

**ON SOME PROBLEMS CONCERNING THE IMPROVEMENT OF LEGISLATION,
REGULATION OF INFRINGEMENT OF TAX LEGISLATION**

PhD student Evghenia ILIINSCAIA, ASM

The administrative responsibility for infringement of tax laws established by Articles 253, 254, 254¹, 255-257, 257¹, 259, 260, 260¹, 262, 262¹, 263, 263¹ of the Tax Code of the Republic of Moldova №1163-XIII of 24.04.1997, and Articles 287, 287¹, 287², 293¹, 297, 301, 311 Offences Code of the Republic of Moldova.

The aim of the work is to highlight the shortcomings of the Offences Code of the Republic of Moldova and Tax Code of the Republic of Moldova and making proposals on the elimination of these shortcomings.

Key words: *administrative responsibility, administrative penalties, taxpayer, tax authority, Tax Code of the Republic of Moldova, Offences Code of the Republic of Moldova, tax infringement, customs official, customs payer's, collection, conventional units, enterprise, amendments, obligation.*

Tax Code of the Republic of Moldova contains a number of provisions promoting the infringement of the rights of taxpayers.

The aim of the work is to highlight the shortcomings of the Offences Code of the Republic of Moldova and Tax Code of the Republic of Moldova and making proposals on the elimination of these shortcomings.

Administrative responsibility for committing tax infringement set:

1. Offences Code of the Republic of Moldova №218-XVI of 24.10.2008. [3]
2. Tax Code of the Republic of Moldova №1163-XIII of 24.07.1997. [1]
3. The Customs Code of the Republic of Moldova №1149-XIV of 20.07.2000. [2]

The administrative responsibility for infringement of tax laws established by Articles 253, 254, 254¹, 255-257, 257¹, 259, 260, 260¹, 262, 262¹, 263, 263¹ of the Tax Code of the Republic of Moldova №1163-XIII of 24.04.1997, and Articles 287, 287¹, 287², 293¹, 297, 301, 311 Offences Code of the Republic of Moldova.

Most tax infringements entail administrative liability as a fine.

The exception to this rule is found in paragraph (2) of Article 287² and Article 297 Offences Code of the Republic of Moldova.

In accordance with paragraph (2) of the 287² Offences Code of the Republic of Moldova rendering of the access of a customs official in the office or the customs payer's premises for the purpose of enforcement of the customs debt implies the imposing a fine on individuals in the amount of 100 conventional units and on officials in the amount of 250 conventional units or in both cases, the penalty of arrest for a period of 15 days.

According to paragraph (1) of Article 297 Offences Code of the Republic of Moldova unlawful refusal of authority employee empowered to tax administration, in the taxpayer tax registration and in the issuance of the certificate of fiscal code assignment; in accordance with the legislation unlawful refusal to issue a document confirming registration of a bank account by the tax authority; unlawful refusal to inform a taxpayer of his rights and obligations, as well as of the existing taxes, fees and charges of the procedure and terms of payment and relevant regulations; failure to exercise proper and respectful relations to the taxpayer, his/her representative, another participant of tax attitude, i.e. neglect or willful derogation of rights, interests and dignity of the person; unlawful refusal to provide tax incentives provided by law; refusal to provide free taxpayer standard forms tax reports; unreasonable requirements on fulfilment actions and submission of tax reports; unjustified refusal to give or failure to or issue of the certificate of payment of tax liabilities; for in due time unjustified refusal to accept and register statements, reports, complaints and other

petitions shall be sanctioned by a fine from 20 to 30 conventional units with or without the deprivation the right to carry out certain activities for a period from 3 to 6 months.

The same types of administrative penalties are also established in paragraphs (2) and (3) of Article 297 Offences Code of the Republic of Moldova.

Part (2¹) Article 30 Offences Code of the Republic of Moldova set a 12-month limitation period for administrative liability for tax infringements.

Article 375 Offences Code of the Republic of Moldova establishes the presumption of innocence of the offender.

At the same time, some Offences Code of the Republic of Moldova rules, in our opinion, need to be improved, in particular, part (6) of article 16, and paragraph (2²) and (2³) Article 34 Article Offences Code of the Republic of Moldova.

The legal definition of "official" provided in paragraph (6) of Article 16 Offences Code of the Republic of Moldova, according to which the official (person exercising on the state enterprise, institution, organization, central or local public authorities on a permanent or temporary basis, by virtue of law, virtue of his appointment, election or in terms of a specific order, certain rights and responsibilities to implement the functions of a public authority or administrative action of administrative-organizational and economic nature) shall be liable for an infringement in the commitment of offenses provided for in this Code, in the case of:

- a) intentional use of its powers in derogation of duty;
- b) the apparent exceeding of the rights and powers provided by law;
- c) non-performance or improper performance of the official duties.

Under this definition business leader, non-government, including leaders are not included:

- 1) municipal enterprises;
- 2) enterprises with 100% state capital or mixed;
- 3) private enterprises.

