or engages in concealed or speculative foreign exchange transactions, shall receive a warning from the foreign exchange administration authorities; the foreign currency involved shall be subject to compulsory settlement, illegal gains shall be confiscated, and a fine of up to 30% of the amount involved may be imposed, or a heavier penalty in serious cases. Where such conduct constitutes a crime, criminal liability shall be pursued in accordance with the law.

In China, an entity that violates regulations on foreign currency accounts by opening foreign currency accounts within or outside the country without authorization, or by lending, borrowing, transferring, or altering the quota of such accounts without approval, shall be ordered to cease the illegal activities; the relevant accounts may be closed, and a warning shall be issued together with a fine imposed in accordance with statutory limits[550].

In China, an entity that violates regulations on foreign exchange verification and settlement by forging, altering, lending, transferring, or repeatedly using import or export certificates, or by failing to complete the prescribed verification procedures, shall receive a warning from the foreign exchange administration authorities; illegal gains shall be confiscated, and a fine shall be imposed

[550] Regulations of the People's Republic of China on Foreign Exchange System, Arts. 46–47.

in accordance with the law. Where the violation constitutes a crime, criminal liability shall be pursued[551].

In addition to tax and currency sanctions, the legislation of the People's Republic of China also provides for sanctions for offenses in the banking sector. Article 43 of the Law of the People's Republic of China on Banking Regulation and Supervision stipulates that where a banking institution is established or banking operations are conducted without authorization, the banking regulatory authority under the State Council shall order the cessation of such activities. If the conduct constitutes a crime, criminal liability shall be pursued in accordance with the law. If no crime is constituted, illegal gains shall be confiscated, and where such gains exceed RMB 500,000, a fine of one to five times the amount of illegal gains shall be imposed; where there are no illegal gains or they are less than RMB 500,000, a fine ranging from RMB 500,000 to RMB 2,000,000 shall be imposed[552].

The banking regulatory authority under the State Council shall order a banking institution to take corrective measures where it commits any of the following offenses: 1) establishing branches without authorization; 2) altering or terminating business operations without authorization; 3) conducting banking operations without approval or without completing filing procedures.

If a banking institution provides false data or fails to disclose important facts in reports, documents, or other materials submitted to the regulatory authorities, the banking regulatory authority shall order it to make corrections. If the corrections are not made within the prescribed time limit, a fine shall be imposed in accordance with the law.

If a banking institution violates laws, administrative regulations, or regulatory rules, the banking regulatory authority may impose administrative sanctions on directly responsible executives and other directly responsible personnel in addition to penalties imposed

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[551] Regulations of the People's Republic of China on Foreign Exchange System, Art. 48.

[552] Law of the People's Republic of China on Banking Regulation and Supervision, Art. 43.

on the institution. Where such conduct does not constitute a crime, fines may be imposed on the responsible individuals in accordance with statutory provisions[553].

Therefore, the above analysis of the legislation of the People's Republic of China on the regulation and imposition of financial-law sanctions demonstrates the strict nature of financial sanctions. At the same time, the system of sanctions for violations of foreign exchange regulations reflects a traditionally high level of state involvement in regulating foreign exchange relations, which differs from liberal market-based models of currency regulation.

4.5. Application of Financial-Law Sanctions under Martial Law and Extraordinary Legal Regimes (Ukraine, Germany, Austria, the United States, Israel, the United Kingdom, and China)

Ukraine: Martial Law and a Special Tax Liability Regime

The introduction of martial law in Ukraine by Presidential Decree No. 64/2022 of February 24, 2022, approved by Law of Ukraine No. 2102-IX, has become the regulatory basis for a comprehensive modification of the financial-law liability regime[554]; [555]. Unlike the standard sanctions regime, the legislator created a temporary special regulatory framework within the Tax Code of Ukraine (TCU).

Of key importance is Subclause 69 of Subsection 10 of Section XX "Transitional Provisions" of the TCU, which introduced specific

[553] Law of the People's Republic of China on Banking Regulation and Supervision, Art. 48.

[554] Pro vvedennia voiennoho stanu v Ukraini: Ukaz Prezydenta Ukrainy vid 24 liutoho 2022 r. № 64/2022 [On the Introduction of Martial Law in Ukraine: Presidential Decree No. 64/2022 dated February 24, 2022]. Ofitsiinyi visnyk Ukrainy. 2022. [in Ukrainian]

[555] Pro zatverdzhennia Ukazu Prezydenta Ukrainy "Pro vvedennia voiennoho stanu v Ukraini": Zakon Ukrainy vid 24 liutoho 2022 r. № 2102-IX [On Approval of the Presidential Decree on Martial Law: Law of Ukraine No. 2102-IX dated February 24, 2022]. Vidomosti Verkhovnoi Rady Ukrainy. 2022. [in Ukrainian]

requirements for fulfilling tax obligations during martial law[556]. Specifically, Subclause 69.1 established exemption from liability for late fulfillment of tax obligations in the event of proven impossibility of fulfillment due to military action. Thus, the legislator institutionalized the criterion of objective impossibility as a basis for exemption from financial liability. Article 129 of the Tax Code regulates the accrual of penalties for late payment of tax obligations. Under martial law, the accrual of penalties was temporarily suspended in some cases or was contingent on subsequent voluntary fulfillment of the obligation.

Of particular note is subparagraph 69.37 (2023 edition), which stipulates that upon payment of the additionally accrued obligation within the established deadline, the penalties are considered waived, and no penalties are accrued. This model of conditional exemption from sanctions represents an example of the temporary neutralization of the punitive element while maintaining the public law nature of liability.

Thus, the Ukrainian model is characterized by phased dynamics: from a broad moratorium on the application of sanctions to a differentiated conditional liability regime with elements of incentives for voluntary fulfillment.

Germany: Built-in Flexibility in the Tax Code

In German law, financial liability for late payment of taxes is regulated by § 240 of the Tax Code (AO), which establishes a 1% surcharge for each month of late payment[557]. These surcharges arise ipso iure and are of a public-law nature.

At the same time, the AO contains built-in proportionality mechanisms. § 222 of the AO allows for a Stundung (deferral) if the taxpayer suffers significant hardship. § 227 of the AO provides for the possibility of Erlass (exemption) for reasons of equity (Billigkeit).

[556] Podatkovyi kodeks Ukrainy: Zakon Ukrainy vid 2 hrudnia 2010 r. № 2755-VI [Tax Code of Ukraine: Law of Ukraine No. 2755-VI dated December 2, 2010]. Vidomosti Verkhovnoi Rady Ukrainy. 2011. [in Ukrainian]

[557] Abgabenordnung (AO) vom 16. März 1976 (BGBl. I S. 613), § 240. [in German]

During the COVID-19 pandemic, the federal government adopted special tax measures (COVID-Steuerhilfegesetz 2020), which temporarily eased the application of penalties[558]. However, the structure of financial liability did not change: the intensity of application was adjusted, but not its legal nature.

Austria: BAO and Crisis Sanctions Derogation

The Austrian system is based on the Bundesabgabenordnung (BAO). Section 217 of the BAO sets the Säumniszuschläge at 2% of the overdue amount[559].

The BAO contains procedural mechanisms to mitigate the pressure of sanctions: Section 212 of the BAO—Zahlungserleichterungen (deferral/installment plan), Section 212a of the BAO—Aussetzung der Einhebung (suspension of collection during appeal).

