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On The Practice Of Application By The Courts Of The Legislation On Responsibility For Tax Crimes

The Review On The Resolution Of The Plenum Of The Supreme Court Of Russian Federation On November 26, 2019 N 48 "On The Practice Of Application By The Courts Of The Legislation On Responsibility For Tax Crimes"

The Resolution includes issues of the effect of acts of legislation on taxes and fees over time, the subject composition of tax crimes, the procedure for calculating large or especially large amounts of tax evasion, fees, insurance premiums, duties and responsibilities of tax agents, which evidence confirms the presence or absence of evidence of elements of tax crimes, etc.

The Plenum explained how the courts should consider criminal cases of tax crimes:

- ▶ Not only an ordinary people, but also an individual entrepreneur, as well as an attorney who has established an attorney's office, a notary and other private practitioners can be held liable. In case of non-payment of taxes, an organization can attract its head or an authorized representative who actually performed the duties of the head. In addition, the figurehead will be involved as an accomplice.
- ▶ Tax evasion is only possible with direct intent, therefore, the fact of tax evasion alone is not enough. The court must take into account circumstances precluding guilt.
- ▶ All fatal doubts are interpreted in favor of the accused. This also applies to determining the period for calculating large or especially large amounts of debt.
- ▶ When hiding money or taxable property, not only their presence should be established, but also circumstances that show that these funds were intentionally hidden.
- ▶ Courts are required to determine the true amount of tax liabilities when determining the damage to the budget system, taking into account all factors.
- ▶ Evidence in criminal cases can be tax returns, other documents necessary for calculating a tax or contribution, acts of tax audits, expert opinions, court decisions.
- ▶ It is noted that the courts should check whether the decision on bringing as the accused, the indictment contains information about what specific norms of the legislation on taxes and fees that were in force at the time the crime was committed are violated by the accused, the timing of payment of a specific tax, fee, insurance contribution, how the period was calculated for determining large or especially large amounts for the purposes of applying Articles 198, 199, 199.1 of the Criminal Code of the Russian Federation.
- ▶ When considering criminal cases of tax crimes, courts are advised to identify the circumstances that contributed to the commission of such crimes, violation of the rights and freedoms of citizens, as well as other violations of the law that were committed during the preliminary investigation or when the criminal case was examined by a lower court, attention of relevant organizations and officials to them.

The Resolution of the Plenum of the Supreme Court of Russian Federation on December 28, 2006 N 64 "On the Practice of the Application by the Courts of the Criminal Law on Responsibility for Tax Crimes" is recognized as invalid.

For additional tax advice, you can always contact the auditors and lawyers of GRATA International St. Petersburg.

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