

**CHANGES IN TAX LEGISLATION IN THE RUSSIAN FEDERATION: AN  
EDUCATIONAL STUDY**

**MUDANÇAS NA LEGISLAÇÃO TRIBUTÁRIA NA FEDERAÇÃO RUSSA: UM  
ESTUDO EDUCACIONAL**

**CAMBIOS EN LA LEGISLACIÓN FISCAL EN LA FEDERACIÓN DE RUSIA: UN  
ESTUDIO EDUCATIVO**



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**ABSTRACT:** The current study makes an attempt to emphasize that the criminal policy in Russia on liability for tax-related offenses holds a steady tendency toward humanizing. To meet that aim, the present study utilizes the dialectical approach of cognition of legal and social concepts and phenomena in their interdependence as well as development. Based on the results obtained, tax evasion is comprised of acts, such as deliberately including false information in the tax return or other documents, the submission of which is mandatory according to the legislation on taxes and fees in Russia, or simply failing to submit any of these documents.

**KEYWORDS:** Taxes. Tax-related crimes. Criminal liability. Human freedoms and rights.

**RESUMO:** *O presente estudo tenta enfatizar que a política criminal na Rússia sobre a responsabilidade por delitos fiscais mantém uma tendência constante de humanização. Para atender a esse objetivo, o presente estudo utiliza a abordagem dialética da cognição de conceitos e fenômenos jurídicos e sociais em sua interdependência e desenvolvimento. Com base nos resultados obtidos, a evasão fiscal é composta por atos, como incluir deliberadamente informações falsas na declaração de impostos ou outros documentos cuja apresentação é obrigatória de acordo com a legislação sobre impostos e taxas na Rússia, ou simplesmente deixar de apresentar qualquer desses documentos.*

**PALAVRAS-CHAVE:** *Impostos. Crimes tributários. Responsabilidade penal. Liberdades e direitos humanos.*

**RESUMEN:** *El presente estudio intenta enfatizar que la política criminal en Rusia sobre responsabilidad por delitos relacionados con impuestos tiene una tendencia constante hacia la humanización. Para cumplir con ese objetivo, el presente estudio utiliza el enfoque dialéctico de la cognición de conceptos y fenómenos legales y sociales en su interdependencia y desarrollo. Según los resultados obtenidos, la evasión fiscal comprende actos, como incluir deliberadamente información falsa en la declaración de impuestos u otros documentos, cuya presentación es obligatoria de acuerdo con la legislación sobre impuestos y tasas en Rusia, o simplemente no presentar cualquier de estos documentos.*

**PALABRAS CLAVE:** *Impuestos. Delitos en materia tributaria. Responsabilidad penal. Libertades y derechos humanos.*

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## Introduction

According to the research conducted by some authors, the criminal policy in the Russian Federation on responsibility for tax crimes is aimed at humanizing legislation (IVANOV *et al.*, 2018). Many authors are increasingly turning to the topic of improving tax legislation. It is necessary to minimize the difficulties of constantly changing tax norms for market entities (METELEV *et al.*, 2016).

In 2019, less than 1.3 thousand criminal cases were received by regional and equal courts of first instance, which is 9.5% less than in 2018 (1.4 thousand cases). The increase in the receipt of criminal cases is observed in the following categories of cases: crimes in the sphere of economy– 6.4 thousand, or 1.1%, (in 2018-5.3 thousand, or 1.2 %), the increase was 21.0 %. For these crimes in the first half of 2020, 4882 cases were considered, 3122 persons were convicted, 28 were acquitted, 1661 cases were terminated on rehabilitative grounds, of which only 33 on rehabilitative grounds (IVANOV *et al.*, 2018).

Indeed, in recent years, the state has paid much attention to the issue of regulating tax and financial legislation. Thus, Federal Law n. 73-FZ of 01 April 2020 amended the Criminal Code of Russia, increased the amount falling under the large size of Articles 198 and 199 of the Criminal Code of Russia. As you know, a person who has committed a tax crime for the first time is released from criminal liability if the amounts of arrears and corresponding penalties, a fine are fully paid (part 1 of Article 76.1 of the Criminal Code of Russia). Of great importance for law enforcement practice is the Resolution of the Plenum of the Supreme Court of Russia n. 48 dated 26 November 2019 "On the practice of applying legislation on liability for tax crimes by courts" (NELAEVA *et al.*, 2020).

