



PROBLEMS OF IDENTIFYING EVIDENCE AND STRENGTHENING IT IN THE INVESTIGATION OF CRIMES RELATED TO TAX EVASION

Jasurbek Mardanov

Independent researcher of the Law Enforcement Academy
of the Republic of Uzbekistan,
e-mail: husniddinovichjasurbek@mail.ru.
<https://doi.org/10.5281/zenodo.7460679>

ARTICLE INFO

Received: 10th December 2022
Accepted: 19th December 2022
Online: 20th December 2022

KEY WORDS

Tax, tax evasion, tax offense, income, tax crime, tax authority, cash flows, intangible assets, financial investments of the taxpayer.

Written evidence can be considered as a basis for initiating a criminal case on tax crimes, but the testimony of participants in criminal proceedings given during the interrogation enhances the reliability, belonging and adequacy of the evidence collected in the case. It is from the totality of the evidence collected in the criminal case that an objective conclusion can be drawn about the elimination of existing inconsistencies and their promotion.

In the practice of investigating criminal cases, interrogation is considered the most widely used investigative action, "its purpose is to obtain testimony about facts and events that may be important or significant for identifying situations that must be proved on behalf of the person, identifying sources of information related

ABSTRACT

This article discusses the investigation of crimes in the field of tax evasion or fees, the improvement of tactical and forensic techniques of conducting work, consideration of cases of crimes in the field of tax evasion or fees, tactical and forensic features of search and seizure, issues of identifying evidence and solving the problem of their consolidation in the investigation

The article also discusses the specifics of the investigation of crimes related to tax evasion or mandatory payments, procedural and tactical aspects of the initial stage of the investigation of crimes related to tax evasion or mandatory payments.

to the event under investigation, and verifying the reliability of the evidence available in the case" [1].

Naturally, each person perceives the phenomena happening around him in his own way, in addition, the information received is processed and takes up space in memory. When receiving this information, certain schemes are needed that act as a filter for information, says American writer Dave Laxani [2]. Indeed, during the investigation we will try to get the necessary information from this person. In this case, if certain forensic tactics are not applied, the interrogation investigative action will be ineffective.

In our opinion, as for the main purpose of the interrogation:

- information about the circumstances that must be proved in a



criminal case, reflected in the memory of the interrogated person as sources of evidence, belonging and acceptability in the form and content of their full designation in accordance with the requirements of the criminal process;

- the use of information obtained as a result of interrogation to draw conclusions about the reliability and adequacy of all available evidence based on the principle of legality in a criminal case and for a good-faith decision.

The tactics of interrogation on tax crimes have their own peculiarities in the general system of the methodology of their investigation, which include:

- questioning about tax crimes is a way to determine the reasons and conditions for the evasion of participants in tax relations from paying taxes and mandatory payments in order to obtain illegal tax benefits;

- all the interrogated persons are directly or indirectly connected with the tax legal relations within which the tax crime under investigation was committed;

- the interrogated persons are the owners of information that is directly or indirectly related to the circumstances of the tax offense established by the tax authority;

- the subject of the interrogation is information that is directly or indirectly related to cases of tax evasion and mandatory payments during the interrogation of participants in the criminal process;

- persons reporting cases of tax crimes rarely know themselves as witnesses;

- the identification of a tax offense does not automatically establish the presence of criminal elements in the

actions of a person. If the testimony of one of the interrogated persons does not correspond to the information provided to the tax authority and reflected in the materials of this body, the investigator compares them with other evidence and takes measures to collect other evidence confirming or refuting these facts;

- on the surface, there is information about the offense in the materials of tax audits, and during the investigation, various types of qualifications are carried out based on evidence of the guilt of the accused (suspect) in committing a tax crime.

