FEATURES OF THE PROCESS OF EVIDENCE IN CRIMINAL CASES
EVANCATION OF PAYMENT FOR TAXES FROM ORGANIZATIONS

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ABSTRACT

Objective: The study of the features of the process of proof in criminal cases of tax evasion from organizations.

Theoretical framework: Theoretical materials were based on international scientific publications, reports, and scientific papers. And also for a more complete and objective presentation of the problem being studied, practical materials from criminal cases were used.

Method: It is a method to analyze the knowledge of the general patterns that characterize the evidentiary process in criminal cases of tax evasion. The methods of deduction and inducement made it possible to highlight the problematic aspects and characteristics of the investigation of evidence in criminal cases of tax evasion in criminal cases of tax evasion.

Results and conclusion: Different points of view on the determinants of tax crimes are taken into account, taking into account macro factors, moving to microregulatory factors and moving to an additional need for sanction of some tax evasion actions. The author concludes that there is a need to improve the standards of legislation in order to deal effectively with tax offences.

Originality/value: In criminal cases of tax evasion, the characteristics, procedure and mandatory points of the proof process of the entities are analyzed, which will allow us to identify many relevant circumstances. This type of crime greatly damages the budget of the Kazakhstan, and nowadays it has a great tendency for the problems of investigating tax crimes and one of its most dangerous manifestations, tax evasion, to be significant.

Keywords: tax evasion, process of evidence, criminal case, tax crimes, investigation, evidence, tax audit, criminal prosecution.

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CARACTERÍSTICAS DO PROCESSO DE PROVAS EM PROCESSOS PENAIS EVANÇAÇÃO DO PAGAMENTO DE IMPOSTOS DE ORGANIZAÇÕES

RESUMO

Objetivo: O estudo das características do processo de prova em casos criminais de evasão fiscal de organizações.

Estrutura teórica: Os materiais teóricos foram baseados em publicações científicas internacionais, relatórios e artigos científicos. E também para uma apresentação mais completa e objetiva do problema estudado, foram utilizados materiais práticos de processos criminais.

Método: É um método para analisar o conhecimento dos padrões gerais que caracterizam o processo comprobatório em casos criminais de evasão fiscal. Os métodos de dedução e indução permitiram destacar os aspectos problemáticos e as características da investigação de provas em processos penais de evasão fiscal em processos penais de evasão fiscal.

Resultados e conclusão: São tidos em conta diferentes pontos de vista sobre os determinantes dos crimes fiscais, tendo em conta os fatores macro, passando para os fatores microregulamentares e passando para uma necessidade adicional de sanção de algumas ações de evasão fiscal. O autor conclui que é necessário melhorar os padrões da legislação para lidar eficazmente com as infrações fiscais.

Originalidade/valor: Em casos criminais de evasão fiscal, são analisadas as características, o procedimento e os pontos obrigatórios do processo de prova das entidades, o que nos permitirá identificar muitas circunstâncias relevantes. Este tipo de crime prejudica grandemente o orçamento do Cazaquistão, e atualmente tem uma grande tendência para os problemas de investigação de crimes fiscais e uma das suas manifestações mais perigosas, a evasão fiscal, ser significativa.

Palavras-chave: evasão fiscal, processo de prova, processo penal, crimes fiscais, investigação, prova, auditoria fiscal, processo penal.

1 INTRODUCTION

One of the indicators that pose a threat to the national needs of Kazakhstan in the field of economic activity is economic crime. Its integral part at present is tax crime, including, first of all, evasion of taxes and fees. Recently, it has acquired a global character and has spread to such proportions that serious damage is caused to the economic security of the state.

It is the very mediocre effectiveness of criminal legislation that is the main indicator of the increase in criminal offenses, which creates incorrect opinions about the impunity of persons who commit crimes in the field of economics and economic activity
in general, the preventive role of criminal legislation is leveled, it will cease to fulfill the task of preventing new crimes.

Many studies confirm that, ultimately, after the commission of tax offenses provided for in Chapter 8 of the Criminal Code of the Republic of Kazakhstan, significant material damage is caused.

Tax offenses, as a relatively new type of social activity for the current national legislation, attracts the attention of many current legal scholars, and it can be noted that there are currently many cutting-edge studies of tax crime.

Despite this, it must be emphasized that, for many theoretical reasons, it is still quite difficult to give a fair assessment of tax crime. Official statistics do not fully show true data on tax evasion; this is due, first of all, to the latency of tax crimes; it is the secrecy that has led to the lack of objective data on tax crimes committed, the registered number of which is only a small part of those actually committed (De Lima & Maciel-Lima, 2021).

2 LITERATURE REVIEW

Budget cuts have a negative impact on the socio-economic development of developing countries. The research problem lies in the analysis of taxpayers from commercial organizations regarding the impact of tax evasion on socio-economic development (Krasniqi & Jusufi, 2022).

