DE GRUYTER OPEN
International Conference KNOWLEDGE-BASED ORGANIZATION
Vol. XXIV No 2 2018

TYPES OF ADMINISTRATIVE SANCTIONS FOR TAX OFFENCES

Petar Ivanov BALDZHIEV

"Neofit Rilski" South-West University, Blagoevgrad, Bulgaria
petarbaldgiev@abv.bg

Abstract: *The Bulgarian law regulates the administrative sanction as a specific sanction for non-compliance with the approved order in the state administration. Its imposition is considered to be an expression of state compulsion and it represents a realization of the administrative responsibility. The article aims to examine the peculiarities of the administrative sanctions imposed in the cases of tax offences, in regard to the specificity of the tax entities. The legislator has provided various administrative sanctions which are mainly systematized in the Administrative Violations and Sanctions Act. Tax legislation does not lay down new types of administrative sanctions but it uses the types provided by the Administrative Violations and Sanctions Act, and namely: public reprimand, fine, temporary deprivation of the right to be exercised a particular profession or to be carried out a particular activity, forfeiture in favour of the state, sanctions in the form of penalty payments imposed on legal entities and sole traders. The typical characteristics and peculiarities of the imposed for tax offences sanctions are the subject of the analysis.*

Keywords: administrative sanctions, tax offences, public reprimand, fine, deprivation of a right, seizure in favour of the state, penalty payments.

The administrative and criminal responsibility relates to the imposition of sanctions in the cases of intentional non-compliance with or poor fulfillment of administrative legal obligations. It is a "governmental punitive measure imposed by administrative order"[1]. The types of administrative sanctions are mainly mentioned in article 13 of the Administrative Violations and Sanctions Act (AVSA) – public reprimand, fine and temporary deprivation of the right to exercise a particular profession or to carry out a particular activity. Article 83 of AVSA regulates the opportunity for imposing sanctions in the form of penalty payments on sole traders and legal entities. The administrative legal theory describes the partial character of the systematization of the administrative sanctions.

"Tax liability - it is the tax-legal correlation, so the offender to be sanctioned and to be the subject of limitations of proprietary and non-proprietary character which are actualized in a single law enforcement proceeding"[2]. The tax legislation does not introduce new types of administrative sanctions, as it uses the types which are mentioned in AVSA - "fine", "penalty payment" and "temporary deprivation of the right to exercise a particular profession or to carry out a particular activity" as basic administrative sanctions for tax offences and "forfeiture in favour of the state" as a subsidised sanction. The "public reprimand" is not explicitly specified in the

DOI: 10.1515/kbo-2018-0080

administrative penal provisions of the tax laws. The tax laws use the general term "penalty payment" in a narrow sense in the cases when sanctions in the form of financial penalties shall be imposed on sole traders, legal entities, respectively for unincorporated companies and insurance funds. In regard to the legal entities and the sole traders they include other administrative sanctions - for example, deprivation of the right to carry out a particular activity (e.g. in article 269 and 270 of the Corporate Income Tax Act (CITA), etc.) which, by its legal nature, is a "penalty payment", i.e. its effect limits the financial status of the sanctioned person, even though it has a non-monetary nature.

The administrative sanctions specified in the tax laws for tax offences reveal a number of peculiarities in connection with the determining of their type and amount.

The sanctions of the administrative penal provisions of the tax laws reveal a number of particularities of the established system of administrative penalties for committed tax offences. The sanction is that thing which determines the type and the amount of the administrative sanction that will be imposed in the cases when it is comitted a tax offence which is mentioned in the disposition.

The type and the amount of the specified in the tax law administrative sanctions represent not only the negative assessment of the state in general for the respective acts but also the degree of public danger of the different tax offences. The sanctions in the modern legal system shall comply with the two basic administrative penal principles - of legality and individualisation of the imposed administrative sanction in respect to the characteristics of the particular tax offence.