In order to achieve great success with the help of interrogation, taking into account the specifics of the investigation of tax crimes, it is necessary to adhere to appropriate forensic tactics. In this case, the specific features of the interrogation tactics include:

- 1) to study the psychological state (portrait) of the interrogated person;

- 2) determine the level of general information or education of the interrogated, the degree of professional understanding of the conditions associated with the violation of the legislation on taxes and fees, the degree of involvement in the events that led to the commission of a tax crime, and involvement in this crime;

- 3) if the specifics of the violation of the legislation on taxes and mandatory payments and the mechanism of committing a tax offense are related to the professional activity and experience of the interrogated person, then it is necessary to establish:

- to study the general aspects and circumstances of the mechanism of committing a tax crime, including their views on the criminal phenomenon,



- to study their opinion on the extent to which the requirements of tax legislation on the committed offense have been violated;

- to know the awareness and opinion of the interrogated person about the facts of the manifestation of guilt in the actions (inaction) of persons directly or indirectly involved in the implementation of the mechanism of tax crime;

- obtaining information about the motives, degree of participation and role of each person directly or indirectly involved in the implementation of the mechanism of committing a tax crime of the interrogated person, as well as about the direct connection between the legal consequence that has arisen;

4) analysis of legislation regulating legal relations in which a tax crime was committed by an official of the inquiry or an investigator, as well as materials of judicial and investigative practice;

5) due to a clear knowledge of the subject of interrogation and the availability of clear information about the application of tax legislation in law enforcement practice, this makes it possible to put the right questions to the interrogator, to make statements (versions) about the commission of a crime;

6) knowledge of regulatory legal acts and the specifics of the law enforcement of the inquirer or investigator in the event that the suspect or accused does not admit his guilt, as well as information about specific facts in the case, allows you to understand the entire mechanism of the tax crime of the interrogated person and help partially or;

7) it will help to identify persons who are not related to the commission of a tax crime only if they know the procedural

legal relations and the norms of legislation governing the criminal case, which are established by the responsible official;

8) the fact that the investigator knows the legislative framework governing the legal relations in which the tax crime was committed, and also has sufficient knowledge of the precedents of judicial and investigative practice, ensures the correct formation of the list and order of interrogation of persons, the establishment of the subject and procedure for interviewing each person effective communication;

9) it is necessary to determine the interests of the interrogated person, based on the procedural posture of the interrogated person. At the same time, it is desirable to form an opinion, taking into account the interests of the interrogated person, that the purpose of the investigation is in one direction. It is desirable for the investigator to determine the subject of general feedback with the interrogated person and enter into a conversation with the interrogated person;

10) each statement on interrogation must reflect the opinions of the interrogated person about information about the signs of the objective and subjective side about the circumstances of the criminal incident;

11) before the interrogation, it is desirable to find out the opinion of the interrogated person from other sources on the subject of a criminal employee. The purpose of this is to plan in advance the questions asked to the interrogated person and analyze the tactics of his behavior;

12) many interrogated persons are interested in certain issues of the investigation during the interrogation, therefore, the purposeful designation of the



subject of interest, its management and satisfaction of the investigation with a tactical managerial pose allow the interrogated person to influence his ideas about the information known to him in the interests of the investigation;

13) often the ideas about the information presented during the interrogation are of an analytical or contemplative nature, to one degree or another reflecting the confidence of the interrogated person. Therefore, knowing his confidence allows the investigator to correctly evaluate the data received from him and control the process of obtaining them;

14) it is always necessary to determine whether the interrogated person has changed his point of view on certain issues of the circumstances that he stated during the interrogation;

15) if the interrogated person asks for guarantees (personal safety, guarantees in the form of rights and obligations arising from cooperation with the investigation, etc.), it is necessary to reliably acquaint him with all rights and guarantees.

When interrogating a suspect (accused), it is necessary:

- achieve convergence of opinions on more questions related to the subject of the survey and on topics not related to the survey;

- show empathy for his posture and the posture of people close to him;

- try to evoke a sense of mutual closeness in relation to certain personal characteristics (common experience in any work, living in the same region, knowledge, the ability to express their thoughts correctly, the ability to listen, intelligence, self-esteem, etc.);

- I am often forced to answer the interrogated person's questions with the word "yes", demonstrating the persuasiveness of the investigative logic and the evidentiary sequence of exposing all participants in the committed crime, after which it is possible to discuss the relevant points of his interests and the interests of the investigation.

Search and seizure are carried out when it is known exactly where and who has certain things and documents that are relevant to the criminal case. Thus, the content of the seizure consists in the seizure of individually defined items and documents from a particular person that are important for determining the circumstances that need to be proved. At the same time, he must first determine the location of the documents. In this case, it is extremely important to observe the procedural order in which, before the seizure, the inquiry officer or investigator must offer to issue the relevant items or documents.

