

Tax Evasion: Criminological Characteristic, Problems of Criminal Liability Application and Improvement of the Mechanism of Crime Suppression

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Abstract: The paper investigates tax evasion in the Republic of Kazakhstan as a crime in terms of the science of criminology and criminal law. This type of crime causes a very significant harm to the state budget of Kazakhstan and currently has a strong tendency to further growth, so the issues of research of tax crime and one of its most dangerous manifestations, namely tax evasion, are important. The author considers different points of view on the determinants of tax crime, beginning with a look at the macro-level factors, goes to the micro-level factors and concludes about further necessity of criminalization of a number of actions that are used to avoid tax payment. The author argues for the low efficiency of decriminalization of tax evasion by increasing the statutory amount of major damage and demonstrates the usefulness of a comprehensive tax amnesty as an alternative to decriminalization. Having performed a comparative analysis of the rules of criminal liability for tax evasion, the author notes that in various modern legal systems the graduation of the degree of responsibility for tax evasion is based on determining the size of the concealed amounts. The author comes to a conclusion about the need of complex improvement of the rules of various branches of legislation to effectively combat tax crimes.

Key words: Taxes • Tax crime • Tax evasion • Criminalization • Tax amnesty

INTRODUCTION

Stable economic and political conditions of social development of any country are directly dependent on the state budget, its full and complete formation and distribution of its financial resources.

The growth of the number of private businesses has resulted in a sharp contradiction between the financial interests of the state and society, on the one hand and the interests of the new owners, on the other.

The government aimed at addressing its inherent functions and their financial security keenly needs constant inflow of tax revenues. Actions on tax evasion opposing the execution of these tasks seem to some extent natural to state taxpayers, since they are conditioned by the owners' attempt to somehow protect their property, assets and income from any attack, even from the legitimate ones. In order to resolve these contradictions in the emerging democratic society of Kazakhstan there is a discussion aimed at finding answers to many questions in the field of

taxation, including the regulation of liability for tax offenses.

It should be noted that the answer to the question has not been found yet that, in turn, is proved by the increasing rate of tax crime.

Over the years of economic reforms in the Republic of Kazakhstan there has been a lot of positive work to strengthen the country's budget and increase its transparency, but, unfortunately, there is a strong deterrent to further improvement of the budgetary mechanisms - the tax delinquency, which continues to cause huge financial losses to the state treasury.

Tax delinquency is organically linked with market relations, private property and entrepreneurship. The main manifestations of tax crime are actions aimed at evading payment of taxes (concealment of income, illegal reduction of the tax base, etc.) that bring the greatest damage to the interests of the state and society.

In the studies conducted by the foreign authors it was rightly pointed out that tax evasion is the main reason for the existence of "shadow economy" [1, P. 170].

Experience shows that some applications of criminal liability for tax evasion bring certain difficulties for the law enforcement agencies. The experts-theorists have not yet formed a consensus on some issues of such liability.

To clarify the legal nature of the criminal law prohibition of tax evasion we should recognize the need to determine its economic and legal grounds. In this study, we attempt to give criminological and penal characteristics, as well as to analyze and predict the possible results of criminalization and decriminalization of the said act.

From historical, philosophical and psychological points of view tax evasion is a permanent phenomenon that is soundly proved by both the past and the present. Many major historical events were related directly or indirectly to the reluctance of people to pay taxes and fees. The roots of this reaction can be sought, on the one hand, inside the person, in his selfish motives and greed and on the other, as it has been said already, they are caused by external circumstances: the unwillingness to pay the tax is a countermeasure against the relevant fiscal policy of the state [2, P.142].

