

САЯСИ ТРАНСФОРМАЦИЯ ЖАҒДАЙЫНДАҒЫ КОНСТИТУЦИЯЛЫҚ, ӘКІМШІЛІК
ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚТЫ ДАМУДЫҢ ҚАЗІРГІ ТЕНДЕНЦИЯЛАРЫ
СОВРЕМЕННЫЕ ТЕНДЕНЦИИ РАЗВИТИЯ КОНСТИТУЦИОННОГО,
АДМИНИСТРАТИВНОГО И МЕЖДУНАРОДНОГО ПРАВА В УСЛОВИЯХ
ПОЛИТИЧЕСКОЙ ТРАНСФОРМАЦИИ
CURRENT TRENDS IN THE DEVELOPMENT OF CONSTITUTIONAL,
ADMINISTRATIVE AND INTERNATIONAL LAW IN THE CONTEXT OF POLITICAL
TRANSFORMATION

COMBATING TAX EVASION AND AVOIDANCE: EU AND KAZAKHSTAN'S
EXPERIENCES

Marco Greggì – professor of the University of Ferrara (Ferrara, Italy)

Madina Albekova – 2d year doctoral student of the Karaganda Buketov University

Gulnara Nurbekova – 2d year doctoral student of the Karaganda Buketov University

Modern conditions give rise to an economic situation that requires improvement of tax administration methods. The most important feature of the modern tax system of Kazakhstan and other countries, including countries of the European Union, is the growth of the scale and diversity of tax offenses and the development of the shadow sector.

The status of the financial system at the state and global levels, the assessment of risks of using the world and national financial systems for criminal purposes, the development of preventive measures and measures to apply criminal activity in the financial sphere are the basis for the study of this topic that covers the interplay between tax offenses and money laundering as revenue originating from tax evasion is very often disguised and concealed behind legitimate business before being reinvested.

The problem of money laundering is multidimensional and has transnational features. In this regard, the world community has developed common standards for the administration of the process aimed at combating it. This global approach allows member states of the Union, in Central Asia and eventually international associations to develop effective and timely financial monitoring tools. In the field of taxation, money laundering is also addressed via an effective exchange of information system.

In 2012, the Financial Action Task Force on Money Laundering (FATF) added tax evasion to the list of money laundering offenses, along with crimes such as drug trafficking, corruption, and many other serious crimes [1].

According to Article 35 of the Constitution of the Republic of Kazakhstan, payment of taxes is a duty and obligation of everyone [2]. Tax evasion consists in illegal actions aimed at avoiding or reducing the payment of taxes [3]. Such evasion may include knowingly submitting false information in tax declarations, hiding income, violating tax laws or using other illegal methods to reduce tax liabilities. Tax evasion is an offense and is subject to administrative and criminal liability in accordance with the law of the state.

Common methods of tax evasion around the world are:

- Business splitting. This type of offense is characterized by the use of several organizations and individual entrepreneurs who apply reduced rates to understate taxes. This method can be either legal or criminal in nature, so it is the purpose of the split that makes it important for detecting tax evasion.

- One-day firms. One of the most common methods of tax evasion worldwide. As a rule, the only result of their work is tax reduction for their legal partners or embezzlement of public funds. This is also true in case VAT where one-day firms are routinely used by criminal organizations and fraudulent entrepreneur to inflate their tax credit via fraudulent invoicing (so called “carousel frauds”)

- Use of "fake" intermediaries. A cash-out scheme most often looks like a chain of operating companies headed by nominal executives. These companies perform similar transactions, for example, consulting services. In reality, no transactions are actually made, but money is transferred from one account to another and eventually cashed out for a percentage to the beneficiary.

- Taxpayer Migration. Quite often taxpayers change the location of the company to regions with tax preferences. Fictitious migration of legal entities is a problem, the consequence of which is the growth of tax arrears, non-payment of funds to budgets of all levels. There may be many reasons for migration, but as a rule, they are attempts to avoid tax control, conceal activities of participation in tax evasion schemes or cashing of funds.

The following methods of legalization of proceeds of tax crimes are also common:

- cases of use in schemes in the commission of crimes practical examples of the use of overpricing/underpricing practices. Transfer pricing is used by companies as a method of reducing taxes, circumventing currency controls and customs duties and concealing the real ultimate profitability of their operations;

- schemes using a fictitious document of turnover for the purpose of committing ML from these offenses or other predicate offenses (in particular, VAT-related schemes);

- in money laundering schemes for these offenses or other predicate offenses, cases when, for any illegal purposes, funds are transferred through a chain of companies with the signs of one-day companies;

- cash-in transactions, including the purchase of cash currency;

- Identity of the amounts deposited and debited from the account, i.e. the transient nature of the transactions.

