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## Penal (financial) sanctions for non-payment of agreed amounts of tax obligations: nomocracy under martial law in Ukraine

Sankcje karne (finansowe) za niepłacenie uzgodnionych kwot  
zobowiązań podatkowych: egzekwowanie prawa  
w warunkach stanu wojennego na Ukrainie

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**Abstract:** The relevance of the research of applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations has been determined by multifaceted and controversial relations that arise regarding tax and fee collection, competence of controlling bodies, powers and duties of their officials, responsibility for violations of tax legislation. The purpose of the article is to reveal the features of applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations. Contemporary general philosophical, general scientific and specific scientific methods have been used. The procedure for bringing the payer to financial responsibility and fintech model when applying fines have been addressed. It has been adduced that the date from which the period during which a fine could be imposed is calculated is the date of payment of the agreed amount of the tax liability, and not the date on which the statutory payment period for the agreed monetary liability expires. The specificity of the date from which this period is calculated, has been dealt with in terms of the tax authority conducting a chamber audit on the timeliness of payment of the agreed tax (monetary) obligation, and the application of fines for late payment by the taxpayer of the agreed monetary liability is the date of actual payment of the agreed amount of the tax liability. The practical value of the results is that they could be

used to establish specific temporal limits for calculating the period during which a chamber check could be conducted on the timeliness for paying the agreed monetary obligations.

**Keywords:** monetary obligation, tax audits, tax debt, debt repayment, statute of limitations

**Abstrakt:** O celowości badań stosowania sankcji karnych (finansowych) za niepłacenie uzgodnionych kwot zobowiązań podatkowych przesądzają wieloaspektowe i kontrowersyjne relacje, jakie powstają w zakresie poboru podatków i opłat, kompetencji organów kontrolnych, uprawnień i obowiązków ich funkcjonariuszy, odpowiedzialności za naruszenia przepisów podatkowych. Celem artykułu jest ujawnienie cech stosowania sankcji karnych (finansowych) za niepłacenie uzgodnionych kwot zobowiązań podatkowych. Zastosowano współczesne metody ogólnofilozoficzne, ogólnonaukowe i szczegółowe. Omówiono procedurę pociągnięcia płatnika do odpowiedzialności finansowej oraz model fintech przy nakładaniu kar. Wskazano, że datą, od której liczy się termin, w którym można nałożyć karę pieniężną, jest data zapłaty umówionej kwoty zobowiązania podatkowego, a nie data, w której upływa ustawowy termin zapłaty umówionej kary pieniężnej. Przeanalizowano szczególne problemy pojawiające się w związku z datą, od której liczony jest ten termin, a związane z przeprowadzaną przez organ podatkowy kontrolą w zakresie terminowości zapłaty umówionego zobowiązania podatkowego (pieniężnego) oraz stosowania kar za zwłokę podatnika uzgodnionego zobowiązania pieniężnego. Praktyczna wartość uzyskanych wyników polega na tym, że mogą one posłużyć do ustalenia określonych limitów czasowych do obliczenia okresu, w którym można by przeprowadzić izbową kontrolę terminowości regulowania uzgodnionych zobowiązań pieniężnych.

**Słowa kluczowe:** zobowiązanie pieniężne, audyty podatkowe, dług podatkowy, spłata długu, przedawnienie

## 1. Introduction

Multifaceted and controversial are the relations that arise in the field of tax and fee collection, in particular, the comprehensive list of taxes and fees and the order of their administration, taxpayers and fees, their rights and obligations, the competence of controlling bodies, the powers and duties of their officials during tax control, as well as responsibility for acts of violation of tax legislation. These issues determine the relevance of research on the context of applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations. The question arose as regards establishing the beginning of the limitation period, both in terms of the tax authority's in-house inspection on the timeliness of payment of the agreed tax (monetary) obligation, and the application of fines for late payment by the taxpayer of the agreed monetary obligation. The problematic issue is related to the manner in which the calculation of fines should be executed, taking into account the statute of limitations, as well as the starting point of such a period: whether it is the date of actual payment of the amount of the tax (monetary) obligation agreed upon

in previous years, or within the legally defined term regarding the last day of the deadline for submitting a tax declaration and/or the deadline for payment of monetary obligations.

Basically, it is about the methods of influence exerted by the tax administration in Ukraine. The system in which the tax authority imposes administrative financial sanctions for failure to pay tax on time or in the appropriate amount does not apply to Poland, because due to a separate criminal fiscal regulation, the tax authority acts in some cases as a financial criminal procedural authority. Within the limits of nomocracy under martial law in Ukraine, tax audits will be resumed in full beginning with 1 July 2023. Nevertheless, the tax and customs authorities in Ukraine are not law enforcement agencies, although they have some fiscal functions. The Bureau of Economic Security as a financial criminal procedural authority is in the process of reformation due to insufficient performance indicators. Thus, the tax authorities impose administrative financial sanctions for failure to pay taxes.