During the COVID-19 period, Section 323c of the BAO was introduced, providing special rules in connection with anti-crisis measures. Under this provision, certain types of interest and surcharges were temporarily suspended. This is an example of lex specialis temporalis, which does not change the public law nature of the sanction. In addition, the Finanzstrafgesetz (FinStrG) regulates financial penalties and, during the crisis, allowed procedural modifications (e.g., remote procedures).

United States of America: Statutory Deferrals During Military Operations

American tax law explicitly provides for military circumstances as grounds for deferrals. 26 U. S. C. § 7508 establishes deferrals for individuals located in a combat zone[560].

26 U. S. C. § 7508A grants the President and the Treasury Department authority to defer tax obligations in the event of a declared disaster or military action. This affects the application of penalties governed by IRC § 6651.

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[558] Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise (COVID-19-Steuerhilfegesetz), BGBl. I 2020. [in German]

[559] Bundesabgabenordnung (BAO), BGBl. Nr. 194/1961, § 217. [in German]

[560] Internal Revenue Code, 26 U. S. C. § 7508. United States Code. [in English]

The regulation in 26 CFR § 301.7508A-1 details the procedure for applying deferrals[561].

The American model demonstrates the institutionalized recognition of military action as a legal fact that influences the occurrence of sanctions consequences.

Israel: Administrative Adaptation of Deadlines and Penalties

In Israel, tax liability is governed by the Income Tax Ordinance 1961 and the VAT Law 1975[562;563]. In the context of the military escalation of 2023, the Israel Tax Authority announced an extension of the filing deadlines and a temporary waiver of late penalties[564].

At the same time, interest and indexed charges will remain in effect unless otherwise provided by individual decision[565]. This demonstrates the separation of the penalty and compensatory elements of liability.

UK: Doctrine of Reasonable Excuse and Crisis Deferral Schemes

Financial penalties for late filing of returns are regulated by the Finance Act 2009, Schedule 55[566]. The Taxes Management Act 1970, s. 118(2) enshrines the doctrine of reasonable excuse, allowing penalties to be waived where there is a valid reason[567].

During COVID-19, a VAT deferral scheme was in effect, allowing penalties and interest to be temporarily waived if the conditions for subsequent payment are met[568].

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561 Code of Federal Regulations, 26 CFR § 301.7508A-1. [in English]

562 Income Tax Ordinance [New Version], 1961. State of Israel. [in English]

563 Value Added Tax Law, 5736–1975. State of Israel. [in English]

564 Israel Tax Authority. Official Notice on Extension of Tax Reporting Deadlines due to Security Situation, 2023. [in English]

565 Income Tax Ordinance (1961), provisions on interest and linkage differentials. [in English]

566 Finance Act 2009, Schedule 55. United Kingdom. [in English]

567 Taxes Management Act 1970, s. 118(2). United Kingdom. [in English]

568 HM Revenue & Customs. VAT Deferral Scheme Guidance, 2020. [in English]

China: Tax Administration and the No-Fault Principle

The PRC Law on the Administration of Tax Collection provides for the imposition of a "late payment surcharge" for late payment of taxes (Article 32)[569].

The Administrative Penalty Law (2021 revision) enshrines the principle of no-fault administrative penalties[570].

During the COVID-19 pandemic, the State Administration of Taxation of the People's Republic of China issued notices extending tax filing deadlines and easing penalties[571].

A comparative analysis shows that in all the jurisdictions examined, financial sanctions retain their public-law nature (coercitio publica) even in wartime or emergency situations. It is not the substance of the sanction that is modified, but its intensity and procedural implementation.

Four universal models are identified:

Special military derogation (Ukraine).

Institutional flexibility of the general tax code (Germany, Austria).

Statutory deferment during military operations (USA).

Administrative adaptation through reasonable excuse or force majeure (Israel, UK, China).

Thus, the principles of proportionality (proportionalitas) and fairness (aequitas) serve as general systemic invariants of modern financial law in extraordinary regimes.

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[569] Law of the People's Republic of China on the Administration of Tax Collection (as amended), Art. 32. [in English]

[570] Administrative Penalties Law of the People's Republic of China (2021 Revision). [in English]

[571] State Taxation Administration of the People's Republic of China. Notice on Extension of Tax Filing Deadlines during COVID-19, 2020. [in English]

Section 5
ACHIEVEMENTS OF CURRENT UKRAINIAN LEGISLATION IN THE LEGAL REGULATION OF RELATIONS IN THE FIELD OF FINANCIAL-LAW LIABILITY AND PROSPECTS FOR ITS FURTHER DEVELOPMENT

The present monograph identifies and substantiates the main achievements, existing problems, and prospects for the further theoretical development and normative consolidation of the fundamental categories and structural elements of financial-law liability, which constitutes an independent and important institution of financial law. An integral component of this institution is financial-law sanctions.

As previously noted, ensuring the adequacy of legal regulation to the level and nature of social relations, as well as establishing optimal legal regimes for their development, constitutes one of the primary objectives of law. In this context, financial-law sanctions, and consequently financial-law liability, play a significant role in the system of public finance regulation and are widely applied in practical financial activities. At the same time, the doctrinal justification and normative formalization of financial-law liability in Ukraine have long been the subject of scientific debate and criticism[572].

Judicial practice, including the legal positions of the Supreme Court of Ukraine, confirms that misinterpretation or distortion of the financial-law nature of financial sanctions leads to inconsistencies in law enforcement, creates theoretical contradictions, and complicates the uniform application of financial

[572] Kucheravenko, M. P. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kharkiv, 2020. [in Ukrainian]

legislation[573]. Conversely, the consistent recognition of financial-law liability as an independent type of legal liability and its practical implementation by judicial authorities have contributed to the formation of a stable and effective legal practice. Such practice is theoretically substantiated and corresponds to the fundamental principles of financial law and the adjudication of disputes arising in the sphere of public finance[574].

In this regard, it is appropriate to systematize existing scientific approaches and unresolved issues in the field of financial-law liability in order to define the conceptual foundations and directions for further academic research and legislative improvement.

In Ukraine, the formation of the regulatory framework governing financial-law liability has developed along two interrelated paths. First, it has evolved within the system of financial law through the adoption of laws and subordinate normative acts establishing financial offenses and corresponding sanctions. Second, it has been shaped through the comprehensive development of procedural norms aimed at safeguarding the rights and legitimate interests of participants in financial legal relations, including guarantees of judicial protection and due process[575].

According to contemporary international and national legal doctrine, financial-law liability is characterized by a number of specific features resulting from the special nature of financial law. In particular, financial liability serves as a means of enforcing financial legislation and is established exclusively by the norms of financial law; it arises solely for financial offenses; it is ensured by specific forms of state coercion; it is expressed through the imposition of financial-law sanctions that entail adverse pecuniary consequences for the offender; and it performs a protective function within financial legal relations. Financial

[573] Supreme Court of Ukraine. Resolutions in tax disputes concerning financial sanctions and penalties, 2019–2024. [in Ukrainian]

[574] Supreme Court of Ukraine, Grand Chamber. Legal positions on the legal nature of financial sanctions, formulated in decisions of the Grand Chamber. [in Ukrainian]

[575] Code of Administrative Procedure of Ukraine; Law of Ukraine "On Basic Principles of State Financial Control in Ukraine". [in Ukrainian]

and legal liability is imposed by authorized public bodies in accordance with a legally prescribed procedural framework[576].