I should say that criminologists of RK have formed different concepts that reflect the content of the causal complex of the crime: the factors, the determinants, the phenomena, circumstances, etc. Thus, E. Alaukhanov and K. Akhmedin [3] believe that to characterize the tax crime it is the most appropriate to apply such major factors as circumstances and conditions that contribute to the commission of tax crimes. The circumstances are divided by these authors according to their nature into six groups: 1. spiritual and moral; 2. political; 3. economic; 4. social; 5. organizational and managerial; and 6. legal. The conditions of committing the crime should be considered as factors that allow and facilitate the commission of such acts. Among the conditions of committing the crime the mentioned authors identify: 1. technical (imperfect procedures and methods for collection and payment and monitoring of their performance by taxpayers) and 2. legal (imperfect legislation and the presence of "loopholes" for unscrupulous taxpayers).

A. Aykimbaev [4] attributes two groups of determinants to the conditions that contribute to the commission of crimes in the area of tax relations:

- Terms of macro-level (changes in the socio-economic structure, ideology, social values, etc.).
- Factors of the micro-level, i.e. those that contribute to the commission of specific socially dangerous acts.

A. Aykimbaev, operating the same factors as the above-mentioned authors, does not make a distinction between the facts and circumstances of tax crimes, which, incidentally, is not a serious error.

S.D. Sulaimbekova [5] in addition to the conditions highlights the reasons leading to tax evasion. This author proposes the following groups of reasons: political, economic, moral and technical. As we see the originality of the approach of these authors is expressed in a different combination of similar factors in the groups with different names (the circumstances, conditions, causes) that, in general, allows speaking of a single line, developed by RK criminologists in relation to the Kazakhstan's tax crimes.

While agreeing with this general line, we consider appropriate to add some noted reasons, which should be attributed to the micro-level.

Thus, a cause and a consequence of tax evasion is at the same time the spread of a not-bank circulation of cash, not recorded in the accounting and reporting. This negative phenomenon in the field of entrepreneurship has received the name of "black cash". This factor is also mentioned by a number of foreign authors [6].

It is also important and necessary to distinguish the legal reasons of tax evasion. In this case, we are referring to the state of the relevant legal regulation. Tax legislation at present is still too volatile and imperfect; it is characterized by the complexity and internal contradictions and does not fit in with the norms of other branches of the law. It is the imperfection of certain tax rules that in turn gives rise to the set of terms that make tax evasion possible.

Among other reasons of tax evasion there is the misuse of various legal schemes provided by the tax laws-benefits, deferrals, installments to pay taxes, as well as other factors.

All of the above clearly leads to the idea of criminalizing such actions consisting in tax evasion in all its forms and establishing appropriate criminal prohibitions.

The criminalization of tax evasion is the traditional way to combat the crime in question, used by the majority of states. The principles of criminalization of tax evasion, perceived by the laws of most Western countries are based on the theory put forward by the Western authors M. Allingham and A. Sandmo [7], according to whom the measure of liability must be minimum necessary to ensure that the fear of liability to overpower the desire to evade taxes in a certain amount. Thus, the level of responsibility and the level of punishment should fit. This approach

applicable in particular by U.S. law [8], according to these authors, will allow minimizing the loss incurred by the taxpayer as a result of an error in proper calculations of the one made by the regulatory bodies. In line with this approach, the U.S. law has established different degrees of responsibility by introducing a maximum limit of fines and terms of imprisonment in respect of tax evasion, depending on the scope, nature of the act (objective aspect), the size of the concealed amounts-fines in the amount of 1000, 2000, 5,000, 10,000, 25,000 and \$ 100,000 and terms of deprivation of 6 months, 1, 2, 3 and 5 years. The U.S. law itself determines the act in question as the deliberate, illegal acts of tax evasion, the federal legislation, the perpetrators of which may be subject to fines or imprisonment [8].

The current legislation of Kazakhstan in less detail differentiates the penalties for tax evasion. The duty of every citizen to pay certain taxes and fees provided by the law that is enshrined in Article 35 of the Constitution of the Republic of Kazakhstan [9] is guaranteed by the application of criminal and legal sanctions against guilty people. Articles 221 and 222 of the Criminal Code of the Republic of Kazakhstan (CC of KR) [10] establish criminal liability for violation of this constitutional obligation.

