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**Oksana Baik**

Lviv Polytechnic National University,  
Doctor of Juridical Sciences, Professor,  
Professor of the Department of Civil Law and Procedure  
Educational and Scientific Institute of Jurisprudence,  
Psychology and Innovative Education  
Oksana.I.Bayik@lpnu.ua  
ORCID ID: <https://orcid.org/0000-0003-4819-7722>

**Zoriana Hrytsak**

Lviv Polytechnic National University,  
Student Educational and Scientific Institute of Jurisprudence,  
Psychology and Innovative Education  
[zoriana.hrytsak.mpvprz.2023@lpnu.ua](mailto:zoriana.hrytsak.mpvprz.2023@lpnu.ua)

## **CRIMINAL LIABILITY FOR EVASION OF PAYMENT OF TAXES, FEES (MANDATORY PAYMENTS): A MODERN VIEW OF THE PROBLEM**

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The article analyses the theoretical and legal aspects of criminal liability for evasion of taxes and fees (mandatory payments) in the current context. In particular, the authors analyse the concept and features of criminal liability, as well as the grounds for its occurrence.

It was found that Article 212 of the Criminal Code of Ukraine «Evasion of taxes, fees (mandatory payments)» actually provides for criminal liability for violation of tax legislation. At the same time, this article provides for the establishment of the fact of violation of a specific tax norm, as a result of which taxes were not paid.

It is noted that criminal liability for evasion of taxes, fees (mandatory payments) has all the properties of criminal liability, taking into account the peculiarities of tax legal relations. It was determined that the signs of criminal liability for evasion of taxes, fees (mandatory payments) are that it: 1) is provided for by the norms of the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and other regulatory legal acts; 2) is a criminal legal guarantee of payment of taxes, fees (mandatory payments); 3) is established in case of intentional evasion of taxes, fees (mandatory payments).

The article analyses the elements of a criminal offence under Article 212 of the Criminal Code of Ukraine, the methods of committing this type of offence and the conditions of criminal liability for evasion of taxes, fees (mandatory payments).

The authors consider the qualification for intentional evasion of taxes, fees (mandatory payments) and summarise the statistical data on the number of criminal offences in proceedings in which the pre-trial investigation is carried out by the Bureau of Economic Security of Ukraine based on Article 212 of the Criminal Code of Ukraine for January 2020–2023.

**It is noted that criminal prosecution for evasion of taxes and fees (mandatory payments), although an effective means of influencing offenders, should be noted that national legislation needs to be finalized in order to achieve clarity and unambiguity.**

**Keywords: composition of the offense; criminal liability; criminal offense; payment evasion; taxation.**

**Formulation of the problem.** The timely payment of taxes, fees and other mandatory payments by taxpayers demonstrates that they are properly fulfilling their constitutional obligation and contributes to the filling of our country's budgets at all levels. However, since the full-scale invasion of Ukraine by the Russian Federation, this issue has become increasingly relevant, as today, among other things, there is an urgent need for significant spending on the defense of our country. Therefore, it is extremely important to continue developing Ukraine's economy in such a difficult environment. At the same time, there are still cases of evasion of taxes and fees (mandatory payments) for which criminal liability is provided. It is the clarification of the theoretical and legal features of this type of liability in modern conditions that has aroused interest for the study.

**Analysis of research and publications.** It is worth noting that today problematic issues of criminal liability have become the subject of research by a wide range of scientists who have made a significant contribution to the development of the institution of criminal liability both in general and by studying problematic issues of criminal liability for violation of tax legislation. In particular, the theoretical and legal aspects of criminal liability for violation of tax legislation were considered within the framework of previous studies of the conceptual and categorical apparatus of tax law of Ukraine. The authors' own developments, as well as the works of scholars and the provisions of current national legislation, became the basis for the study of criminal liability for evasion of taxes and fees (mandatory payments) in the current conditions, taking into account the martial law.

**The purpose of the article.** To analyze the theoretical and legal aspects of criminal responsibility for evading the payment of taxes and fees (mandatory payments).