A. H. Pyshnyi, a Ukrainian researcher, substantiates that financial-law liability constitutes an independent type of legal liability which, alongside the general features inherent in all types of legal liability, possesses specific characteristics determined by the nature of financial law. These features make it possible to distinguish financial-law liability as a separate legal institution within the system of Ukrainian law[577].

D. O. Hetmantsev defines financial-law liability as legal relations arising as a consequence of a financial offense committed in the sphere of public financial relations. Such relations emerge between the state and the offender in connection with the formation, distribution, and use of centralized and decentralized public financial resources, on the basis of a decision adopted by a competent public authority or, in cases expressly provided by law, through the voluntary fulfillment of the obligation by the offender. These relations are based on an authoritative legal act that entails the application of financial-law sanctions of a punitive nature[578].

Financial-law liability comprises several interrelated aspects: the emergence of a financial-law obligation arising from the juridical fact of committing a financial offense; the formal condemnation of the offender's conduct by a competent authority; the application of state coercion; and adverse property consequences for the offender in the form of financial-law sanctions. Financial-law liability exists exclusively within legal relations established by norms of financial law. Financial legal

[576] Voronova, L. K. *Finansove pravo: teoriia i praktyka* [Financial Law: Theory and Practice]. Kyiv, 2019; OECD. Comparative studies on financial liability. [in English]

[577] Pyshnyi, A. H. *Poniattia finansovo-pravovoi sanktsii. Problemy finansovoho prava* [The concept of financial-law sanction. Problems of financial law]. Issue 2. 1996. P. 81–82. [in Ukrainian]

[578] Hetmantsev, D. O. *Finansovo-pravova vidpovidalnist yak instytut finansovoho prava* [Financial-law liability as an institution of financial law]. Kyiv, 2015. P. 64–66. [in Ukrainian]

relations cannot arise outside normative regulation. Where a norm of financial law is violated, protective legal relations of financial liability arise at the moment of the offense and, as a general rule, terminate upon the execution of the imposed sanction. Contemporary legal doctrine emphasizes that legal relations of liability are relations of authority and subordination between the state and the offender [579].

In order to determine the scope of protective legal relations, it is necessary to identify the moment and grounds for their emergence. The prevailing view in Ukrainian financial law doctrine holds that protective legal relations of financial liability arise at the moment a financial offense is committed, while the immediate factual basis for their emergence is the juridical fact of such an offense.

A financial offense serves as the factual basis for both financial-law liability and the emergence of protective legal relations. A financial offense is defined as a socially harmful, unlawful, and culpable act or omission committed by a delictually capable entity, which violates norms of financial legislation, infringes protected public financial interests, and entails the application of financial-law sanctions provided by law [580].

The concept of a financial offense includes the following set of attributes: an act (action or omission), unlawfulness (violation of financial legislation), culpability, commission by a certain group of persons, and penality (liability to punishment in accordance with financial legislation). The definition of a financial offense is based on the attributes of an offense, taking into account both the generic features inherent in all offenses and the specific nature of separate offenses. A regulatory framework is necessary for protective legal relations to emerge, i.e. the act in question must be legally defined as a financial offense.

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[579] Ochkurenko, S. V. *Finansovo-pravova vidpovidalnist: problemy teorii ta zastosuvannia norm prava* [Financial-law liability: problems of theory and application of norms of law]. Chasopys Akademii advokatury [Bulletin of the Academy of Advocacy]. 2012. No. 16(3). P. 8. [in Ukrainian]

[580] Kucheravenko, M. P. *Finansove pravo Ukrainy* [Financial Law of Ukraine]. Kharkiv, 2020. P. 298–300. [in Ukrainian]

An important component of financial-law liability is its procedural aspect. Procedural acts are not required for the emergence of protective legal relations themselves, but they constitute the legal basis for the realization of financial sanctions. Procedural acts function as juridical facts that modify and ensure the implementation of protective legal relations of financial liability.

Financial-law liability is imposed exclusively in a special procedural form and solely by authorized public authorities. Although procedural financial legal relations involve specific competent bodies, the substantive party to financial-law liability remains the state as a whole. Therefore, the application of financial sanctions is not merely a discretionary right but a statutory obligation of the competent authority. Financial-law sanctions are characterized by a high degree of legal certainty, which significantly limits the discretion of enforcement authorities in determining the type and amount of liability. This feature distinguishes financial liability from administrative and criminal liability. At the same time, legislation permits voluntary fulfillment of financial obligations by the offender as an exception to compulsory enforcement.

The procedure for imposing financial-law liability consists primarily of mandatory procedural legal relations arising between the offender and the state, represented by its authorized bodies, following the commission of a financial offense. Within these relations, the offender is subjected to adverse property restrictions, while the competent authorities bear the responsibility to apply the sanctions prescribed by the violated financial-law norm in strict accordance with the law.

As a result of the analysis of financial procedural norms, three main stages of financial-law liability may be distinguished: 1) documentation of the fact and classification of the act; 2) prosecution; 3) imposition of adverse measures on the violator [581].

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[581] Ivanskyy, A. Y. *Finansovo-pravova vidpovidalnist v suchasnii Ukraini: teoretychne doslidzhennia* [Financial-law liability in modern Ukraine: a theoretical study]: dissertation for the degree of Doctor of Juridical Science: specialty 12.00.07 / National University "Odesa Law Academy". Odesa, 2009. P. 147–149. [in Ukrainian]

As noted above, financial-law liability arises exclusively for a financial offense, which constitutes the factual basis of such liability. A financial offense is understood as an unlawful and culpable act or omission committed by a participant in financial legal relations, which infringes upon legally protected public financial interests of the state and society and for which financial-law liability is expressly provided by law.

The analysis of the elements of financial offenses reveals a number of unresolved issues that remain insufficiently regulated by current legislation and therefore require further doctrinal research. According to the Ukrainian researcher S. V. Ochkurenko, even such a mandatory element of liability as unlawfulness may be questioned due to the ambiguous wording of certain legislative provisions. For example, Article 73 of the Law of Ukraine "On Banks and Banking Activities" establishes "conducting risky activities" as an independent ground for the application of enforcement measures to banks alongside direct violations of banking legislation, despite the fact that risk is an inherent and legally permissible component of banking activity [582].

The object of a financial offense is the system of social relations regulated and protected by financial law that arise in the process of mobilization, distribution, redistribution, and use of public financial resources and that are unlawfully infringed upon by the offender.

The general object of financial offenses is the financial system of Ukraine as a whole. A specific object is represented by a distinct group of homogeneous public financial relations regulated by financial law and protected through measures of financial coercion. The direct object of a financial offense consists of concrete legally defined financial relations protected by a specific financial sanction. For instance, the direct object of a tax offense includes

[582] Ochkurenko, S. V. *Finansovo-pravova vidpovidalnist: problemy teorii ta zastosuvannia norm prava* [Financial-law liability: problems of theory and application of norms of law]. *Chasopys Akademii advokatury* [Bulletin of the Academy of Advocacy]. 2012. No. 16(3). P. 9–11. [in Ukrainian]

relations connected with the assessment, calculation, payment, and control of taxes and mandatory fees[583].

Financial offenses may be classified according to their object into tax offenses, budget offenses, banking offenses, offenses related to cash circulation, offenses in the sphere of currency regulation, offenses concerning compulsory state social insurance, and other violations of financial legislation. A key theoretical and practical challenge in this regard is the clear delineation of the subject matter of financial law and, accordingly, the determination of the scope and boundaries of financial-law liability.