In the Republic of Kazakhstan, the National money laundering risk assessment identified tax crimes, illegal economic activities, corruption and embezzlement of budget funds, fraud, and drug trafficking as high degree threats.

According to the study Paying Taxes 2020, conducted by the World Bank together with the international financial corporation PricewaterhouseCoopers, Kazakhstan ranked 64th among 190 countries of the world on the way of administration and collection of taxes.

Despite the creation by the state of favorable conditions for entrepreneurship, some taxpayers resort to various "gray" schemes in order to evade taxes and minimize the tax burden anyway.

The issuance of fictitious invoices is one of the main ways of tax evasion. In addition, stolen budgetary funds are withdrawn into the shadow turnover through "naked" companies. To a greater extent, these crimes are committed as part of organized crime groups, causing major damage to the budget of the state.

Statistics show that in 1,033 cases involving the issuance of fictitious invoices, the damage amounted to 138.1 billion tenge, with an average of 133.7 million tenge per crime. On tax evasion on 533 cases the damage amounted to 226.3 billion tenge, per crime on average - 424.6 million tenge. At the same time, the third part of the registered criminal cases related to ML falls precisely on the issuance of fictitious invoices and tax evasion [4].

As a result of the analysis, the most relevant national threats were identified: issuance of fictitious invoices, tax and customs evasion, economic smuggling, illegal entrepreneurship, illegal gambling business, shadow turnover of oil and oil products, corruption and embezzlement of budget funds, financial pyramids, illegal drug trafficking.

Based on the above, tax evasion is a serious problem hindering stable economic development, to avoid which states establish various types of liability: moreover, tax evasion distorts competition as honest businesses are competing on an uneven playing field with those which evade taxes and as a consequence benefit from a competitive advantage. For example, Chapter 16 of the Code of Administrative Offenses of the Republic of Kazakhstan, consisting of 22 articles, provides for administrative responsibility in the form of monetary fines for offenses in the field of taxation [5].

Also for tax evasion, the legislation of the Republic of Kazakhstan provides for criminal liability, in accordance with Articles 244 and 245 of the Criminal Code of the Republic of

Kazakhstan, for example, in the form of a monetary fine, restriction and imprisonment for up to three years [6].

In Kazakhstan, tax crimes are addressed by: the Economic Investigation Service of the Agency of Financial Monitoring (AFM), the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan, and the Financial Intelligence Unit (FIU). These state bodies, as well as the Ministry of Internal Affairs of the Republic of Kazakhstan, Anti-Corruption Service, carry out detection of offenses in the sphere of entrepreneurial activity.

The AFM and SRC joined efforts and developed common approaches to the risk management system. Analytically generated data on potential criminal groups engaged in issuing fictitious invoices to take criminal prosecution and preventive measures (deregistration from VAT registration, invalidation of registrations and transactions, blocking of electronic invoices, etc.).

The Republic of Kazakhstan has carried out extensive work to improve tax administration. From January 1, 2020, a widespread transition of business entities to the use of online cash registers with the function of data recording and transmission has been organized.

Voluntary application by individual entrepreneurs of a three-component system (online cash register, POS-terminal, ERP-system) was introduced, which had a multiplier effect in terms of reducing shadow cash turnover, increasing business transparency and enhancing the efficiency of tax collection.

A project is being implemented that uses IT tools to identify risky companies at an early stage and restrict their issuance of “Electronic Invoicing Information Systems”.

As a result of the measures taken, about 6,000 high-risk taxpayers were identified. The additional amount of taxes paid after sending notices amounted to 16 billion tenge [4].

The considered measures of responsibility for tax evasion and ways to improve tax administration are implemented by the state at the national level. At the same time it is necessary to pay attention to the ways to eliminate non-payment of tax payments, undertaken within the framework of integration associations, since international cooperation is one of the key factors in counteracting the evasion of taxpayers to fulfill their tax obligations.

In this regard, it is worth starting with the European Union (EU), whose single market and free movement of capital provide taxpayers with opportunities for cross-border tax evasion. The European Union has repeatedly taken measures to combat tax evasion and avoidance by adopting various instruments, namely:

- Code of Conduct on Business Taxation, adopted by the Economic and Financial Affairs Council and aimed at combating tax practices such as offshore activities and preferential regimes that provided excessive tax advantages [7];

- the directive on the taxation of economic income, which entered into force in 2005 and establishes the principle of automatic exchange of information [8];

- Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. The agreement was subsequently updated, and the scope extended, in 2015 (27 May 2015) [9].