**Main material presentation.** Today, criminal liability is the most severe type of legal liability that occurs for the most significant violations of tax legislation that pose a public danger [1, p. 114]. At the same time, it should be noted that the current legislation of Ukraine does not enshrine the concept of criminal liability, although it is often used in various legal acts. In contrast, the legal literature expresses certain approaches to the essence of the concept of criminal liability, which, according to I. Krasnytskyi, can be combined into the following conditional concepts «criminal liability – punishment»; «criminal liability – condemnation»; «criminal liability – duty»; «criminal liability – legal relations (set of legal relations)»; «criminal liability – enduring by a person of coercive measures»; «criminal liability – application of criminal law sanction» [2, p. 57].

The signs of criminal liability, as well as other legal liability of a public law nature, are: on the one hand, a negative reaction of the state to the offense and its subject, which is a legitimate (from Latin *legitimus* – complying with the law, legal, lawful) measure of influence; on the other hand, the offender's obligation to endure the measures of influence applied to him (in this case, compulsory measures of criminal legal influence). If the measures of influence are not legitimate, then there is no obligation to endure them, and failure to fulfill this obligation cannot be punished. Criminal liability applies only to the offender, i. e., its subject cannot be a person who is not a subject of a criminal offense by law, and only in connection with a criminal offense, i. e., criminal liability does not exist if there is no composition of a criminal offense [3, p. 292–293].

The grounds for criminal liability are the commission by a person of a socially dangerous act that contains the elements of a criminal offense under the Criminal Code of Ukraine (part 1 of Article 2 of the Criminal Code of Ukraine). In turn, a criminal offense is a socially dangerous culpable act (action or

inaction) committed by a subject of a criminal offense under the Criminal Code of Ukraine (part 1 of Article 11 of the Criminal Code of Ukraine). Criminal offenses are divided into criminal misdemeanors and crimes (Part 1 of Article 12 of the Criminal Code of Ukraine) [4].

In fact, Article 212 of the Criminal Code of Ukraine «Evasion of Taxes, Duties (Mandatory Payments)» provides for criminal liability for violation of tax legislation. At the same time, this article provides for the establishment of the fact of violation of a specific tax provision, which resulted in non-payment of taxes. Establishment of the fact of violation of tax legislation, as well as the actual failure to receive funds to budgets (trust funds) as a result, is carried out under a special legislative procedure, i.e. by conducting a tax audit, which results in the following documents as defined by the Tax Code of Ukraine: 1) an audit report (in case of violations of tax legislation); 2) a certificate (in case of no violations of tax legislation) [5; 6].

We believe that criminal liability for evasion of taxes, fees (mandatory payments) has all the features of criminal liability, taking into account the peculiarities of tax relations. The features of criminal liability for evasion of taxes, fees (mandatory payments) are that it: 1) is provided for by the provisions of the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and other regulatory legal acts; 2) is a criminal law guarantee of payment of taxes, fees (mandatory payments); 3) is established in case of intentional evasion of taxes, fees (mandatory payments).

As noted by Y. Streltsov, the qualification of an act begins from the moment of resolving the issue of the possibility (or impossibility) of bringing a person to criminal liability for committing a socially dangerous act, the basis for which is the need to establish the elements of a criminal offense in such an act. In other words, the qualification is «directly» related to the *corpus delicti* of a criminal offense. The composition of a criminal offense is traditionally recognized as a set of signs enshrined in the criminal law, in the presence of which a socially dangerous act is recognized as such an offense. In each composition of a criminal offense, four elements are distinguished: the object, the objective side (this set is called the objective elements of the offense), the subject and the subjective side (this set is called the subjective elements of the offense). In their unity, these objective and subjective features form the composition of a criminal offense. In general, it should be taken into account that the composition of a criminal offense is a formula, a model of a specific criminal offense defined in a criminal law norm. Each criminal law norm, each part of the article of the Criminal Code of Ukraine has (contains) its own formula of a criminal offense [7, p. 8–9].