The objective element (actus reus) of a financial offense comprises a set of features established by financial legislation that characterize unlawful conduct and are sufficient for recognizing an act as a financial offense. According to the Ukrainian scholar V. P. Nahrebelnyi, the actus reus of a financial offense consists of actions or omissions that contravene financial legislation and reflects the totality of legally significant attributes of unlawful behavior that determine the harmful effects of a financial offense in the sphere of public finance[584].

In the context of tax legal relations, unlawful conduct in the form of omission by a participant in financial relations consists in failure to register with the tax authorities, failure to calculate and pay taxes and fees, failure to perform tax withholding and remittance duties by a tax agent, or failure to submit information required for the purposes of tax control. In the sphere of budgetary relations, omission manifests itself in failure to submit budgetary reports, failure to transfer budgetary funds to designated recipients, or failure to repay budget loans and accrued interest thereon, as provided by law.

Unlawful actions of a financial offender include, inter alia, gross violations of accounting rules relating to income, expenses,

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[583] Yaiuk, T. A. *Do pytannia normatyvnoho zakriplennia skladu finansovoho pravoporushennia u zakonodavstvi Ukrainy* [On regulatory consolidation of elements of financial offenses in Ukrainian legislation]. *Mytna sprava [Customs Business].* 2001. No. 1(73). Part 2. P. 254–259. [in Ukrainian]

[584] Nahrebelnyi, V. P., Chernadchuk, V. D., Sukhonos, V. V. *Finansove pravo Ukrainy: zahalna chastyna: navch. posibnyk* [Financial Law of Ukraine: general part: textbook]. Sumy, 2005. P. 247–250. [in Ukrainian]

or assets, as well as obstruction of lawful activities of tax officials, including preventing access to premises during tax audits. In the context of budget legislation, unlawful actions may consist in violating statutory prohibitions on placing budgetary funds in deposit accounts, granting budget loans in violation of established procedures, or using budgetary funds for purposes not envisaged by law. In the area of cash circulation, unlawful actions include conducting cash settlements in excess of statutory limits and other violations of cash transaction rules[585].

Participants in financial legal relations may act as perpetrators of financial offenses. Such perpetrators possess a set of legally significant characteristics that enable the application of financial-law sanctions. These characteristics differ depending on whether the offender is a natural person or a legal entity. Financial legal personality is a legal attribute conferred by the state through legislation, recognizing an entity's ability to participate in financial legal relations, acquire rights, and bear obligations therein. Financial legal personality traditionally comprises legal capacity and legal competence.

In certain cases, so-called "atypical" entities (such as structural subdivisions of legal entities or branches of foreign banks that do not possess independent legal personality) are nevertheless recognized by legislation as separate participants in financial legal relations. In such cases, the procedure for bringing such entities to financial liability requires special regulation based on the delictual capacity of the corresponding legal entity. At the same time, the issues of financial legal competence and financial delictual capacity of both natural and legal persons remain doctrinally complex, since current legislation does not provide explicit definitions of these concepts, and even within tax law the moment at which such capacity arises is not always clearly determined. The question of the financial delictual capacity of the state, territorial communities, public authorities, local self-government bodies, and their officials also remains insufficiently explored.

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[585] Pyshnyi, A. H. *Poniattia finansovo-pravovoi sanktsii. Problemy finansovoho prava* [The concept of financial-law sanction. Problems of financial law]. Issue 2. 1996. P. 83–85. [in Ukrainian]

The issue of bringing officials to financial liability has repeatedly attracted scholarly attention. For example, S. Pepeliaev argues that a tax authority official acting in collusion with a taxpayer should bear liability as an accomplice in the violation of tax legislation. However, an analysis of the current Tax Code of Ukraine demonstrates that although liability of officials of controlling authorities is formally recognized as an element of a tax offense (Article 109), the specific procedure for holding such officials financially liable is not clearly regulated. Moreover, compensation for damage caused by unlawful actions or omissions of officials of controlling authorities is, as a rule, paid at the expense of the relevant authority funded from the state budget (Article 21 of the Tax Code of Ukraine). According to T. A. Yayuk, such an approach contradicts the principle of individualization of liability and therefore requires legislative improvement. The researcher proposes introducing a mechanism of recourse claims by the state against officials whose intentional unlawful actions caused damage. The author of this study notes, however, that such a mechanism is difficult to implement in practice, as demonstrated by the unsuccessful experience of introducing financial liability of officials in certain foreign jurisdictions [586].

Since financial offenses, like other types of offenses, are characterized by guilt, it is necessary to analyze guilt as an element of the subjective side (mens rea) of a financial offense. Guilt may take the form of intent or negligence. A distinctive feature of financial-law liability under Ukrainian law is that financial legislation does not always explicitly define guilt as a mandatory condition for the imposition of liability. This circumstance is largely explained by the absence of a unified statutory definition of financial liability and the elements of a financial offense. An important exception is paragraph 129.6 of Article 129 of the Tax Code of Ukraine, which expressly provides that a bank may be held liable for late transfer of taxes and fees to budgets or state trust funds only where fault is established.

[586] Yayuk, T. A. *Vidpovidalnist posadovykh osib u podatkovykh pravovidnosynakh* [Liability of officials in tax legal relations]. Kyiv, 2017. P. 96–99. [in Ukrainian]

At the same time, guilt constitutes a generally recognized principle of legal liability across all branches of law. Consequently, the guilt of a financial offender should, as a rule, be established in the course of proceedings, while any deviations from this principle must be expressly provided for by law[587].

Similar to many other financial legal acts governing protective legal relations, the Tax Code of Ukraine does not consistently indicate guilt as a mandatory element of a tax offense. This feature allows financial-law liability in certain cases to be characterized as liability approaching a strict (objective) model, while still requiring doctrinal and judicial safeguards to prevent unjustified application of sanctions[588].

A similar approach can be observed in the financial legislation of a number of other states. According to Ukrainian researcher O. M. Heichman, in such cases the issue concerns not legal liability in the classical sense, but rather the obligation to compensate for damage caused to public financial interests[589]. At the same time, the constitutional framework of legal liability in Ukraine is based on fundamental legal principles, including the Roman law maxim nulla poena sine culpa ("no liability without fault"), as well as the requirement that financial sanctions may be imposed only in cases expressly provided for by law. From this perspective, the author critically assesses legislative models of strict liability, emphasizing that any offense may be deemed to have occurred only where all its essential elements are present, including the object of infringement, the unlawful act (actus reus), the subject of the offense, and guilt (mens rea). Consequently, transforming financial-law liability into an absolute, fault-independent form

[587] Yaiuk, T. A. *Vyna yak neobkhidnyi element finansovoi vidpovidalnosti yurydychnykh osib* [Guilt as an integral element of financial liability of juridical persons]. *Mytna sprava* [Customs Business]. 2010. No. 5. Part 2. P. 230–234. [in Ukrainian]

[588] Voronova, L. K., Bekerska, D. A. *Finansove pravo: navch. posib* [Financial law: textbook]. Kyiv: Venturi, 1995. P. 204. [in Ukrainian]

[589] Heichman, O. M. *Finansovo-pravova vidpovidalnist u systemi publichnykh finansiv* [Financial-law liability in the system of public finance]. Kyiv, 2018. P. 112–114. [in Ukrainian]

cannot be regarded as a normal or desirable characteristic of this legal institution[590].