In the foreign legal literature, there are also opinions of scientists on this issue, which, in their opinion, it is advisable for an investigator to use the help of specialists to identify important documents, since it is on the surface of what documents are required that a specialist can give advice [3]. According to other scientists, ensuring that the participation of a specialist or forensic experts in the investigation process is not limited to one or two investigative actions, but in all cases when there is a need to use forensic technical means directly affects the effectiveness of the investigation [4]. Indeed, the participation of a specialist in such investigative actions as inspection, search



and seizure can only be assessed on the positive side.

When conducting an expert examination or a special study on tax crimes, traces of a crime are considered as the object of research. In a narrow sense, it can be classified into three groups of traces of a crime: 1) descriptive objects; 2) material traces; 3) objects [5].

Forensic accounting examination is carried out in the following cases:

- study of the method and state of the taxpayer's accounting;
- determination of violations of the rules of accounting for income and expenses and objects of taxation for the purpose of calculating and paying taxes;
- identification of violations of the rules for the formation and maintenance of registers of primary documents, invoices, accounting and tax accounting;
- identification of facts of timely and incorrect reflection on accounting accounts, tax accounting registers and reports on business transactions transferred to the tax authority, cash flows, tangible assets, intangible assets and financial investments of the taxpayer [6].

The Criminal Procedure Code of the Republic of Uzbekistan provides for the possibility of questioning many participants in the criminal process. In our opinion, from the point of view of the volume of evidence obtained in the investigation of tax crimes, as in the investigation of many other crimes, the most important is the interrogation of witnesses, suspects and accused on other issues.

The opinions of various categories of witnesses developed by them on the tactical features of the interrogation, depending on their attitude to the suspect

or the accused in the investigation of tax crimes, are of a scientific, theoretical and practical nature, which, as we believe, can be used in investigative actions.

In our opinion, when investigating a tax crime, it is advisable to take into account the characteristic features that emphasize the specifics of the interrogation and give the investigator direction regarding the subject of the interrogation in the system of tax relations.

Thus, the specifics of the interrogation of participants in criminal proceedings in cases of tax crimes are as follows:

a) when determining the order of interrogation of persons under investigation, the subject and tactics of interrogation, the prospects of their procedural status, the investigation of criminal communications during their investigation formulates materials requested or seized from the tax authority, documents, the results of the examination, documentary examination, audits and based on the opinion of experts;

b) the inquirer or investigator forms an opinion on the level of awareness of the interrogated person in violation of the legislation on taxes and mandatory payments based on the results of the analysis of the materials of the tax authority and the mechanism by which the offense was committed;

c) the awareness of the interrogated person about cases of violation of tax legislation is related to his participation in tax legal relations: a taxpayer, a representative of a tax authority, a taxpayer in labor, civil, family, personal or other relations, as a proxy.

d) based on the results of the interrogation, the reasons are determined:



the causal relationship of the actions (inaction) of the interrogated person with the mechanism of violation of tax legislation;

the degree of awareness of the interrogated person about the circumstances of a violation of tax legislation committed by other persons;

e) if there is a causal relationship with a violation of tax legislation, which is known to the person being interrogated about this, the reasons for the actions committed by the interrogated person and other persons are clarified;

f) the testimony of the interrogated person will repeat, supplement or have inconsistencies in a certain part of the information about the circumstances of the violation of tax legislation contained in the materials of the Tax Authority, which will put the need for correction in the interrogation agenda and clarify the reasons for this;

g) information about each interrogated person complements the details of the mechanism of committing a tax crime modeled by the investigator and affects the assessment of the content of the implementation of this mechanism;

h) the results of each interrogation increase the investigator's awareness of the role and participation of the interrogated persons in the planning and implementation of the mechanism for committing a tax crime.