The determination of the types of administrative sanctions given in the tax laws for committed tax offences reveals a number of peculiarities.

Alternatively laid down sanctions. In the acting tax legislation there are no alternatively provided sanctions - two or more types of administrative sanctions, as the administrative penal authority can impose only one of them.

Cumulatively laid down sanctions. The cumulatively laid down sanctions provide two or more types of administrative sanctions which the administrative penal authority must impose simultaneously.

„Public reprimand" as an administrative sanction for tax offences.

Article 13 of AVSA provides a general opportunity to be imposed the mentioned in it administrative sanctions. Among them is the "public reprimand" which is of a non-material nature. Within the meaning of article 14 of AVSA, the public reprimand for a comitted administrative offence represents a public reprimand of the offender before the colleagues he works with or before the organization in which he is a member.

The general provision of article 2, paragraph 1 of AVSA underlines that the administrative sanctions must be concretely specified by a law. In order to be referred to the tax violations, public reprimand shall be explicitly regulated in the relevant administrative penal provisions of the tax laws or the provisions of AVSA shall be applied. The acting tax laws do not explicitly regulate the imposition of the "public reprimand" sanction for a committed tax offence.

In accordance with article 15, paragraph 2 of AVSA and when it comes to minors, the administrative sanction "fine" is replaced by a public reprimand.

In connection with the possibility of a negative public impact on the public sphere of the persons who have not fulfilled their tax liabilities, it's interesting to note the provision of article 182, paragraph 3 of the Tax-Insurance Procedure Code (TIPC) which represents a measure of state coercion which was introduced with the abrogated Tax Procedure Code (article 145, paragraph 9). In the cases where the tax liability is not

fulfilled within the period for voluntary enforcement, the respective state authority may put in a prominent place in the respective administration office a notice with the debtors who have not paid their liabilities in due time (it. 2)

The „fine" as an administrative sanction for tax offences.

The fine is the main type of administrative sanction for committed tax offences. It represents a penalty payment of a monetary nature. It includes the payment of a certain amount of money (article 15 of AVSA) - "money claim against the offender". The fine has also a "financial significance because apart from being a sanction, it is also a budget revenue".

The fine is an administrative sanction predicted to be used against adults who have committed a tax offence. In accordance with article 15, paragraph 2 of AVSA and when it comes to minors, the individualized administrative sanction "fine" is replaced by the "public reprimand".

In view of the degree of explicitness of the fines laid down in the administrative penal provisions of the tax laws, it can be distinguished absolutely defined and relatively defined sanctions. Among the relatively defined fines are differentiated sanctions the amount of which is determined according to the amount of material benefit that the offender has realized or would realize.

The amount of the absolutely defined fines is fixed. That is the approach in relation to the fines provided to be an administrative sanction for a number of tax offences - for example in article 185, paragraph 6 of the Value Added Tax Act (VATA). The absolutely laid down sanctions do not allow the administrative penal authority to particularize the sanction in relation to the characteristics of the committed tax offence.

The description of the fine in the relatively defined sanctions allows its individualization in view of the concrete tax offence. Here in compliance with the principle of legality of the administrative sanction, the administrative penal authority is given the opportunity to assess the correlation between the committed tax offence and the imposed sanction. There are several varieties of the relatively defined sanctions.

For sanctions with a special maximum, only the maximum amount of the fine is specified - for example article 80-84 of the Income Taxes on Natural Persons Act, article 6 of the State Fees Act , article 127 of the Excise Duties and Tax Warehouses Act (EDTWA). Unlike the criminal law /article 47, paragraph 1 of the Criminal Code of the Republic of Bulgaria/ AVSA does not provide minimum amount of fine for the administrative law. The rule of article 27, paragraph 5 of AVSA will not apply to the fines set by a special maximum.