At the same time, the absence of guilt in certain tax cases (often described in doctrine as formal or "inchoate" tax offenses) is not treated in Ukrainian practice as an exception, but rather as a prevailing rule. Although the presumption of innocence of the taxpayer is formally proclaimed, it is not fully implemented in Ukrainian tax law. In practice, during administrative and judicial appeals against decisions of tax authorities, the burden of proving the absence of an offense or the absence of guilt is often shifted to the taxpayer. This significantly complicates the harmonization of Ukrainian tax legislation with European legal standards. In most developed market economies, a taxpayer acting in good faith on the basis of an official or reasonable technical interpretation of tax legislation is exempt from liability for a tax offense. In Ukraine, however, cases still occur where previously issued interpretations are withdrawn retroactively and financial sanctions are imposed as a result.

At the same time, certain provisions of the Tax Code of Ukraine indicate that the element of guilt is not entirely disregarded in the regulation of tax relations. For example, individuals who are officially declared wanted by law enforcement authorities by the end of the reporting year are exempt from the obligation to file tax returns (paragraph 179.4 of Article 179 of the Tax Code of Ukraine). In addition, the extrajudicial procedure for writing off tax arrears has been abolished, and public authorities are required to prove the legality and validity of their decisions in administrative proceedings. Thus, while the presumption of the taxpayer's guilt cannot be considered to exist de jure, de facto the issue of guilt is often not examined or substantiated in the process of administering mandatory payments, which is largely due to the absence of explicit legislative requirements to do so[591].

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[590] Ochkurenko, S. V. *Finansovo-pravova vidpovidalnist: problemy teorii ta zastosuvannia norm prava* [Financial-law liability: problems of theory and application of norms of law]. Chasopys Akademii advokatury [Bulletin of the Academy of Advocacy]. 2012. No. 16(3). P. 9–11. [in Ukrainian]

[591] Tax Code of Ukraine, Arts. 21, 56, 77, 109, 129, 179; Code of Administrative Procedure of Ukraine.

Another characteristic aspect of financial-law liability concerns determining the nature of a financial offense committed by a legal entity or by an individual entrepreneur. It should be noted that the doctrinal framework governing financial offenses committed by legal entities has not yet been fully systematized in Ukrainian financial law. Nevertheless, Ukrainian scholars have made significant attempts to formulate a substantive concept of guilt applicable to legal entities in the sphere of financial liability[592].

In order to define the guilt of a legal entity, it is necessary to consider the nature of its legal capacity. Ukrainian legal doctrine generally proceeds from the understanding that a legal entity exercises its rights and obligations through the actions of its authorized representatives and officials. Accordingly, the conduct of such individuals, performed within the scope of their official powers, is attributed to the legal entity itself and produces legal consequences for it. At the same time, the legal entity is not identified with any particular individual, and liability arises only where the actions or omissions of such individuals are functionally connected with the unlawful conduct of the legal entity[593].

Therefore, in determining whether a legal entity acted culpably, it is necessary to establish whether its unlawful conduct resulted from the actions or omissions of individuals involved in its management or operational activities. Where such conduct is caused by circumstances independent of the will and consciousness of these individuals, the guilt of the legal entity should not be presumed. Guilt of a legal entity should thus be established through the connection between the conduct of its representatives and the unlawful result attributed to the entity itself. At the same time, unlawful actions of individual officials that independently constitute offenses may give rise to separate legal liability of those individuals under the relevant branches of law.

To summarize the above, it can be concluded that in order to determine the guilt of a juridical person, it will be of primary

[592] Voronova, L. K. *Finansove pravo: teoriia i praktyka* [Financial Law: Theory and Practice]. Kyiv, 2019. P. 181–184. [in Ukrainian]

[593] Hetmantsev, D. O. *Finansovo-pravova vidpovidalnist yurydychnykh osib* [Financial liability of legal entities]. Kyiv, 2017. P. 63–67. [in Ukrainian]

importance for an individual employee to assess not their own actions, but how their actions affect the actions of the juridical person in general. In other words, the guilt of a juridical person can be defined as the mental attitude of its individual members to the connection between their actions (omissions) and the unlawful actions of the juridical person itself[594].

At the same time, an alternative approach exists in Ukrainian legal doctrine. According to this view, when establishing the guilt of an organization for a tax offense, it is inappropriate to mechanically transfer the psychological guilt of individual officials to the legal entity. Instead, it is proposed to apply an objective legal standard characteristic of administrative and civil law, under which a legal entity is considered guilty if it had the real opportunity to comply with financial legislation but failed to take all reasonable and necessary measures to ensure such compliance. This approach is increasingly reflected in the practice of Ukrainian courts and corresponds to European standards of corporate liability.

In the author's view, this approach to determining the guilt of a juridical person significantly complicates the process of proof, since establishing intent or negligence of a juridical person at the time of committing a financial offense is, in practice, extremely difficult. Moreover, the manner in which the will of a **juridical person should** be expressed remains unclear. Even decisions adopted at a general meeting of participants or founders cannot always be regarded as a clear manifestation of such will, given the collective and mediated nature of decision-making. At present, there is no established legal practice of identifying the actual intent of a juridical person on the basis of the actions of all its members rather than solely through the conduct of its governing bodies.

In general, proof constitutes one of the central elements of any legal process, including proceedings concerning financial offenses. Without a comprehensive and objective investigation of the circumstances of a financial offense by an authorized

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[594] Lukianets, D. *Pro vynu yurydychnykh osib u sferi administratyvnoi vidpovidalnosti* [On guilt of juridical persons regarding administrative liability]. *Pravo Ukrainy* [Law of Ukraine]. 1999. No. 11. P. 121. [in Ukrainian]

body, it is impossible to resolve a case in a lawful, reasonable, and fair manner [595].

At the same time, despite the adoption of a new version of the Tax Code of Ukraine, the activities of tax authorities and taxpayers in evidentiary matters remain insufficiently regulated. This is evidenced by the fact that the term “evidence” and related concepts are mentioned in only a limited number of provisions of the Tax Code of Ukraine (in particular, Articles 56, 77, 83, 86, and 94). However, even these provisions do not contain a statutory definition of evidence, do not establish an exhaustive list of admissible evidence, and do not regulate the methods and procedures for its collection, submission, or evaluation by the parties to a tax dispute [596].

In order to address these shortcomings, it appears necessary to formally consolidate in legislation the concept of facts subject to proof in cases of tax and other financial offenses. Such a concept should encompass:

1) circumstances giving rise to, modifying, or terminating tax obligations;
2) the fact of non-fulfillment or improper fulfillment of financial obligations;
3) the harmful consequences of an unlawful act;
4) a causal link between the unlawful act and its consequences;
5) guilt in the form of intent or negligence, where required by law;
6) circumstances excluding financial-law liability;
7) circumstances allowing exemption from financial-law liability;
8) circumstances aggravating or mitigating financial-law liability.

In addition to defining the subject of proof, another essential element of financial-law liability is the legislative regulation of methods and procedures for collecting and submitting evidence. In practice, tax authorities collect the majority of evidence prior

[595] Code of Administrative Procedure of Ukraine, Arts. 2, 9, 77; Constitution of Ukraine, Art. 129.

[596] Tax Code of Ukraine, Arts. 56, 77, 83, 86, 94.

to the formal initiation of tax dispute proceedings, primarily during tax audits. Evidence may be obtained through requests for documents, explanations from taxpayers, information from third parties, as well as through other tax control measures provided for by law, and subsequently included in the audit materials.

However, the Tax Code of Ukraine does not establish a unified procedural framework for the collection of evidence by tax authorities. Instead, it mainly guarantees the taxpayer's right to submit evidence in their favor during administrative or judicial appeal proceedings. As a result, the issue of evidentiary procedure in tax cases remains largely unresolved and requires substantial legislative refinement.