- direct tax administrative cooperation directive providing for automatic exchange of information in several tax areas (so called “DAC” Directives) [10];

- the VAT administrative cooperation regulation, which entered into force in 2012 and regulates the collection and exchange of information between the tax and customs authorities of EU Member States in the field of VAT; this regulation also integrates databases on taxable persons registered for VAT purposes and their intra-community transactions in order to detect and reduce tax evasion in this field [11];

- the directive on mutual assistance for tax recovery, which entered into force in 2010 and significantly enhanced the ability of Member States to recover taxes related to cross-border transactions [12];

- the European Commission's action plan to strengthen the fight against fraud and tax evasion, which includes more than 30 measures relating to individuals and businesses;

- introducing clearer mechanisms for identifying the real beneficiaries, including the real beneficiaries behind legal persons, as well as consolidating and updating the rules on money laundering and transfer of funds;

- introducing new rules on additional requirements for banks to increase the transparency of operations carried out by transnational financial institutions; these institutions will thus be obliged to report additional information, e.g. relating to turnover, profits, accruals to each EU Member State and to each third country where they operate;

- amending EU accounting standards to introduce a country-by-country reporting system in the case of large EU private enterprises or EU listed companies operating in the oil, gas, mining or forestry sectors [10].

In addition to the above measures, in 2012 the European Commission developed a plan to combat fraud and tax evasion, which included:

- a proposal for a European Tax Code (which was subsequently not adopted);

- the signing of VAT administrative cooperation agreements between the European Union and third countries;

- the need to improve tax compliance by establishing a unique counter in all Member States;

- a proposal to develop motivational incentives, such as the creation of information disclosure programs, the creation of a tax Internet portal or the unification of criminal sanctions [13].

Given the above, it is worth noting that the European Union has done a significant amount of work, which continues to date.

Speaking about combating tax evasion at the international level, it is also important to mention the Special Plan developed in 2013 by the Organization for Economic Cooperation and Development (OECD) together with the G20, which was aimed at combating the movement of profits at the cross-border level. This plan consists of 15 actions:

- outlining the tax problems resulting from global digitalization;

- preventing the abuse of tax treaties;

- preventing artificial evasion of permanent establishment status;

- developing certain "minimum requirements" to be enforced by amending current tax laws;

- mandatory disclosure rules;

- carrying out insurance reporting, and so on.

At present, 141 states have joined this plan, and the Republic of Kazakhstan is among them. In addition, in 2020 the Republic of Kazakhstan ratified the OECD Multilateral Convention on Combating Tax Base Dilution and Profit Shifting. Within the framework of this convention, amendments were made to bilateral agreements on avoidance of double taxation between Kazakhstan and foreign countries [14].

To summarize, it should be noted that tax evasion continues to be a pressing international problem, despite the measures taken by the European Union and the OECD to combat this type of offense.

Consequently, combating tax evasion is a multifaceted task that requires an approach not only at the national level and by international organizations. In order to achieve compliance with tax laws, legal liability measures against tax evaders should be strengthened; transparency of financial transactions should be increased; education and awareness of taxpayers regarding the legal consequences arising from tax evasion should be stimulated; and international tax cooperation should be strengthened.

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9 Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. The agreement was subsequently updated, and the scope extended, in 2015 (27 May 2015).

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СООТНОШЕНИЕ ПРАВА НА ЗДОРОВЬЕ И ПРАВ ПАЦИЕНТОВ

Гафурова Н.Э., PhD, Ташкентский государственный юридический университет

Задачей современной доктрины права на здоровье, является определение его места в системе права. Учитывая взаимосвязь права на здоровье с медицинским правом, международным медицинским правом, мы полностью поддерживаем научные взгляды таких ученых, как Ю.Д.Сергеева, М.И. Милушина, А.А.Мохова, С.Г.Стеценко, А.Н.Пищиты, Н.Г.Гончарова, А.А. Рёрихта и других, которые рассматривают медицинское право в качестве сформированной самостоятельной комплексной отрасли права, внутреннюю структуру которой составляют, соответственно, нормы, институты и отрасли медицинского права. Как отмечает Рёрихт А.А. в своей монографии, комплексность медицинского права позволяет использовать приемы «сквозного» регулирования, не закрепляя жестко те или иные институты за определенной отраслью права, будь это управление здравоохранением или уголовная ответственность за преступления [1].

Итак, в нашей работе в качестве базовой концептуальной основой медицинского права мы обозначили именно право на здоровье. При этом право на здоровье, которое является всеобъемлющим правом, имеет более широкий охват отношений, которые выходят за рамки