The object of the criminal offence under Article 212 of the Criminal Code of Ukraine is the social relations that exist in the field of filling budgets and state trust funds through taxation, i.e. those social relations that arise between the state and taxpayers on the basis of tax rules governing the establishment, change and cancellation of contributions to budgets and state trust funds. The objective aspect of the criminal offence in Article 212 of the Criminal Code of Ukraine is characterised by a combination of three features: 1) an act – evasion of taxes, fees, other mandatory payments included in the taxation system; 2) socially dangerous consequences in the form of actual non-receipt of funds to budgets or state trust funds in significant (part 1 of Article 212), large (part 2 of Article 212) or especially large (part 3 of Article 212) amounts; 3) causal link between the act and the consequences. The subject of the criminal offence under Article 212 of the Criminal Code of Ukraine is a special one, because along with general features, it also has a special feature, namely the obligation to pay taxes, fees (mandatory payments), for the violation of which a person may be held criminally liable under Article 212 of the Criminal Code of Ukraine. The subjective side of this composition of the criminal offense is characterized by guilt in the form of direct intent, for which the guilty person is aware of the public danger of evading the payment of taxes, fees (mandatory payments), foresees its consequences in the form of non-payment of funds to budgets or state special funds and provides the inevitability of their occurrence [8].

Evasion of payment of taxes, fees (mandatory payments) is a rather dynamic criminal offense. Even the object of criminal encroachment is not constant and changes depending on how the state builds its tax policy. The ways of committing this criminal offense are diverse, and currently, despite the large number of classifications proposed by scientists, none of them can fully cover all the ways by which offenders

evade the payment of taxes and fees (mandatory payments). In this regard, according to V. Oliynychenko, the legislator in the formulation of the disposition of Article 212 of the Criminal Code of Ukraine decided to avoid listing the methods of evasion of taxes, fees (mandatory payments), thus providing the pretrial investigation authorities with the opportunity to meet the challenges posed by offenders to the state, identify new methods of evasion and prevent criminal offenses [9, p. 207].

At the same time, as stated in the Resolution of 16 May 2019 of the panel of judges of the Second Judicial Chamber of the Criminal Court of Cassation of the Supreme Court in case No. 761/20985/18, proceedings No. 51-8007 km 18, «if there was no event of a criminal offence or if the actions of a person do not constitute a criminal offence, then under such circumstances criminal proceedings cannot be initiated. And if such proceedings were initiated by mistake or for other reasons, they should be immediately terminated both from the standpoint of law and order and in view of the interests of all parties to legal relations» [10].

Liability under Article 212 of the Criminal Code of Ukraine can only be incurred under a set of mandatory conditions when: 1) unpaid taxes, fees, and other mandatory payments are part of the taxation system and introduced in accordance with the procedure established by law; 2) the object of taxation is provided for by the relevant law; 3) the payer of the tax, fee, or other mandatory payment is defined as such by the relevant law; 4) the mechanism for collecting taxes and fees (mandatory payments), their rates, and tax exemptions are determined by the laws on taxation [11].

According to Article 212 of the Criminal Code of Ukraine, liability for evasion of taxes, fees, and other mandatory payments included in the taxation system, introduced in accordance with the procedure established by law and credited to budgets or state trust funds, arises only if the act is committed intentionally. The motive is not relevant for the latter qualification. This article provides for criminal liability not for the mere fact of failure to pay taxes, fees, and other mandatory payments within the established timeframe, but for intentional evasion of their payment. In this regard, the court must establish that the person intended not to pay the taxes, fees or other mandatory payments due in full or a certain part of them. Intent to evade payment of taxes, fees, and other mandatory payments may be evidenced by, for example: – absence of tax accounting or its maintenance in violation of the established procedure; – misrepresentations in accounting or reporting documentation; – failure to post cash received for the performance of work or provision of services; – double (official and unofficial) accounting; – use of bank accounts that have not been reported to the state tax authorities; – overstatement of actual costs included in the cost of goods sold, etc. It is necessary to distinguish between evasion of mandatory payments and late payment in the absence of intent to evade payment [11].