The legislative tendency for the fine to depend on and to correspond to the material benefit that the administratively and criminally responsible person had or would have is one of the peculiarities of the fine as an administrative sanction for committed tax offences. There are several types of relatively defined fines in the tax legislation depending on the amount of the material benefit. In most cases the sanction is determined by the amount of the tax liability and sometimes by the amount of the remuneration.

"Penalty payment" as an administrative sanction for tax offences.

The penalty payments which are mentioned in article 83 of AVSA are of an administrative nature. They are administrative sanction. They may have monetary and non-monetary nature, as respectively the monetary sanctions and the temporary deprivation of the right to carry out a particular activity.

In view of the degree of determination of the penalty payments specified in the administrative penal provisions of the tax laws, it can be distinguished absolutely

defined and relatively defined sanctions. Among the relatively defined penalty payments it shall be separated those whose amount is determined depending on the amount of the material benefit that the offender has realized or would realize.
The analysis of the peculiarities in determining the amount of the fines in the administrative penal provisions of the tax laws can also be referred to the specificities in establishing the amount of the penalty payments.

Deprivation of the right to be exercised a particular profession or to be carried out a particular activity as an administrative sanction for tax offences.
The temporary deprivation of the right to be exercised a particular profession or to be carried out a particular activity is a basic administrative sanction. Within the meaning of article 16 of AVSA, it represents a temporary prohibition for the offender to practice a particular profession or to carry out a particular activity in relation to which he has committed the tax offence. The deprivation of a right affects the financial sphere of the offender by limiting his ability to earn income from a profession or activity in respect of which he has a qualification or organizational capacity.
The administrative sanction "deprivation of a right" does not affect the acquired qualification of the offender in the respective area, except in the predicted by the law cases /pursuant to article 16, sentence 3 of AVSA/.
The administrative sanction "deprivation of a right" is of a *temporary* nature /pursuant to article 16, sentence 1 and 2 of AVSA/. Unlike other administrative sanctions, it is implemented over a certain period of time.
The administrative legal theory outlines the prerequisites which determine the imposition of the administrative sanction "temporary deprivation of a right". They can be also referred to the area of the tax offences:

• in relation to the respective tax offence it shall be predicted the administrative sanction "deprivation of a right";
• the offender should have been granted the prior right to exercise the respective profession, activity or occupation;
• the tax offence has to be commited in an objective connection with the exercised profession or the carried out activity or in connection with the held position;
The sanction has two varieties: 1- deprivation of the right to exercise a particular profession; and 2- deprivation of the right to carry out a particular activity.
The administrative sanction "deprivation of the right to exercise a particular profession" may be imposed only on natural persons. In the acting tax laws there is no explicitly laid down sanction "deprivation of the right to exercise a particular profession" for a person who has committed a tax offence.
The administrative sanction of deprivation of the right to be carried out a particular activity may be imposed on natural persons, legal entities, sole traders and unincorporated taxable persons in case of a committed tax offence.
The tax legislation contains a special form of the sanction -"deprivation of the right to hold a concrete position" imposed on persons who have committed official tax offences /article 270 of TIPC/. Unlike article 37, paragraph 1, item 6 of the Criminal Code of the Republic of Bulgaria, AVSA has no general regulation of the administrative sanction "deprivation of the right to be held a certain position".
In the cases of tax offences it is allowed the cumulation of the temporary deprivation of the right with the financial administrative sanctions.
In view of the degree of certainty of the duration of the deprivation of a right in the administrative penal provisions of the tax laws, we distinguish absolutely defined and relatively defined sanctions. The absolutely defined sanction “deprivation of a right” is with precisely fixed duration. They do not allow the administrative penal

authority to particularize the sanction in relation to the characteristics of the committed tax offence. The description of the sanction in respect of the defined sanctions allows its individualization in view of the specific tax offence. Here again in compliance with the principle of legality of the administrative sanction, the administrative penal authority is given the opportunity to assess the correlation between the committed tax offence and the imposed sanction.

"Forfeiture in favour of the state" as an administrative sanction for tax offences.