According to Article 28.1 of the Criminal Procedure Code of Russia, it is established that compensation for damage serves as a basis for exemption from criminal liability. From the point of view of legal technology, the three-time mention in the Criminal Code of Russia of provisions on the exemption from criminal liability of homogeneous crimes on one basis (compensation for damage) indicates normative redundancy and tautology, the penetration of the element of "commercialization" of relations with the state into the criminal law (CROTTY, 2016).

There are grounds to note that until 30 November 2016, the Tax Code of the Russian Federation did not allow the performance of tax duties for a taxpayer. The duty to pay taxes is

one of the constitutional duties of a citizen, it cannot and should not be performed by another person. Criminal liability should not be equated with tax liability (TSINDELIANI *et al.*, 2019).

The COVID-19 pandemic in 2021 revealed and exacerbated many legislative, political, economic and social issues that had been in the life of our country for decades, but which seemed secondary. The shock of the "viral crisis" experienced by the world can affect not only European political institutions, but also the entire system of international relations.

To date, very often amendments are made to the criminal procedure law, which could not have been made, but the legislator is in no hurry to make relevant, significant amendments.

## **Method**

The study employs the dialectical approaches of cognition of legal and social concepts in their interdependence and development. Over this process, scientific and general approaches of scientific knowledge are also utilized legal, and historical, statistical, systemic, comparative legal, sociological, structural-functional, particularly the logical-legal, formal-logical, and so forth. The information basis and legal framework comprises the study of global legal instruments, judicial procedures to guarantee the lawful and rights benefits of people in the pre-trial procedures.

## **Results**

The essence of tax liability is material compensation, and the essence and purpose of criminal punishment is, in particular, the restoration of social justice, correction of the convicted person and prevention of new crimes commission. The desire to shift the entire emphasis towards only compensating the budget for the damage caused devalues the very concepts of punishment and its inevitability.

Now they are already saying that if the criminal agrees, any person or organization will compensate for the damage or otherwise make amends for the harm, then the crime committed by a particular person will actually cease to be a crime that entails punishment. It should be noted that in world practice, general punishment is often accompanied by punishment of an economic nature.

For example, in France and Germany, the norms of punishment for tax crimes are of a combined nature (imprisonment and a fine). Fines under French law for tax fraud (crime) are

mainly 500 euros and reach up to 2 million euros for qualified personnel (Article 1727-Article 1756 of the Tax Code of the French Republic).

The Supreme Court of Russia (Supreme Court of the Russian Federation) has spoken about giving retroactive force to norms that improve the situation of a person who has committed a crime (METELEV *et al.*, 2016).

Federal Law number 250-FZ of 29 July 2017 “On Amendments to the Criminal Code of Russia and the Criminal Procedure Code” associated with improving the Legal regulation of Relations in relation to the insurance premiums payment to state extra-budgetary funds. This Law included insurance premiums in Articles 198–199. 2 of the Criminal Code of Russia. Thus, when qualifying tax evasion committed before the entry into force of amendments to the law, it should be considered that the insurance premiums paid before its entry into force are included in the calculated payments, if this leads to a decrease in the share of payments not paid by an individual or an organization in the aggregate for the corresponding period.

At the same time, the Supreme Court of Russia relied on the earlier Decision of the Constitutional Court of Russia n. 27-P of 09 July 2019. Since the addition of insurance premiums to the denominator of the indicator may lead to the absence of *corpus delicti*, this is the basis for giving retroactive effect to the provisions of Law n. 250-FZ, which improves the situation of the person who committed the crime.

It is worth noting that in law enforcement practice, measures to combat tax crimes are still very conditional in nature (CROTTY, 2016; FORSTATER, 2018).