Evaluation of evidence in tax disputes involves determining its relevance, admissibility, reliability, and sufficiency for resolving the case. Although tax authorities formally exercise discretion in evaluating evidence, such discretion is limited by constitutional principles, procedural legislation, and judicial review. In practice, priority is often given to documentary evidence reflecting legally significant facts, while testimonies of taxpayers or witnesses are used sparingly and play a secondary role in substantiating such facts[597].

It follows that insufficient legislative attention to the concept of evidence and evidentiary procedures cannot improve the quality or effectiveness of judicial proceedings or out-of-court settlement of tax disputes. A significant number of disputes arise due to incorrect determination by tax authorities of legally relevant facts, inadequate investigation of the circumstances of a case, and failure to take all necessary measures to collect and properly assess evidence. The absence in the Tax Code of clear, detailed, and effective evidentiary rules inevitably leads to the referral of a substantial number of cases to courts.

Apart from the provision of evidence, the relevance of the socially harmful effects of an unlawful act that encroaches on tax, budgetary and other financial relations also remains a debatable issue in terms of the procedure for bringing to financial liability. At the same time,

[597] Supreme Court of Ukraine, case-law on standards of proof and evaluation of evidence in tax disputes (2018–2024).

formalizing the majority of specific types of offenses is characteristic of financial law, which does not preclude the existence of consequence offenses that also require establishing a direct causal link between the unlawful act and its antisocial effects[598].

Financial-law sanctions are imposed for a financial offense and are understood as an integral structural element of the financial law norm that is of a property nature, enforced by the state, imposed in a special procedural order by authorized state bodies and their officials in order to compensate for the proceeds lost by the budgetary or non-budgetary funds and to punish violators in case of total or partial failure to comply with the requirements of the legislation on the accumulation, distribution, use of centralized and decentralized funds (i.e. in case of a financial offense) by a financial entity—a natural or juridical person[599].

For each statutory ground of financial-law liability, financial legislation establishes a clearly defined system of sanctions. Financial sanctions within each segment of financial-law liability are intended to eliminate adverse economic consequences caused by financial misconduct, ensure the stability of public finances, and protect legally safeguarded financial interests of the state and territorial communities.

Financial sanctions constitute an integral structural element of financial-law liability. They determine the scope and extent of such liability, serve as a legal instrument for regulating financial relations, and are applied by authorized public bodies in cases expressly provided for by financial legislation upon the commission of a financial offense.

Sanctions of a financial law norm should be considered both as a structural element of the legal regulation of financial relations

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[598] Ochkurenko, S. V. *Finansovo-pravova vidpovidalnist: problemy teorii ta zastosuvannia norm prava* [Financial-law liability: problems of theory and application of norms of law]. *Chasopys Akademii advokatury* [Bulletin of the Academy of Advocacy]. 2012. No. 16(3). P. 11–13. [in Ukrainian]

[599] Ivanskyy, A. Y. *Finansovo-pravova vidpovidalnist v suchasnii Ukraini: teoretychne doslidzhennia* [Financial-law liability in modern Ukraine: a theoretical study]: dissertation for the degree of Doctor of Juridical Science: specialty 12.00.07 / National University “Odesa Law Academy”. Odesa, 2009. P. 334–337.

and as a specific coercive measure established by financial legislation and directed against a financial offender. In this sense, a financial sanction operates simultaneously as a normative element of financial law and as an individual measure of state coercion applied in a concrete case.

From the standpoint of their semantic content and functional purpose, financial sanctions may be understood, on the one hand, as monetary sanctions imposed under norms of various branches of law and payable to the state or local budgets, and, on the other hand, in a narrower sense, as sanctions specifically regulated by financial legislation, primarily fines and penalties. In both interpretations, financial sanctions provided for by financial legislation are clearly determined by law, imposed exclusively in cases of a financial offense, affect the property interests of financial offenders, do not exclude the application of administrative or criminal liability, and may be applied cumulatively with such forms of liability depending on the nature and degree of public harm of the offense.

Financial sanctions occupy a special place in the system of financial law enforcement. They differ from other measures of financial-law coercion by their objectives (which combine compensatory and punitive functions), by their grounds (the commission of an act qualifying as a financial offense, including a tax or budget offense), by the procedure for their imposition (which involves establishing the factual circumstances of the offense and compliance with statutory procedural guarantees), by their focus (legal influence is directed primarily at the offender’s property sphere), and by the possibility of imposing additional financial obligations.

Accordingly, effective regulation of financial legal relations by the state is impossible without the application of measures of state coercion that entail adverse property consequences for violators of financial legislation. In recent years, Ukrainian financial legislation and judicial practice have demonstrated certain positive developments in this sphere, including the refinement of sanction mechanisms and the strengthening of procedural guarantees for taxpayers and other participants in financial relations.

At the same time, fundamental concepts such as financial-law liability, financial offense, and financial sanctions, as well as a number of related theoretical and practical issues, remain the subject of ongoing academic debate. The lack of doctrinal consensus and incomplete legislative regulation negatively affect lawmaking and contribute to the existence of gaps and inconsistencies in current financial legislation.

The current state of financial law doctrine and financial legislation indicates an insufficient level of systemic regulation of the fundamental principles of financial-law liability. Certain types of financial offenses, as well as the general procedure for bringing offenders to financial liability, are not comprehensively regulated by normative legal acts. In this regard, there is an objective need to adopt a unified legislative act that would establish the general and special principles of financial-law liability, define the system of financial offenses and sanctions, and regulate the procedural framework for bringing persons to financial-law liability in a coherent and consistent manner.

CONCLUSIONS

Financial-law liability for financial offenses is impossible without the measures and tools that can be used to enforce the adverse consequences of liability on the violator of financial norms. Such measures are defined as financial-law sanctions.

The plurality of the term “sanction” indicates a special combination of several roles that appear critical depending on the specifics of a particular legal situation.

Financial-law sanctions are an integral structural element of financial law and are defined as measures of financial-law liability that are of a pecuniary nature, enforced by the state, imposed in a special procedural order by authorized state bodies and their officials in order to compensate for the damages caused to the state and to punish violators in case of a financial offense committed by a natural or juridical person.

As a part of this study, the scope of financial-law sanctions was examined in order to determine their legal nature. Thus, the scope of financial-law sanctions involves establishing and determining the possible consequences of the actions of parties to financial legal relations in case of non-compliance (violation) with the disposition of financial-law norms, which requires the state to establish a method and means to protect, secure and enforce the compliance with and fulfillment of rights and obligations stipulated by the financial norm on the part of parties to financial legal relations.

As measures of financial-law liability, financial-law sanctions possess specific features and characteristics that are inherent in them due to the legal nature of financial legal relations and which allow distinguishing them from other types of legal sanctions and coercive measures. The main features of financial-law sanctions include the following: they are of a pecuniary as well as punitive and remedial nature; an additional obligation arises as a result of their imposition; they are imposed for the commission of a financial offense in a special procedural order; funds are recovered from the guilty party and transferred to the state budget at the expense of the total profit (property) of the financial offender. It is the coincidence of the majority of these features that characterizes certain liability measures as financial-law sanctions.

State conviction is defined by financial science as financial-law liability that, in terms of subjective law, appears as a normative, formally defined in financial law, guaranteed and secured by financial-law coercion legal obligation for the offender to undergo measures of state coercion in the form of financial-law sanctions (fine, penalty) for the commission of a financial offense.