For the evasion of social, economic and other taxes in the Criminal Code of the Republic of Kazakhstan there are 2 articles: 221 of the KR Criminal Code (evasion from payment of taxes and (or) other obligatory payments to the budget) and Article 222 of RK Criminal Code (tax evasion in the organization and (or) other obligatory payments to the budget). If we turn to the criminal law of our main economic partner - the Russian Federation, it is easy to see that the approach of Russian and Kazakh legislators to the regulation of the liability for tax evasion is maximally similar. In Art. 221 of KR Criminal Code and in respective article 198 of RF Criminal Code [11] there are similar constructs. In both considered standards there are similar dispositions that very clearly describe the criminal act and provide for the liability only for large scale damage. Art. 221 of RK Criminal Code does not stipulate deprivation of liberty for a simple, non-qualified evasion among penalty measures and according to the Art. 198 of the Criminal Code it is up to 1 year. The essential difference lies in the qualifying Part 2 of Art. 221 of RK Criminal Code, which provides punishment in the form of a fine from five hundred to three thousand monthly assessment indices, or correctional labor for up to two years, or imprisonment for a term up of to three years and part 2 of RF Criminal Code, where a qualifying characteristic is a particular large size, which concept is disclosed in the Commentary following the text of Para. 1,

Part 2, Art. 198 of the Criminal Code of the Russian Federation. In Para. 2 of the Commentary of Art. 198 of RF Criminal Code there are the conditions of exemption from liability for tax evasion by an individual who has committed the crime in question, subject to reimbursement of arrears and penalties, as well as a fine provided for by the tax legislation of the Russian Federation. In the RK CC there is also a commentary to Art. 221, revealing a large size, but the exemption from the liability for tax evasion is not provided. In terms of the Art. 222 of RK Criminal Code and 199 of RF Criminal Code, establishing liability for tax evasion of the organization, the differences are almost the same, repetition (Part 2 of Art. 222 of RK Criminal Code), the absence of conditions of exemption from liability in a commentary to the article 222 of RK Criminal Code, the maximum penalty of the qualifying second part-up to 7 years in prison in Part 2 of Art. 222 of RK Criminal Code to 6 years in Part 2 of Art. 199 of RF Criminal Code. The difference between both defined crimes (Articles 221 and 222 of the Criminal Code and Art. 198 and 199 of the Criminal Code) with differentiation on the subject of crime can be traced in relation to sanctions such in the form of fines to the monthly indicator in RK Criminal Code and indication of specific amount of money in the Criminal Code of the Russian Federation. At the mentioned similarity the norms of Articles 221 and 222 of RK Criminal Code seem rather well-considered, in contrast to the corresponding provisions of RF Criminal Code, where a feature of repetition was excluded that appears to be erroneous.

However, the rules of Articles 221 and 222 of RK Criminal Code do not completely agree with the urgent problems of the criminal law in the field of combating tax evasion; therefore there is a need to simultaneously toughen the penalties for the commission of the act and provide grounds for exemption from the liability. In this respect, it is proposed to present paragraph 2 of Art. 221 of the Criminal Code as follows (amendments in italics):

In a large scale, or the same act, if committed repeatedly,

Is punishable with a fine from *one thousand* to three thousand monthly calculation indices, or correctional labor for a term up to two years, or imprisonment for up to three years with a fine of up to *five hundred* monthly assessment indices or without it.

The Note to Art. 221 of RK Criminal Code to be presented as consisting of two parts: Part 1 which includes the text of the operative standard, supplemented by the words: "*and if the amount of unpaid taxes and mandatory payments exceeds five thousand monthly estimated indices, the crime is considered as committed in a large scale.*"

Part 2 of the Notes Shall Contain the Following Text:

- *If the actions of the citizen who has voluntarily paid a certain amount of indebtedness determined by the law of the Republic of Kazakhstan, the amount of fines and penalties, are not discerned as components of other crimes, such a citizen is exempted from criminal liability under the first part of this article.*

Among the penal actions against tax evasion, along with criminalization the decriminalization is applied. It is mainly the increase in the size of the unpaid taxes and fees, entailing criminal liability of taxpayers, which is conditioned by a general increase in the income of individuals and organizations in the country and, correspondingly the changing approach to determination of the large size of the committed crime. According to the noteworthy opinion of some experts [12], decriminalization in taxation is ineffective because it can be accompanied by many negative factors and first of all a significant reduction of all of preventive action of the procedures of criminal and criminal codes; consequently an additional condition for ignoring the constitutional public-law duty to pay the legally established taxes will appear.