There are still unreasonably short deadlines for bringing to criminal responsibility for tax crimes. Today there are more than a hundred ways of evading taxes and fees (LEONTIEVA *et al.*, 2018). In addition, the difficulties in qualifying tax crimes are also due to blank dispositions, which one cannot disagree with (IVANOV *et al.*, 2018). The opinion is supported that it is necessary to refuse to specify specific methods of tax evasion in Articles 198 and 199 of the Criminal Code of Russia (AKHMADEEV *et al.*, 2016a; RICHARDSON, 2017).

The main problem in solving the issue of bringing taxpayer officials to criminal responsibility under Article 199 of the Criminal Code of Russia is to determine the amount of expenses incurred by the taxpayer, considering the contradictory provisions of Article 252 of the Tax Code of Russia (ELENA *et al.*, 2019).

At the same time, in most cases, the taxpayer confirms false information with deliberately fictitious documents, which may include supply, lease, purchase and sale, loan and

other contracts concluded without the purpose of their execution, but for the purpose of artificially inflating the expenditure part, which often occurs through business fragmentation.

In modern conditions, the development of the rule of law, civil society, and cooperation agreements can become the enemy of fair justice. An accused person, for example, who simply slandered another person, gets a minimum sentence, and the investigation and the court actually get rid of the need to prove the crime committed, to bring the true perpetrators to criminal responsibility. As a result, the principle of adversarial proceedings is not observed, the defense party, the victims do not actually participate in the process.

There are many examples of the negative application of the institution of agreement with justice in law enforcement practice. In each of them, there are defendants who have concluded a pre-trial cooperation agreement. The testimony of the accused may become the basis for the criminal prosecution of several more persons, while other sufficient and reliable evidence in the case may sometimes not be available at all.

As the author's analysis of judicial practice shows, the greatest difficulties arise with proving the fact of distortion of data on income received by including deliberately false information in the tax return. The Federal Tax Service indicated ways of evading taxes and fees, insurance premiums in a letter dated 29 December 2018, n. ED-4-2/25984 "On abuse of tax advantages established for small businesses" (AKHMADEEV *et al.*, 2016b).

The order notes that many create only the appearance of the activities of several independent taxpayers, covering the activities of one taxpayer, in order to obtain or retain the right to apply a special tax regime that provides for a reduced tax burden.

## **Discussion**

The most common special regime among those who left the UTII in 2021 was the so-called simplified. There may be a splitting of the business into several, in order to obtain several legal entities whose turnover will not exceed the threshold amount determined for the special simplified tax regime. The Federal Tax Service of Russia regards such cases as an unjustified tax benefit.

The analysis of judicial practice allows us to come to the conclusion that the underestimation of the tax base through the so-called fragmentation of business in order to evade taxes and fees, insurance premiums indicate the absence of real economic activity by the

taxpayer. The decision of the Arbitration Court of the Nizhny Novgorod Region of 13 May 2019 in case n. A43-39155/2018 may be indicative here.

In criminal cases under Article 199 of the Criminal Code of Russia, the prosecution most often refers to such evidence as the testimony of witnesses (tax inspectors who conducted the audit, employees of the taxpayer organization, tax and accounting documents of the organization, documents of "counter" tax audits of counterparties). The groundlessness of the application of tax deductions is primarily indicated by the fact that the taxpayer has drawn up fictitious documents with organizations that actually did not provide.

## Conclusion

There are grounds to make amendments to the Federal Tax Service regarding the establishment of signs of underestimation of the tax base by taxpayers. At the same time, proposals are being discussed in scientific circles to completely decriminalize tax crimes, to transfer these compositions to the category of simple offenses in the Administrative Code of Russia. It should be noted that compensation for damage can be carried out through the confiscation mechanism. Both in the case of liability for tax evasion by an individual, and in the application of subsidiary liability of founders for tax evasion from organizations.

The prejudicial significance of the decisions of arbitration courts causes supporters of the restriction to want to "overcome" it within the framework of the current Code of Criminal Procedure of Russia. In the criminal process, there was previously a binding of the reasons and grounds for starting a criminal case of criminal prosecution to the decision of the tax authority on crimes supplied for in Article 198-199.2 of the Criminal Code of Russia. To date, the damage is still determined by the tax authority. In practice, prejudice has often ceased to be an obstacle in the way of fighters against tax crime.

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