The study of the differences between financial-law sanctions and the measures of civil-law, economic-law and administrative liability, which are most often referred to as financial-law sanctions, indicates that financial-law sanctions belong to a separate sector and should not be identified with the specified liability measures.

Based on the definition of financial-law sanctions, the study of their features and characteristics, the determination of functions performed by measures of financial-law liability, their classification, etc. carried out in the first section of this monograph, it can be concluded that financial-law sanctions are special tools of the state's fiscal policy, constitute a measure of financial-law liability and play an extremely important role in the regulation of financial legal relations as well as their protection from illegal encroachments. Financial-law sanctions are an exclusive legal phenomenon of financial legal relations and are imposed only for financial offenses. This is why any identification with administrative penalties or economic and legal sanctions as well as with other types of legal sanctions is inappropriate.

Being coercive measures, financial-law sanctions belong to the general legal system of state coercion measures, are a form of response of the state represented by its authorized bodies to violations of financial legislation and are an external material expression of state coercion for committing unlawful acts in the field of finances.

Financial-law sanctions represent the state's disapproval of the violator's unlawful actions depending on the gravity and level of public danger of the financial offense while determining certain legal limits for state coercion. This, in particular, qualifies financial-law sanctions as measures of financial-law liability.

As measures of financial-law liability, financial-law sanctions implement state coercion, which consists in imposing punitive measures determined by the law on the violator of financial-law norms.

The financial-law norms contain requirements imposed on the relevant parties to financial legal relations regarding the timely statutory payments to the budgets on different levels as well as requirements for budget holders to distribute and use budget funds in accordance with their intended purpose and the adopted regulations, to provide reports and other documents for control by competent authorities, etc. Therefore, it is the financial-law norms that are the regulator of public financial relations, while financial-law sanctions serve as a peremptory formalization of the state's imperative regulations and are designed both to deter the parties to financial legal relations from violating the financial legislation and to anticipate the consequences of certain unlawful acts.

The general principles of regulating the legal classification of financial-law sanctions among other coercive measures and their application following the prosecution consist, first of all, in the legislation of coercive measures that are imposed on the financial offender by the state, although not by way of referencing such coercive measures, but through their direct personification. A sanction is a certain liability measure that, at the same time, is not identical to state coercion.

The coercive nature of financial-law sanctions is not limited to the stage of the actual imposition of sanctions but also appears as an important aspect at other stages of imposing the financial-law liability on the violator, in particular, at the stage of payment (recovery) of sanctions, which is characterized by the violator's compliance with the legal requirements for the recovery of sanctions. That is why it is important to take into account what the imposition of financial-law sanctions and their payment involve.

Financial-law sanctions are aimed at depriving the offender of certain benefits for the unlawful acts committed by them. At the same time, these restrictions do not focus on the violator (arrest, restriction of freedom or imprisonment, etc.), but only on their property.

This aspect primarily results from the fact that financial legal relations arise only from the financial activity of the state and are associated with the accumulation, distribution and use of funds, i.e. they are always of a monetary nature.

Thus, the author concludes that financial-law sanctions possess their own distinctive features that allow distinguishing them from other types of sanctions, therefore indicating the sectoral independence of financial-law sanctions, whose imposition mechanism is based primarily on imperative financial legal relations that are directly opposite in their nature to dispositive civil legal relations.

The procedure for imposing financial-law sanctions does contain specific features that allow identifying the sanctions imposed as financial-law sanctions, rather than as measures of administrative or other liability. Such aspects as the offenders involved (including juridical persons) and the specified time limits are indicative of this feature.

The imposition of financial-law sanctions is the final step in legal relations regarding the prosecution of violators and can be defined as pecuniary measures of financial-law liability that are enforced by the state, imposed in a special procedural order by authorized state bodies in order to compensate for the proceeds lost by the budgetary or non-budgetary funds and to punish violators in case of a financial offense committed by a financial entity. The distinction of the correlation between financial-law sanctions and financial-law liability consists in the fact that the imposition of sanctions is a procedural expression of financial-law liability that ensues for the violator from the moment of implementing sanctions. It is the moment of fulfilling additional obligations in the form of certain measures that involve sanctions imposed on the violator of financial-law norms when liability comes to fruition.

The imposition of financial-law sanctions depends on the following grounds: factual (the fact of committing a financial offense), normative (the existence of statutorily defined financial-law norms that establish the cases, conditions, procedure, etc. for the imposition of financial-law sanctions) and procedural (the decision of the authorized bodies to impose financial-law sanctions). The imposition of financial-law liability measures is only possible and legitimate if several grounds coincide.

When considering the grounds for imposing financial-law sanctions, it is necessary to take into account normative and procedural grounds in addition to factual grounds (i.e. the commission of a financial offense). Normative grounds represent a set of financial-law acts that determine the imposition of financial-law sanctions. Procedural grounds consist in the existence of a legal act (decision, resolution, etc.) that determines the type, scope and procedure for imposing financial-law sanctions for the commission of a certain financial offense. Such law-enforcement act implements the will of the state represented by its authorized bodies for the offenders to be held financially and legally liable and subject to financial-law sanctions.

The imposition of financial-law sanctions ensues on the grounds and in the form clearly regulated by the legislation as well as pursuant to the procedure determined by it. This is due to the public nature of the sanctions applied that requires ensuring not only the transparency of the procedure and equal treatment of all violators of financial law by the authorized bodies without any unjustified preferences, but also streamlining such procedural activities of the state bodies.

Financial-law liability measures are imposed by the authorized state bodies through the adoption of a law-enforcement act (decision, resolution, etc.) indicating, among other factual circumstances, the type and scope of financial-law sanctions to be imposed on a specific person. From the moment such an administrative enactment is announced (familiarized with, adopted), a person is considered to be subject to financial-law sanctions.

The current legislation of Ukraine stipulates a specific procedure for the imposition of financial-law sanctions, which, depending on the attitude of the perpetrator to the actions committed as well as other circumstances, divides into extrajudicial (voluntary) and judicial procedures. Thus, the imposition of financial-law sanctions is possible upon the decision of the offender (in the tax sector) as well as upon the decision of executive authorities (extrajudicial procedure) and judicial authorities (judicial procedure).

In order to create an acceptable approach to establishing a person's guilt in the commission of a financial offense, the author considers it necessary to develop a method of proving guilt with regard to the specific features of offenses in the financial sector. This should be carried out within the scope of a separate specialized study.

In this case, guilt should be determined through a special mechanism for considering both the mental characteristics of the offender and the reasons or other impulses pushing the person to the violation.

Certain elements of financial offenses and the entire procedure for bringing offenders to financial-law liability are not fully regulated by legal acts. The author believes, there is currently a need to formalize in a single legal act the procedural aspects of bringing offenders to financial liability as well as general and special principles that will form the basis for financial-law liability.

Essentially, knowledge about financial-law sanctions requires generalization, which will not only contribute to their logical classification but also allow identifying their scale and versatility in the public life of the state, studying their properties as well as highlighting characteristic features as a result of the establishment of a certain classification system (grouping, differentiation).