The contemporary doctrine presents the electronication of the financial responsibility area. The possibility of encoding regulation to make it processable automatically by computers has been gaining attention within the legal discipline. It is about 'automatically processable regulation' (Guitton, Tamò-Larrieux, and Mayer 2022: 267), including AI-based legal technology (Soukupová 2021: 279), regarding 'coherent', 'regulatory-instrumental' and 'technocratic' mind-sets of digitising legislation, underscoring the desirability of combining insights from all three mind-sets (Huggins et al. 2022: 325) via interoperability of various digital platforms (Fei 2023: 105786). We are moving from secrecy to transparency in the offensive sector (Anstis, Leonard, and Penney 2023: 105787). Both in times of peace and in times of war, the control of settlement transactions and the economic security of budgeting are important (Plaksiienko 2018: 253).

Researchers draw attention to the fact that giving society a direction with respect to something as broad and ill-defined as 'innovation' indeed seems to fall within the core of politics (Ducuing 2022: 237). The search for generally acceptable agreements, mutual consideration of interests are more in demand than ever regarding world trade and economic relations, which in contemporary conditions are prone to unprecedented politicization. The values of free trade become hostages of trade wars and other forms of unfair competition. In particular, in recent decades, sanctions applied to certain countries began to play an increasingly important role in the system of international economic relations. Motives for the use of sanctions, including economic ones, may depend on many factors and pursue various goals, primarily political. In most cases, political goals are achieved through the use of economic sanctions. At the same time, the very category of sanctions and the mechanism of sanctions

in the field of international activity basically combine regulatory, political and economic components, which forms the interdisciplinary character of sanctions in a theoretical plan (Flissak 2019: 73).

Economic and legal research is focused on such a responsibility within the limits of nomocracy under martial law in Ukraine, which could be both administrative and financial (Nazar, and Prots, 2018: 50). The research studies confirm that non-application of fines indicates non-application of financial and legal responsibility itself. Exemption from the application of fines for violations of tax legislation committed during quarantine is a special basis for exemption from financial and legal responsibility. The moratorium on the application of fines for violations committed during quarantine does not apply in the case of inspections that are allowed during martial law (Koval 2022: 75).

The purpose of the article is to reveal the features of applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations within the limits of nomocracy under martial law in Ukraine. The research tasks cover defining the date from which the period during which a fine could be imposed and the grounds for charging fines for violating the terms of payment of tax liabilities.

## **2. Materials and methods**

The article uses contemporary general philosophical, general scientific and specific scientific instruments. The choice of the latter is based on a systematic approach, providing an opportunity to explore theoretical and practical issues of applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations within the limits of nomocracy under martial law in Ukraine.

The information base of the research is the doctrine approaches, with the use of abstract, analytical methods of comparisons and analysis, generalizations of information and substantiation of conclusions (Savitska 2021: 137). The methodological component is related to the implementation of methodological guidance on budget implementation, monitoring of the development and implementation of sectoral recommendations prepared on the basis of procedural standards to eliminate the gap in the study of general methodological issues of responsibility and the determination of the specifics of responsibility in specific social relations (Nazar, and Prots 2018: 122).

The PRISMA research strategy (preferred reporting elements for systematic reviews and meta-analysis) has been conducted in order to find as much relevant research on the topic as possible and to use explicit methods to determine what can be said regarding the limits of nomocracy under martial law in Ukraine with confidence based on the studies (Varma et al. 2022: 1)

on the basis of innovative methods such as the Wavelet analysis considering the coherence approach and Markov chain as a switching autoregressive model (Santorsola, Caferra, and Morone 2022: 127791), method of factor analysis to construct comprehensive indexes of technological finance and financial stability before calculating green total factor productivity as the index of high-quality development, using the CRS Multiplicative Model (Shen, He, and Yan 2022: 1), as well as the bibliometric method to gather the knowledge base on financial technologies in an international context (Abad-Segura et al. 2020: 1). The dialectical general philosophical method has helped to reveal the essential dimension when applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations within the limits of nomocracy under martial law in Ukraine.