Article 20 of AVSA includes a general regulation in respect of the possibility of intentional administrative violations - the subject and the mean owned by the offender or the possession of which is forbidden, to be taken in favour of the state. This possibility must be explicitly specified in the respective law.

The forfeiture in favour of the state is an additional administrative sanction imposed for an intentional offence when there is an explicit legal order for it. This sanction represents a negative impact by reducing the offender's property.

The forfeiture is explicitly specified in the tax laws - for example, in article 280, paragraph 3 of TIPC, article 124 and 125, par. 2 of EDTWA, article.186, paragraph 2 of VATA, article 272, paragraph 2 of CITA, etc.

The administrative confiscation may also be imposed on legal entities, unincorporated taxable persons and sole traders as an additional administrative sanction for tax offences when this is specified by the tax law.

Another feature of the forfeiture in favour of the state as an administrative sanction for tax offences is the rule introduced by article 280, paragraph 3 of TIPC - the provisions of article 20 of AVSA are also applicable when the offender is *unknown*.

The provisions of article 280, paragraph 3 of TIPC are of general nature and shall apply to all types of tax offences. The rule of article 280, paragraph 3 of TIPC cannot be accepted without reservation. First, its application in respect of all tax offences with unknown perpetrator is not appropriate. Secondly, it is questionable whether it can be talked about a tax offence within the meaning of article 6 of AVSA when the perpetrator is unknown. Even if the objective signs of the tax offence are present, the subject of the violation and the signs of the subjective side (intentional fault) will not be ascertained. Thirdly, in the case of an unknown perpetrator, the ownership of the property cannot be determined which is of great importance for the application of the provisions of article 20 of AVSA.

When the objective signs of the tax offence are ascertained and the perpetrator is unknown, the preventive and secure effect can be achieved by seizure of the object or the mean of the tax offence under the terms of article 41, article 42, item 10 and article 46 of AVSA, article 159-163 of the Criminal Procedure Code of the Republic of Bulgaria, in relation to article 84 of AVSA, until the moment of finding the offender and proving his guilt and possession of the property.

In the Bulgarian administrative legal literature prevails the statement that the "forfeiture in favour of the state" is an additional /subsidized/ sanction that cannot be imposed separately from the other basic sanctions, as it can be only imposed together with them, unless otherwise provided in a special law. The Excise Duties and Tax Warehouses Act (article 124) does not explicitly impose an independent enforcement of the forfeiture.

It is posed the question whether the additional sanction /the forfeiture in favour of the state/ under article 124 of EDTWA should not be imposed in the case of a committed tax offence, in compliance with an explicit legal order the predicted main administrative sanction is not imposed (for example in the case of article 115-117, in relation to article 124 of EDTWA/. The exclusion of the administrative criminal

responsibility should also exclude the additional sanctionary consequences referred to in article 124 of EDTWA.

By exception, the legislator could lay down an explicit provision for forfeiture in favour of the state and which can be imposed regardless of implemented main measure of the administrative criminal responsibility for a tax offence the subject of which is subject to forfeiture.

In principle, the forfeiture in favor of the state is not allowed where the value of the goods apparently does not match with the nature and degree of the violation (article 20, paragraph 4 of AVSA). This limitation shall not be observed if an explicit text does not specifically provide such an opportunity. Tax laws do not provide an exception to this general rule.

The principle of legality requires the type and amount of the administrative sanctions to be legally specified or definable within legislatively established limits.

References

[1] Чешмеджиева, М. *Административно право в схеми и определения. Обща част*, изд. Пропелер, 2015 p. 102.

[2] Александрова, В. *Бюджетен контрол, дисертация*, 2008, p. 74.

[3] Мусаткина, А. А. *Финансовая ответственность в системе юридической ответственности. Тольятти*, 2003. С. 24-39.

[4] Христозов, Х. *Данъчните нарушения*. Изд. Сиби 2010.