In addition, criminal liability under Article 212 of the Criminal Code of Ukraine may be imposed for incitement and aiding and abetting this criminal offence. For example, the actions of directors and owners of enterprises who instructed their subordinates to sign or submit false (falsified) reports to the tax authorities, not to pay taxes or to pay them in not full, are qualified by the courts under Article 212 of the Criminal Code of Ukraine as actions of accomplices to this criminal offence. Dismissal from office does not exempt from criminal liability. Non-payment of taxes due to negligence excludes their qualification under Article 212 of the Criminal Code of Ukraine. However, this does not exempt from criminal liability in general, as investigators may open criminal proceedings under another article ( for example, Article 367 of the Criminal Code of Ukraine (official negligence). Depending on the qualification of tax evasion actions under a particular part of Article 212 of the Criminal Code of Ukraine, the statute of limitations for bringing to liability may range from two to ten years [12].

Article 212 of the Criminal Code of Ukraine contains three types of criminal offences, which are differentiated, among other things, by the size of unpaid funds that a person is obliged to pay, namely: in a significant (3 thousand or more times exceeding the legally established non-taxable minimum income of citizens, large (by 5 thousand or more times the non-taxable minimum income of citizens established by the law) or especially large (by 7 thousand or more times the non-taxable minimum income of citizens established by the law) amounts, which is directly disclosed in the note to Article 212 of the Criminal Code of Ukraine. By the provisions of Part 6 of Article 368 of the Criminal Procedure Code of Ukraine stipulates

that when choosing and applying the norm of the law of Ukraine on criminal responsibility for socially dangerous acts when passing a sentence, the court takes into account the conclusions regarding the application of the relevant norms of law, set out in the Supreme Court's rulings. At the same time, the judicial practice of the highest court in the judicial system as of 2022 shows that the decisive factor in the consideration of an indictment on the grounds of a criminal offence under Article 212 of the Criminal Code of Ukraine was the establishment and proof of the existence of such a sign of the subjective side of the crime as intent. In this context, A. Davydova notes that most guilty verdicts under this criminal law qualification are delivered precisely on condition that the accused pleads guilty to committing such an act, which is obviously related to the difficulty of proving intent in the actions of a person [13].

K. Doroshenko notes that for the correct qualification under the relevant part of Article 212 of the Criminal Code of Ukraine, it is also necessary to take into account the tax social benefit, which is equal to the tax-free minimum income of citizens provided for in the disposition of the article, which is half of the subsistence minimum for able-bodied persons established as of 1 January of the year of the criminal offence. In 2023, the tax social benefit as of 1 January was UAH 1,342, and therefore, in order to bring a person to criminal liability for tax evasion, the minimum amount of unpaid taxes must be at least UAH 4,026,000 (3,000 x 1,342). Accordingly, the amount of unpaid taxes in the amount of UAH 6,710,000 to UAH 9,394,000 is large, and especially large is UAH 9,394,000 and more. According to the rules of part 6 of Article 368 of the Criminal Procedure Code of Ukraine, when choosing and applying the provision of the law of Ukraine on criminal liability to socially dangerous acts in passing a sentence, the court shall take into account the conclusions on the application of the relevant rules of law set out in the resolutions of the Supreme Court [14]. In turn, V. Voloshyn notes that it is also important to keep in mind that when determining the amount of funds that have not been received by the budget as a result of evasion of taxes, fees, and other mandatory payments, fines and penalties accrued or paid in this regard are not taken into account. Depending on the amount not paid to the budget or other aggravating circumstances, the qualification for intentional tax evasion is made in a certain way (Table 1). At the same time, in the course of a scheduled documentary audit, as a rule, the completeness of tax payments for several previous years is analysed, so it will be useful to provide thresholds for criminal liability for previous years [15].