As measures against decriminalization in relation to tax evasion it seems necessary to set out the Note to Art. 222 of RK Criminal Code as follows:

Note. Failure to pay the organization tax and (or) other obligatory payments to the budget is recognized as a large scale if the amount of unpaid tax and (or) other mandatory payments exceeds fifteen thousand monthly calculation indices and as an especially large scale, if the amount of unpaid tax and (or) other obligatory payments exceeds forty thousand MCI.

It should be noted that along with the decriminalization measures to combat tax evasion the application of the tax amnesty is much more successful. The unprecedented example of effective administration for CIS countries is a comprehensive economic amnesty carried out in 2001 in Kazakhstan.

Since the early 90's Kazakh entrepreneurs have repeatedly raised the issue of legalization of capital. In response, on April 2, 2001 the Parliament adopted the law "On amnesty to citizens of the Republic of Kazakhstan in connection with the legalization of their money," [13], according to which the citizens of Kazakhstan were exempted from criminal and civil liability for economic violations, if their money inside the country or abroad was declared and legalized in a strictly

determined time. The aim of the project was legalization and return of funds from abroad and from the country population to the open economic turnover. The envisaged mechanism for the implementation of the law and the rules laid down in it allowed a differentiated approach to each individual case.

The Law which came into force on June 14, 2001 granted amnesty to a fairly wide range of crimes, including tax evasion.

The legalized funds, which origin was not subject to inspection, were exempted from the payment of taxes and other obligatory payments to the budget, as well as penalties and fines. Moreover, for the period of legalization any inspections of commercial structures by the public authorities were prohibited.

After the economic amnesty, which ended on July 13, 2001, Kazakh officials and businessmen have returned over 480.2 million dollars, of which more than 82 % of legalized money was paid in cash U.S. dollars, 11.4 % were transfers from the accounts of foreign banks and 6%-in the form of cash tenge. The minimum legalized amounts ranged from 2 to 8 thousand dollars. Maximum was about 800 thousand dollars [14].

The effectiveness of economic amnesty was highly evaluated by the world's major rating agencies, which, one after another raised the credit rating of Kazakhstan. The political course of the country leadership to money legalization was further applied to other types of ownership.

In the annual address of the President of the Republic of Kazakhstan to the people of Kazakhstan from March 1, 2006 "Strategy of Kazakhstan entry into the fifty most competitive countries of the world" [15] the President drew attention to the need for a law on amnesty of capital and property taken out from the legal trade, which should provide a clear mechanism that takes into account all the possible nuances of this complex issue.

To implement the Message the Laws "On amnesty in connection with the legalization of property" [16] and "On amendments to some legislative acts of the Republic of Kazakhstan on amnesty in connection with the legalization of property" [17] were adopted on July 5, 2006. The legalization of property realized in accordance with the new laws allowed vesting the property rights with rightholders and, in turn, using it as collateral, thereby creating the conditions for business development. This process was open and highly appreciated by experts as an important step in the further development and construction of a transparent economy of Kazakhstan and relations between the state and society [18].

However, despite the undoubted success of the measures taken by the country's leadership, the actions for capital legalization nowhere, including in Kazakhstan, are considered neither as a panacea from shady business, nor as a long term tool for legalization of the shadow capital. Here the more preferable are improvement of the normative and legal sphere of taxation and increase in transparency of the work of relevant authorities.