The formal methods act as a determining tool for conducting the general research. Empirical general methods of observation, description and comparison of grounds for charging fines for violating the terms of payment of tax liabilities within the limits of nomocracy under martial law in Ukraine. General research methods of theoretical research (axiomatic, hypothetical-deductive, unity of the historical and logical, formalization) reveal the order of defining the date beginning with which the period during which a fine could be imposed is established. Methods of analysis and synthesis, induction and deduction, abstraction and generalization, analogy detail specific temporal limits for calculating the period during which a chamber check could be conducted on the timeliness for paying the agreed monetary obligations, with which the fact of payment of tax (monetary) obligations should also be connected. Analysis and synthesis help to find out the reasons that cause changes in the amount of state budget revenues. Abstract and logical methods are useful when making theoretical and methodical generalizations.

Specifically, research methods take into account a formal-legal and system-structural methods to characterize the dimension of applying penal (financial) sanctions for non-payment of agreed amounts of tax obligations within the limits of nomocracy under martial law in Ukraine. Economic and statistical methods are related to assessing the dynamics of the volume of tax revenues in the structure of state budget revenues.

### **3. Results and discussion**

A tax liability is a monetary expression of the existing tax liability for a taxpayer within the limits of nomocracy under martial law in Ukraine (including a tax agent) to pay a certain tax, the occurrence of which, as well as the order and terms of payment of which, are determined by the norms of tax legislation. At the same time, the amount of the monetary liability includes

both the amount of the tax liability and the amount of the fine (financial) sanction, if the tax legislation provides for its payment. The taxpayer's obligation to pay a monetary liability is determined by the tax authority's finding that the taxpayer has violated the requirements of tax legislation. The consequence of establishing such a violation is the addition of the amounts of the corresponding tax liability and/or a fine (financial) sanction based on the decision of the tax authority. In order for the supervisory authority to be able to establish the duration of the delay in payment of the agreed monetary obligation and, as a result, to determine the amount of the fine that is subject to application to the taxpayer and depends on the number of days of delay in payment of the latter, such an obligation is to be actually paid.

### **3.1. The procedure for bringing the payer to financial responsibility**

The legal fact with which the responsibility in the form of a fine is connected stands for the payment of the agreed amount of the monetary obligation with a delay, and the amount of responsibility depends exclusively on the period of the delay within the limits of nomocracy under martial law in Ukraine. The amount of the fine (financial) sanction is set as a percentage of the repaid amount of the tax debt, and therefore the amount of the fine for violation of the term of payment of the agreed sums of monetary obligations. It is calculated for the period from the day following the last day of the deadline for payment of monetary obligations to the day of the actual payment of the debt. The specificity of the penalty is that it is calculated by the controlling body on the paid agreed amount of the monetary obligation, depending on the number of days of delay.

Instalment payment is a form of settlement of the payer with the budget by changing the payment terms, which could also be used in the procedure of compulsory collection of tax debt. The court's decision on instalment payment of the tax debt is only a procedural decision, which determines the method of execution of the court decision on the collection of the tax debt. The issuance of such a decision does not change the status of such debt and does not refute the fact that the debtor has committed a tax offence in the form of non-payment of tax debt and such offence continues until the debt is repaid voluntarily or forcibly.

It is the budget that characterizes the level of economic development of the country within the limits of nomocracy under martial law in Ukraine, and thanks to the correct implementation of the budget process, including incomes from fines, economic and social stability and the appropriate standard of living of the population are ensured (Figure 1). The total amount of tax revenues

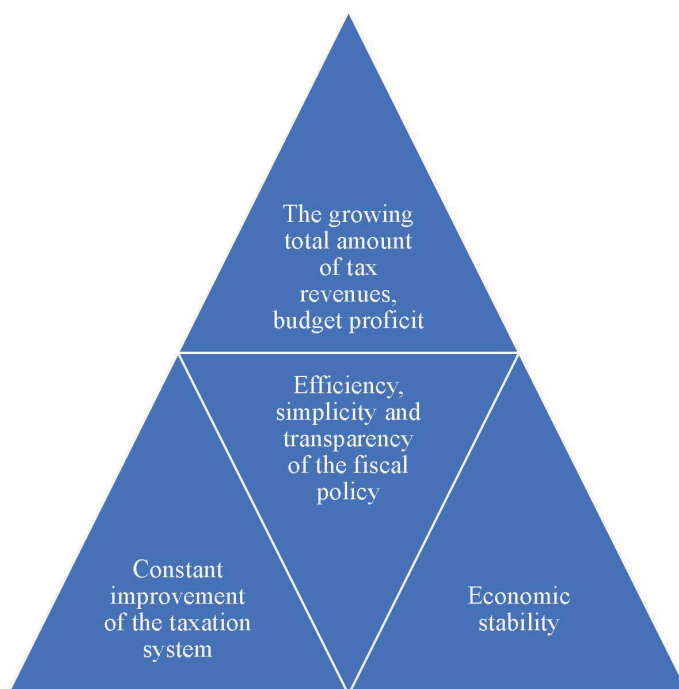


Fig. 1. The fiscal potential of fines

Source: developed by the author based on the results of doctrinal research (Savitska 2021: 142; Titenko, and Vorona 2021: 2).