The comprehensive classification of financial sanctions contributes to the most detailed and complete study of the types of financial-law sanctions and is as follows:

1. According to the main types of financial offenses:

1.1. Tax offenses.

1.2. Offenses in the foreign exchange sector.

1.3. Offenses in the field of cash transactions.

1.4. Offenses in the public banking sector.

1.5. Offenses in the field of compulsory state social insurance.

2. According to entities authorized to impose financial-law sanctions:

2.1. Ministry of Revenues and Duties.

2.2. National Bank of Ukraine.

2.3. Currency regulation and currency control bodies.

2.4. State social insurance bodies:

2.4.1. Sanctions imposed by the Fund of the Social Insurance for Temporary Disability.

2.4.2. Sanctions imposed by the Fund of Compulsory State Social Insurance of Ukraine for Unemployment.

2.5. National Securities and Stock Market Commission.

2.6. State Commission for Regulating Markets of Financial Services of Ukraine.

2.7. State Financial Monitoring Service of Ukraine.

2.8. Courts.

2.9. Perpetrator of a financial offense.

3. According to the types of legal acts:

3.1. Sanctions defined in the legislative acts of Ukraine.

3.2. Sanctions defined in by-laws.

4. Depending on the specificity of the punishment:

4.1. Absolutely specific fines (e.g. in the amount of UAH 680 as per Clause 118.1 of Article 118 of the Tax Code of Ukraine).

4.2. Relatively specific fines.

4.3. Penalty (120% per annum as per Subclause 129.1.3 of Clause 129.1 of Article 129 of the Tax Code of Ukraine, etc.).

5. According to the method and priority of imposition:

5.1. Basic (e.g. fines as per Chapter 11 of the Tax Code of Ukraine).

5.2. Additional (Part 10 of Article 106 of the Law of Ukraine "On Mandatory State Pension Insurance" corresponding to Part 12 of Article 25 of the Law of Ukraine "On Collection and Registration of Unified Contribution for Compulsory State Social Insurance" that stipulate a fine and a penalty for failure to transfer funds in a timely manner).

6. According to the offenders:

6.1. Natural persons.

6.2. Juridical persons.

7. According to the order of imposition:

7.1. Sanctions imposed in an extrajudicial procedure.

7.2. Sanctions imposed in a judicial procedure.

8. According to the purpose of imposition:

8.1. Punitive sanctions.

8.2. Restorative sanctions.

The analysis of the purpose of different types of financial-law sanctions as a result of their application allows determining the main types of such sanctions. Thus, fines are punitive and imposed on financial offenders in case of a violation of the current legislation for the very fact of committing the violation. This is a defense reaction of society (state authorities) to attempts (realized or not) to violate the existing order. At the same time, penalties are restorative in nature, since the money paid in the form of a penalty is intended to compensate for the damages caused to the state by a financial offense during the period of non-payment. In this case, the aim of such compensatory measures is to eliminate damages and restore the original (normal) state of the relevant financial relations as a consequence. What fines and penalties have in common is the fact that they constitute an additional or new financial burden for the financial offender, are transferred to the state budget and collected in accordance with the procedure legally determined by authorized state bodies.

Ukrainian science of financial law studies financial-law categories as well as financial-law norms, develops them and contributes to the improvement of financial legislation by formulating recommendations. While financial law as a branch of law manifests itself as financial-law principles, norms and methods, financial law as science manifests itself in monographs, articles, manuals and textbooks on financial law. Systematizing and generalizing the available data by means of scientific research in the field of regulation and imposition of financial-law sanctions results in the enhancement of scientific knowledge about financial-law sanctions.

It is on the basis of the latest scientific research and developments that the mechanism of bringing to financial liability and imposing financial sanctions should be further improved, since even after the adoption of the new Tax Code, the issue of proving the fact of a financial offense as a basis for bringing to financial liability and imposing financial sanctions remains underregulated. The Tax Code does not define the very concept of "evidence", does not determine what can be considered evidence as well as does not regulate the order and procedure for their provision and evaluation by the parties to the dispute.

In order to address the above issues, it is necessary to determine at the legislative level the fact in proof for cases of tax and other financial offenses. In addition, the norms that regulate the procedure for appealing against the decisions on the imposition of financial-law sanctions need to be significantly revised. Currently, the law provides for two options to appeal against such decisions: appeals to the relevant supreme (supervisory) authority (administrative procedure) or court (judicial procedure).

The collection authority is legally empowered to initiate a judicial procedure for recovering the financial-law sanctions by filing a claim with the court if the person on whom they are imposed fails to fulfill this additional obligation upon receiving a relevant notification. However, not all cases require enforcement proceedings. The procedure for imposing financial-law sanctions should be defined as the sequential performance of mandatory procedural actions associated with the occurrence of the juridical fact of a financial offense and due to which the offender has to bear adverse property restrictions while the authorized bodies have the obligation to subject the offender to adverse legal restrictions provided for by the sanction of the violated financial-law norm.

Taking into account the above analysis, exemption from financial-law sanctions can be defined as a situation where the authorized party to financial legal relations waives the right to subject the perpetrator of a financial offense to its negative consequences due to the presence of circumstances stipulated by the current legislation of Ukraine precluding financial-law liability. This is fundamentally different from the concept of exemption from financial-law sanctions levied on the basis of a violation of financial-law norms in order to bring the offender to responsibility.

The main distinction of the legal phenomenon of exemption from financial-law sanctions consists in the fact that a person is already subject to liability and the obligation to comply with the imposed measures of liability, but the actual enforcement of the decision on bringing to liability and imposing sanctions is not possible due to certain reasons specified by law. The person is therefore not liable to sanctions or their enforcement.

As the embodiment of the institution of exemption from financial-law liability, the institution of exemption from financial-law sanctions is intended to liberalize imperative financial legal relations by introducing an element of rationality into the prosecution for violations of financial legislation with regard to the specific circumstances that, due to their nature, do not allow implementing state conviction of the violator as well as defining and legislating the limits and terms of punishment for a wrongdoing.

The conclusions and recommendations made by the author during this research are also confirmed by the legislation and practice of foreign countries. The study and analysis of international experience allowed accumulating the empirical and scientific basis necessary for the development of recommendations on the legal regulation of financial-law sanctions in the context of current globalization processes.

For this very purpose, the author analyzed the legislation in the field of financial-law sanctions of quite different countries, such as the USA, Germany, Austria, Switzerland, the UK, and China. Thus, the best practices that could be implemented in Ukraine are as follows:

1) comprehensive legislation of mechanisms for the recovery of funds and imposition of sanctions in both judicial and extrajudicial order as well as a clear definition of administrative and judicial procedures for appealing against the imposition of financial-law sanctions by a person held financially liable; separation of financial liability from other types of legal liability;

2) conclusion of agreements between taxpayers and tax authorities on repayment of tax arrears in installments (similar to tax treaties in the USA). Such an approach is of practical value for both parties, as, on the one hand, it provides for the possibility of reducing the amount of fines for the taxpayer and, on the other hand, it ensures continuous receipt of tax revenue for the budget. In addition, the system of repaying tax arrears, fines and penalties in installments ensures more effective control over the fulfillment of tax obligations by taxpayers, without causing bankruptcy and financial insolvency of the latter;

3) an in-depth analysis of Austrian law and implementation of the legislative regulation of the procedure for the imposition of financial sanctions and exemption from financial liability upon the voluntary fulfillment of tax obligations;

4) differentiation of financial sanctions depending on the period of delay in filing tax returns or repaying tax arrears as well as clear determination of the scope of such differentiation, similar to the legislation of the UK. This approach to determining the amount of financial sanctions forces the taxpayer to comply with the obligation imposed by the financial legislation regarding the payment of taxes within the statutory deadlines.

The author is looking forward to all constructive feedback and kind comments that will contribute to this scientific work.
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