It should be noted that the criminal policy of the government in combating tax evasion should be aimed at expanding the scope of criminal sanctions that do not involve deprivation of liberty, including the exclusion of certain sanctions and penalties in the form of imprisonment or a reduction in the maximum terms of imprisonment, as well as determination of the fine as one of the most effective types of criminal penalties and the possibility of expanding its use.

In addition, tax evasion and the tax crime are not only a criminal act infringing the country's financial system, but also an offense against other generic objects, such as the activities of tax authorities and their officials, in the exercise of control over the payment of taxes (that is, in essence, an order of management), as well as the interests of taxpayers. In the end these crimes violate these or other tax legislation [19].

Applicable state criminal law measures against tax evasion, from the point of view of criminal law, are still ineffective. At the same time, public policy against tax evasion and the implemented criminal policy is unique.

To increase its effectiveness Kazakh President, the leader of the nation Nursultan Nazarbayev, in his address "Strategy of Kazakhstan-2050" [20] proposed the following additional measures:

- To introduce a favorable tax regime for the objects of taxation, employed in the manufacturing and new technologies and to perform an audit of all existing tax incentives and make them as effective as possible;
- To continue the policy of liberalization of tax and customs administration and therefore to necessarily simplify and minimize the tax reporting and thereby to promote the market participants to competition rather than to finding ways of avoiding taxes.
- Pragmatic reduction of the tax supervision should minimize the dialog between businesses and tax authorities. In the next five years there is an overall need to switch to the mode of the online reporting.
- From 2020 to introduce the practice of tax crediting. Main task is to stimulate investment activity of entrepreneurs.

- To give social orientation to the new tax policy. To do this, starting from 2015, to develop a set of incentives, including the practice of tax exemption for the companies and individuals who invest in education and health insurance of themselves, their families and employees.

Thus, the future tax policy at the business level shall stimulate domestic growth and domestic exports to international markets and at the level of citizens to encourage their savings and investments [20].

Current legislation requires further development of the legal system in accordance with the Constitution of the Republic of Kazakhstan, the principles and norms of the international law, improvement of existing legislation and adoption of new regulations [19].

Like many other legal issues of law, the problem of responsibility for tax evasion requires an integrated approach that along with the study of criminal law includes further improvement of tax legislation. In this regard there is a need in constant modernization of the tax system in line with the objectives of the new stage of development of Kazakhstan. The current tax legislation should be improved to further reduce the amount of benefits and preferences to improve the quality of tax administration in the interest of taxpayers. But, most importantly, it is necessary to continue the policy of further reduction of the overall tax burden to non-oil sectors of the economy, especially for small and medium businesses. At that one must use the opportunity to compensate for the tax loss in the budget by increasing the economic impact of the extractive industry.

Meanwhile, the reduction of the tax burden should result in additional factors that contribute to economic growth. For example, reduction of the marginal interest rate of certain taxes can encourage people to work harder. It will definitely lead to an increase in labor supply and an increase in the degree of productivity and the productivity itself. At lower tax rates the growth of savings significantly increases, which leads to an increased investment and consumption. Finally, the reduction of the tax burden significantly reduces the motivation of criminal tax evasion and encourages legitimate business practices and its exit from the shadows.

CONCLUSION

As a result of the study, we concluded that the existence of the phenomenon of tax evasion is caused by the presence of complex reasons, circumstances and

conditions of objective nature investigated by domestic and foreign criminologists quite broadly and diversely.

In various jurisdictions, the criminal liability for tax evasion is differentiated on a single base depending on the size of outstanding amounts.

Criminal legal instruments for combating tax evasion are traditionally the criminalization and decriminalization; among other measures of public exposure the most effective is implementation of comprehensive economic and tax amnesties.

To improve the criminal law on the liability for tax evasion it is proposed at the same time to strengthen sanctions for committing the act and providing grounds for exemption from criminal liability.

There is a need for a comprehensive approach to the problems of tax evasion. Improvement of standards of criminal responsibility should be carried out simultaneously with the modernization of the entire tax system, taking into account the objectives of ensuring the economic functions of the state.

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