of the consolidated budget is growing, but despite the absolute increase, their share in the budget is unstable. This shows that even if there is a constant improvement of the taxation system, the fiscal potential is unused due to tax benefits, tax evasion, deficiencies in administration, tax arrears (Savitska 2021: 142). The efficiency of the fiscal policy, its simplicity and transparency have a direct impact on the fullness of the country's budget. The budget deficit and economic instability in modern conditions serve as a driving force for revising the taxation policy for business entities (Titenko, and Vorona 2021: 2).

Chamber audit is one of the ways of implementing the control function of the tax authority within the limits of nomocracy under martial law in Ukraine, through which systematic control is carried out over the timeliness of accruals, the display of all information that affects the correctness of the taxpayer's declaration, as well as the timeliness of payment of agreed amounts of monetary obligations. The object of a camera inspection is only the data that is at the disposal of the tax authority, and any other data cannot be the subject of research by the tax authority. The purpose of the internal audit is to identify arithmetical and/or methodological errors in the submitted reports, other data of electronic administration systems, unified registers, or other information



that led to an understatement or overstatement of the tax liability or evidence of other registration violations that prove the composition of a tax offence.

Violation in connection with the late payment of tax obligations has the consequence of applying responsibility in the form of applying a fine. The application of punitive (financial) sanctions (fines) within the limits of nomocracy under martial law in Ukraine does not release taxpayers from the obligation to pay the appropriate amounts of taxes and fees to the budget, the control over the implementation of which is entrusted to the control bodies, as well as from the application of other measures to them. Penal (financial) sanctions (fines) for violation of the norms of laws on taxation or other legislation, the control of compliance of which is entrusted to the controlling bodies, are applied in the manner and in the amounts established by law. The application of punitive (financial) sanctions (fines) not provided for by law for violation of the norms of laws on taxation or other legislation, the monitoring of compliance of which is entrusted to the controlling bodies, is not allowed.

### **3.2. Fintech model when applying fines**

In order to standardize terms of paying fines within the limits of nomocracy under martial law in Ukraine, it is important to provide a 'fintech model' related to sustainability, regulation, and obstacles. Fintech is the result of financial innovation development, which is supported by financial engineering. Financial innovation is driven by changes in customer demand, regulation, and, of course, emerging technologies (i.e., both the supply and demand push). The primary goal of financial innovation, both for fintech companies and traditional financial intermediaries and financial markets, is to reduce costs by being more efficient and effective and gaining a competitive advantage. The provision of new services or the updating of existing ones is, therefore, a constant activity for all financial participants. These activities are associated with various risks, such as regulatory, strategic, and operational risks, as well as environmental risks (Varma et al. 2022: 1-17), with an obvious negative shock effect on financial stability within a short period, but the effect gradually dwindles as time goes by (Shen, He, and Yan 2022: 1).

The decrease in revenues in the state budget is caused by a number of economic and political factors, which in turn lead to a decrease in the importance of revenues as a macroeconomic regulator in the country's economic system. COVID-19 highlights the possibility, or indeed the likelihood, of contagious disease events that will have tremendous negative impacts on global domestic demand. This is a game changer from financial markets neglecting to price the potentiality of horrific tail-risk events that would not be survivable anyway.



COVID-19 and others like it are globally damaging to the world economy to a rarely precedented extent. But they are survivable (Goodell 2020: 101512). Technological innovation and digitization have posed a challenge to the financial sector globally regarding financial, economic, technology transfer, investment, innovation, partnerships and institutions and commercial (Abad-Segura et al. 2020: 1).

Budget filling on the basis of fines within the limits of nomocracy under martial law in Ukraine is connected with the diffusion of internal power transition within states (Figure 2). The drift is moving towards more capital-intensive modes, with the likelihood that war will continue to have a significant impact on the state. The most important potential effect of projected technological change is transformation of the means of production, which could trigger huge economic and political turmoil (Chin, and Notes 2019: 765), shining light on the intensity of the geopolitical risk, while gold and bitcoin showcase their resilience to war-induced negative economic effects (Santorsola, Caferra, and Morone 2022: 127791).