i) if there is a conclusion of the tax authority on the absence of documents required in accordance with the legislation on accounting and tax - is this usually the result of the implementation of one of the models of the planned mechanism for committing a tax crime or the

manifestation of one of the elements of the mechanism associated with concealment

j) the contact and awareness of the interrogated person about the circumstances of the formation and submission of incomplete, incorrect, contradictory or falsified information to the Tax Authority is clarified;

k) the form and methods of tax deduction of the interrogated person, his connection with the directions of use or investment and awareness are clarified;

l) the awareness of the person questioned by the taxpayer, the taxpayer's representative, the person responsible for tax accounting, in the relationship of dependence (labor, civil, financial and other relations), the actions committed by him, which are causally related to the violation of tax legislation and, as a result, are not taxed by the budget, are specified;

m) it becomes clear that the interrogated person is aware of the illegality of receiving tax benefits and the consequences for the budget in the form of non-receipt of the required amount of tax;

n) it is necessary to find out from the interrogated person about the organizational and legal structure of the organization, the territorial location of offices, warehouses, industrial buildings, branches, representative offices, subsidiaries and divisions, storage locations of the organization's property, management structure, the established procedure for processing circulation documents, etc.;

o) the circle of the taxpayer's counterparties and the nature of transactions concluded with them must be determined by the interrogated person;

p) the list of shareholders (founders) of the organization and the circle of



responsible persons carrying out the current management of the activities of the taxpayer being audited must be determined by the interrogated person, including:

relations between shareholders (founders) and persons carrying out the current management of the organization;

spheres, directions of entrepreneurial and other property interests of shareholders (founders) and persons engaged in the current management of the organization;

important operations performed by these persons during the reporting period;

transactions with foreign currency related and unrelated to the movement of capital during the reporting period by these persons.

Prosecution it is worth noting that a facelift is a "complex investigative action", which in most cases requires "preliminary preparation", which consists in "studying the case materials to identify the opposite circumstances, the relationship between the interrogated persons", determining the initial structure of questions, the sequence of questions, preparing the necessary evidence.

The reason for the contradictions in the testimony during the investigation of criminal cases related to taxes, most often lies in the fact that the information that pops up is a lie of one or both participants in the investigative action. However, the reason for serious contradictions in the

testimony in most cases is predetermined, therefore fractionation is the division of participants in the investigative action into sincere and insincere.

If an investigative action is carried out in a case of a crime face to face between partners, it must be borne in mind that each of them gives evidence more fully and freely in relation to the other and strives to remain silent about their criminal actions. In this case, the investigator takes into account the existence of conflicting interests between the participants, and during the interrogation he will have to periodically change the order of asking questions to one or another participant. If both participants in the investigative action face false testimony, this is due to the tactical risk of conducting an investigative action, since there may be cases of collusion between them. If there are other ways to resolve contradictions, in addition to conducting an investigation, it is not recommended to conduct a confrontation investigation in this case.

In the face of an investigative action, witnesses may side with the suspect (accused) due to the fact that the suspect or accused is interested in avoiding responsibility, as well as various types and levels of dependence. Therefore, before the start of the investigative action, the investigator should direct all his efforts to search for documents or witnesses confirming the circumstances of the mechanism of committing a tax crime.

References:

1. Handbook for investigators / edited by N.A. Selivanov, V.A. Snetkov. M.: INFRA-M, 1997. p. 306.
2. http://loveread.ec/view_global.php?id=49602
3. Gatamov B. G. Tactical combinations in the investigation of customs evasion related to smuggling.



4. Rustamov K. E. Problems and trends of ensuring the rights of the individual when using special forensic knowledge of knowledgeable persons in pre-trial proceedings.
5. Criminalistics: textbook / T.V.Averyanova, R.S.Belkin, Yu.G.Korukhov, E.P.Rossiyskaya. – 3rd ed., reprint. And additional. – M.: Norm: Infra-M, 2010. – p. 195.
6. Izvekov S. S. Economic expertise and its role in the investigation of tax crimes //Auditor. – 2003. – №. 4. – pp. 19-24.
7. Otabek, R. (2022). FOREIGN EXPERIENCE IN RECONSTRUCTION OF CORPORATE LAW. Web of Scientist: International Scientific Research Journal, 3(8), 538-542.]
8. Рахмонов, О. (2022). The content, concept and procedural aspects of the institution of reorganization as a legal category. Общество и инновации, 3(7/S), 248-253.
9. Rakhmonov, O. (2022). Peculiarities of consideration of cases in economic courts on voluntarily reorganized limited liability companies.