In our opinion, it is necessary to supplement part (6) of Article 16 Offences Code of the Republic of Moldova including the number of officers and persons endowed with municipal enterprises and enterprises with 100% state or mixed capital rights and responsibilities for the implementation of actions of administrative and efficient, or organizational and economic character.

All of the enterprise (state, municipal, private), without exception, are taxpayers.

And the heads of all these companies must comply with the tax laws.

Consequently, all leaders, companies without exception should bear the same legal responsibility.

Expansion of the list of officials will allow, firstly, providing a more complete realization of the principle of equality before the law, established by Article 8 Offences Code of the Republic of Moldova.

Secondly, it will significantly replenish the state budget, since the fines collected from officials higher than the fines levied on individuals for the same tax offenses and the number of private enterprises in the hundreds of times the number of operating in the Republic of Moldova state-owned enterprises.

In order to improve the legislation, in our opinion, the following amendments are necessary:

1. To reduce significantly the number of by-laws regulating the tax relations.

Currently, the tax legislation includes a large number of by-laws: Resolutions of the Government of the RM, normative acts of the Ministry of Finance of the Republic of Moldova and Main State Tax Inspectorate, which imposes sanctions for infringement of tax legislation, combining normative and executive activities.

A significant limitation of standard-setting activities of the executive bodies of the state will provide the necessary stability and certainty of tax relations and create optimal conditions for ensuring the rights of taxpayers and ensure the legitimacy of the tax authorities' activities.

2. To change part (3) of Article 267 of the Tax Code of the Republic of Moldova, according to which the burden of proof of the failure of a decision reached by the tax authority, the responsibility of the person

who filed the complaint, finding that the burden of proof of the legality of a decision reached by the tax authority, vested in this body.

At the same time it should be noted that the presumption of innocence of the offender established by Article 375 Offences Code of the Republic of Moldova.

3. Change part (2) of Article 234 of the Tax Code, according to which the person held liable for a tax violation shall have the right to reduce the penalty by 50 per cent in strict compliance with the following conditions:

a) has no arrears on the date of the decision in the case of tax infringement or extinguishes it together with the conditions of paragraph b);

b) within three working days from the date of delivery of the judgment in the case of tax infringement shall pay the amount of taxes (duties), fees, fines and / or 50 per cent of fines specified in the decision;

c) is within the period stipulated for voluntary execution of the decision in the case of tax infringement, documents confirming payment of the amounts provided for in paragraphs a) and b).

Based on the submitted documents in accordance with paragraph c) of the body authorized to consider cases on tax infringements within 10 working days must take the decision to reduce the fines by 50 per cent.

In the event if after the decision to reduce the penalty established failure to comply with at least one of the conditions provided for in paragraphs a) and b), the relevant authority shall cancel the decision and the person cannot enjoy the right to have a 50 per cent reduction in fines.

It is necessary to give the taxpayer the right to pay a penalty of 50% without any additional conditions within 7 working days from the date of delivery of the copy of the decision of the tax authority.

4. Ensure that the individualization of administrative responsibility established by the Tax Code of the Republic of Moldova, taking into account the form of guilt of the taxpayer, the size of the tax arrears and damage caused to the budget, as well as other circumstances of the offense.

For this purpose it is necessary to change articles 253-257, 257¹, 259-262, 262¹, and 263 of the Tax Code of the Republic of Moldova, by setting lower and upper limits of fines.

5. To cancel part (4) of Article 254 of the Tax Code of the Republic of Moldova, according to which the repetition of breaches referred to in paragraphs (1), (2) and (2¹), punishable by a fine in the amount of 25,000 lei.

Committing infringements specified in subsections (1), (2) and (2¹), for the third time or more punishable by a fine in the amount of 50,000 lei for each case.

We believe that the repeated and the third time committed infringement should not entail increased responsibility.

6. To distinguish the obligation to pay tax from the obligation to pay fines and penalties, which is a measure of the tax liability, that is enforceable and has a different legal nature from the obligation to pay the tax.

You should also set a 3 year limitation period for the collection of the tax and a one-year limitation period for the application of the penalty by modifying accordingly Articles 236, 264 and 265 of the Tax Code of the Republic of Moldova.

7. In our opinion, it is necessary to supplement part (6) of Article 16 Offences Code of the Republic of Moldova including the number of officers and persons authorized to municipal enterprises and enterprises with 100% state or mixed capital rights and responsibilities for the implementation of actions of administrative and administrative or organizational – economic nature.

Bibliography:

1. Tax Code of the Republic of Moldova [Moldova Law No. 1163: adopted by the Parliament the thirteenth convocation dated 24.04.1997] [republished] // Monitorul oficial.-2007.-special edition of 08.02.2007.

2. The Customs Code of the Republic of Moldova [Moldova Law №1149: adopted by the Parliament the fourteenth convocation of 20.07.2000] [republished] // Monitorul oficial.-2007.- special edition of 01.01.2007, p.98.
3. Offences Code of the Republic of Moldova: [RM Law №218: adopted by the Parliament the sixteenth convocation from 24.10.2008] // Monitorul oficial.-2009.-№3-6, January 16, 2009, Article 15.