Balanced budget planning of state budget revenues taking into account strategic development goals is important (Syrovetnyk 2020: 273), when determining the fiscal capacity (Queralt 2019: 713) in the context of economic transformations on the eve of the war and its results (Loishyn 2022: 56). A clear procedure for imposing fines, in terms of calculating the date of payment of the agreed amount of the tax liability within the limits of nomocracy under martial law in Ukraine, is established by law and has a legitimate aim to prevent tax evasion. Such a mechanism for bringing to responsibility is propor-

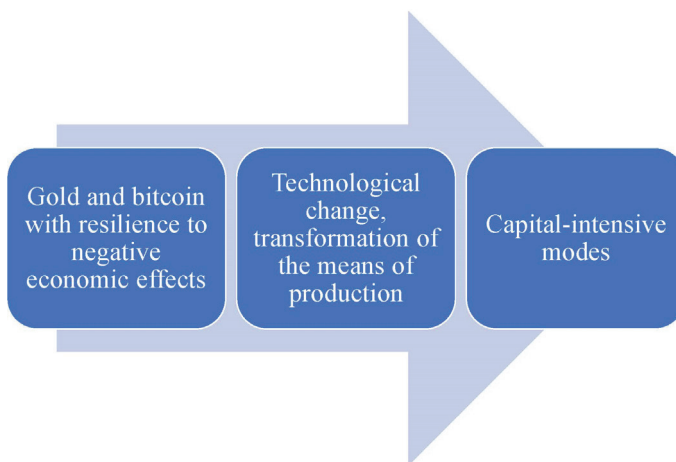


Fig. 2. Budget filling modes

Source: developed by the author based on the results of doctrinal research (Chin, and Notes 2019: 765-783; Santorsola, Caferra, and Morone 2022: 127791).

tional, since the budget is filled, and there are no those who evade taxation. Penalties are to be calculated taking into account the statute of limitations. The calculation of such a period is connected with the day of actual payment by the claimant of the amount of the tax (monetary) liability agreed upon in previous years, and not the last day of the deadline for submitting a tax return and/or the deadline set for payment of monetary obligations. In order to give a legal assessment to the arguments about the imposition of fines for the late payment of a monetary obligation beyond the statute of limitations, the date of the deadline for submitting the relevant tax declaration should also be established. The beginning of the countdown of the limitation period in the part of the chamber audit regarding the timeliness of payment of the tax (monetary) obligation occurs no later than the end of the last day that follows the last day of the deadline for payment of monetary obligations calculated by the controlling body.

Considering the fact that a mandatory condition for the application of a fine (financial) sanction to the taxpayer is the payment of a monetary obligation or the fact of repayment of a tax debt within the limits of nomocracy under martial law in Ukraine, then the counting of the statute of limitations for the application of a fine (financial) sanction for violation of the rules of payment (transfer) of the agreed amount of the monetary obligation begins on the day following the day of the actual payment of such monetary obligation sewing. Therefore, the date from which the period during which a fine might be imposed is calculated as the date of payment of the agreed amount of the tax liability, and not the date on which the statutory period for payment of the agreed monetary liability falls. The amount of the penalty for violation of the term of payment of agreed amounts of monetary obligations is calculated for the period from the day following the last day of the deadline for payment of monetary obligations to the day of the actual payment of the debt.

#### **4. Conclusions**

Consequently, the date from which the period during which a fine could be imposed within the limits of nomocracy under martial law in Ukraine is calculated is the date of payment of the agreed amount of the tax liability, and not the date on which the statutory payment period for the agreed monetary liability expires. The date from which this period is calculated, is determined in terms of the tax authority conducting a chamber audit on the timeliness of payment of the agreed tax (monetary) obligation, and the application of fines for late payment by the taxpayer of the agreed monetary liability is the date of actual payment of the agreed amount of the tax liability.

If the payer paid the amounts of tax liabilities within the limits of nomocracy under martial law in Ukraine on time and in full according to the schedules, then there are no grounds for charging fines for violating the terms of payment of tax liabilities. At the same time, after the entry into force of the court rulings on delaying the execution of court decisions on the collection of tax debt, the statutory payment terms of the relevant tax liability do not change, which does not lose the characteristics of a tax debt due to the change of the payment terms by the court and does not exclude the possibility of charging penalties under the condition of timely execution by the taxpayer of decisions on deferred payment.

Prospects for further research are related to the establishment of specific temporal limits for calculating the period during which a chamber check could be conducted on the timeliness for paying the agreed monetary obligations, with which the fact of payment of tax (monetary) obligations should also be connected in the comparative perspective of foreign legal systems.

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