*Table 1*

**Qualification for intentional evasion of taxes, fees (mandatory payments) (2023) [15]**

Part of Art. 212 of the Criminal Code of Ukraine	Qualifying features	Material damage (tax social benefit) UAH	The amount of the tax social benefit (2023), UAH	Amount of damages caused, ≥ UAH
Part 1	Intentional actions that resulted in the actual non-receipt of funds in significant amounts to budgets or state trust funds	3 000	1 342	4 026 000
Part 2	Actions committed by prior conspiracy of a group of persons, or led to actual non-receipt of funds in large amounts to budgets or state trust funds	5 000	1 342	6 710 000
Part 3	Actions committed by a person previously convicted of evasion of taxes, fees (mandatory payments), or if they resulted in the actual non-receipt of funds to budgets or state trust funds in particularly large amounts	7 000	1 342	9 394 000

Taking into account the decisions published in the Unified State Register of Court Decisions since the beginning of the full-scale invasion, it was found that in general, there are not many criminal cases on charges of committing a crime under Article 212 of the Criminal Code of Ukraine pending in the courts of first instance and appeal. During this period, the courts of first instance delivered 4 verdicts, 3 of which were acquittals, and in one case, although the person was found guilty of committing the crime under part 2 of Article 212 of the Criminal Code of Ukraine, he was released from criminal punishment under Article 49, part 5 of Article 74 of the Criminal Code of Ukraine due to the expiration of the statute of limitations for bringing to criminal responsibility. The situation in the courts of appeal is not much different, as since the beginning of the full-scale invasion, the majority of court decisions available in the register upheld the acquittals of the first instance courts, and in some cases there is one decision each, in which: 1) the prosecutor refused to support the state prosecution; 2) the proceedings were closed due to the expiration of the statute of limitations; 3) the appeal upheld the guilty verdict of the first instance court, however, the cassation court subsequently cancelled the decision of the appellate court and sent it for a new trial to the appellate court [14]. However, taking into account the data of the Report on the Implementation of the Work Plan of the State Tax Service of Ukraine for 2021, based on the results of the review of materials of the units for combating money laundering, 330 criminal proceedings were registered in the Unified Register of Pre-trial Investigations, of which 97 were registered under Article 212 of the Criminal Code of Ukraine [16, p. 59]. At the same time, it should be noted that in Ukraine, the official website of the Prosecutor General's Office publishes monthly statistics on criminal offences in proceedings under pre-trial investigation by the Bureau of Economic Security of Ukraine (including data on criminal offences of evasion of taxes and fees (mandatory payments) under Article 212 of the Criminal Code of Ukraine). In particular, Table 2 summarises the figures for January in 2020–2023 [17].

Table 2

**The number of criminal offences in proceedings under pre-trial investigation by the Bureau of Economic Security of Ukraine (formerly the authorities responsible for control over compliance with tax legislation), based on Article 212 of the Criminal Code of Ukraine for January in 2020–2023**

Reporting on criminal offences under Article 212 of the Criminal Code of Ukraine  Year	Number of offences in January in:			
	2020	2021	2022	2023
1. Criminal offences recorded in the reporting period	93	156	16	54
2. Criminal offences in which persons were served with a notice of suspicion	4	2	0	0
3. Criminal offences for which proceedings have been referred to court	0	2	0	0
4. Criminal offences in which proceedings were closed	0	0	0	0
5. Criminal offences in which no decision was made at the end of the reporting period (on termination or suspension)	93	154	16	54
<b>Total criminal offences in the field of business activities</b>	<b>224</b>	<b>314</b>	<b>71</b>	<b>128</b>
<b>Total criminal offences</b>	<b>255</b>	<b>341</b>	<b>81</b>	<b>163</b>

Thus, from the above statistics, it can be concluded that criminal offences by way of evasion of taxes and fees (mandatory payments) are quite numerous among criminal offences in the field of business activities.

According to Article 212 of the Criminal Code of Ukraine, criminal liability for evasion of taxes and fees (mandatory payments) is enforced by: 1) imposition of a fine; 2) deprivation of the right to hold certain positions or engage in certain activities for up to three years; 3) deprivation of the right to hold certain positions or engage in certain activities for up to three years with confiscation of property [4].

A person who has committed the acts envisaged by parts one and two of Article 212 of the Criminal Code of Ukraine, or acts provided for in part three (if they resulted in actual non-receipt of funds to budgets or state trust funds in particularly large amounts) of this article, shall be released from criminal liability if, prior to bringing him/her to criminal liability, taxes, fees (mandatory payments) were paid, and the damage caused to the state by their late payment (financial sanctions, penalties) was compensated (part 4 of Article 212 of the Criminal Code of Ukraine) [4].

**Conclusions.** To summarise, we note although criminal liability for taxes and fees (mandatory payments) evasion is an effective means of influencing offenders, it is worth noting that national legislation needs to be improved to achieve clarity and unambiguity. For example, today it is necessary to legislatively define not only the concepts of «criminal liability», «intent to fail to pay taxes, fees, other mandatory payments», «evasion of taxes, fees, other mandatory payments», etc., but also to establish a list of evasions from paying taxes, fees, other mandatory payments that are subject to criminal liability.

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**Оксана Байк**

Національний університет «Львівська політехніка»,  
професор кафедри цивільного права та процесу  
Навчально-наукового інституту права, психології  
та інноваційної освіти,  
доктор юридичних наук, професор  
Oksana.I.Bayik@lpnu.ua  
ORCID ID: <https://orcid.org/0000-0003-4819-7722>

**Зоряна Грицак**

Національний університет «Львівська політехніка»,  
студентка Навчально-наукового інституту права,  
психології та інноваційної освіти  
zoriana.hrytsak.mpvprz.2023@lpnu.ua

**КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА УХИЛЕННЯ  
ВІД СПЛАТИ ПОДАТКІВ, ЗБОРІВ (ОБОВ'ЯЗКОВИХ ПЛАТЕЖІВ):  
СУЧАСНИЙ ПОГЛЯД НА ПРОБЛЕМУ**

У статті проаналізовано теоретико-правові аспекти кримінальної відповідальності за ухилення від сплати податків, зборів (обов'язкових платежів) у сучасних умовах. Зокрема, проаналізовано поняття та ознаки кримінальної відповідальності, а також підстави її виникнення.

З'ясовано, що статтею 212 Кримінального кодексу України «Ухилення від сплати податків, зборів (обов'язкових платежів)» фактично передбачено кримінальну відповідальність за порушення податкового законодавства. Водночас ця стаття передбачає встановлення факту порушення конкретної податкової норми, внаслідок чого відбулась несплата податків.

Зауважено, що кримінальній відповідальності за ухилення від сплати податків, зборів (обов'язкових платежів) притаманні всі властивості кримінальної відповідальності з врахуванням особливостей податкових правовідносин. Визначено, що ознаками кримінальної відповідальності за ухилення від сплати податків, зборів (обов'язкових платежів) є те, що вона: 1) передбачена нормами Кримінального кодексу України, Кримінального процесуального кодексу України та іншими нормативно-правовими актами; 2) є кримінально-правовою гарантією сплати податків, зборів (обов'язкових платежів); 3) встановлюється під час умисного ухилення від сплати податків, зборів (обов'язкових платежів).

Проаналізовано склад кримінального правопорушення, передбаченого ст. 212 Кримінального кодексу України, способи вчинення цього виду правопорушень та умови настання кримінальної відповідальності за ухилення від сплати податків, зборів (обов'язкових платежів).

Розглянуто кваліфікацію за умисне ухилення від сплати податків, зборів (обов'язкових платежів) та узагальнено статистичні дані щодо кількості кримінальних правопорушень у провадженнях, досудове розслідування у яких здійснюється Бюром економічної безпеки України, на основі ст. 212 Кримінального кодексу України за січень 2020–2023 рр.

Зазначено, що притягнення до кримінальної відповідальності за ухилення від сплати податків, зборів (обов'язкових платежів) хоча і є дієвим засобом впливу на правопорушників, проте варто зауважити про потребу доопрацювання національного законодавства з метою досягнення чіткості й однозначності.

**Ключові слова:** склад злочину; кримінальна відповідальність; кримінальне правопорушення; ухилення від сплати податків; оподаткування.