It notes that the most common forms of indirect methods of proving criminal tax evasion are the net worth plus non-deductible expenses method and the bank deposit method. These methods can be used for one year; different methods can be used in different years in the same case; any of these methods can be combined with testing a specific product or used on its own. To adequately prepare for a criminal tax evasion investigation by the Internal Revenue Service (“IRS”) or to adequately prepare for a criminal trial in which one of these methods will be used, a criminal tax attorney must have a working knowledge of various circumstantial evidence that may be collected by an IRS special agent, the manner in which such evidence may be structured to prove the ultimate tax deficit, and the weaknesses and strengths of such reconstructions of the alleged financial facts.

Tax evasion leads to a significant reduction in government revenues in the Slovak Republic and the European Union. Therefore, European Union states are looking for ways...
to detect tax evasion. The most common tax evasion is value added tax. It is impossible to eliminate tax evasion, but tax evasion can be effectively identified and combated through legislation and effective tax controls (Vighova, 2022). By the way, a study was conducted, as noted by (Eriksen & Fallan, 1996), on the influence of specific tax knowledge on attitudes towards taxation. The study reports significant changes in attitudes towards personal tax evasion and attitudes towards the fairness of the tax system. After increasing their tax knowledge, respondents perceived their own tax evasion to be more serious, perceptions of tax fairness increased, and attitudes toward other people's tax evasion became stricter. Consistent with previous research, this tax attitude influences the involuntary propensity for tax evasion and tax compliance.

At the same time, it analyzes the current tax behavior of Slovak citizens and their tendency to evade taxes (Holkova et al., 2023). Tax evasion propensity is determined in this study based on respondents' responses to questions regarding their tax behavior. The data processed in this study was obtained from a questionnaire survey of a sample of 1067 respondents. Purposeful sampling was used to ensure a similar mix of respondents. In terms of the acceptability of tax evasion, we have identified three groups of people: honest, dishonest and unconscious. The study confirmed that 78% of the population are prone to tax evasion, and only 22% have never evaded taxes and would not do so, knowingly or unknowingly. Using statistical hypothesis testing, we also found that, with the exception of gender (women are less likely to evade taxes), the propensity to evade taxes also depends on education, age, main source of income and experience. Finally, three types of logistic regression models were built and estimated to predict the propensity to engage in certain tax behavior based on the overall accuracy measure and validated on an ex-post dataset.

The literature has long analyzed optimal tax policies in countries where tax evasion is widespread (Bernasconi et al., 2019). However, very little information has been obtained on the relationship between government debt, tax evasion and long-term economic growth. In this paper, we examine the relationship between sovereign debt sustainability and tax evasion by calculating under what conditions the debt-to-GDP ratio endogenously returns to normal in a context where tax evasion can increase public debt and government spending is used to finance public goods. For a utility consumer, the level of tax evasion does not affect average return conditions, while the same does not apply to more general functional forms. Finally, we conclude that allowing tax avoidance
is not an appropriate policy to ensure debt-to-GDP ratio stability over time, especially in low-growth countries (Levaggi & Menoncin, 2023).

It review the results of a meta-analysis on the relationship of social norms and religiosity to tax evasion, with national culture as a moderating variable. Previous studies have shown mixed results on the relationship between social norms, religiosity, and tax evasion (Sutrisno & Dularif, 2020). Meta-analysis is considered a way out of saturated and conflicting research because it provides an efficient and systematic approach to reach valid conclusions. Theoretically, national culture plays a key role as a variable in mitigating social norms on tax evasion. However, this variable cannot moderate religiosity on tax evasion. These results indicate that the theory of planned behavior does not consistently predict the influence of social norms on tax evasion. In practice, tax authorities should consider involving religious leaders to increase awareness of tax compliance and reduce tax evasion (Dubrovin, 2019).

3 METHODOLOGY

In many civilized, fully democratic countries, this crime is considered very serious, for its commission there are strict sanctions, up to 15 years in prison - for example, in South Korea, Germany. Moreover, criminal prosecution of defaulters is carried out without regard to the fame and authority of the guilty person - in England, relatives were held accountable (Gao et al., 2023).

When investigating tax crimes, it is necessary to widely involve the active participation of tax authorities in collecting evidence on behalf of the state. To do this, we will consider the problems of the German tax authorities in the fight against tax crimes using the example of foreign experience.

If a pre-trial investigation on tax issues is carried out by the prosecutor’s office or the police, then the fiscal authority will not stand aside; on the contrary, it will have certain procedural rights. According to Article 403 of the German Tax Code, the tax authority has the right to become involved in cases where the prosecutor’s office or the police are investigating tax crimes. He must be promptly informed about the place and time of investigative actions, and also have the right to ask questions to the accused, witnesses and experts (German Tax Code).

Thus, such participation of a representative of the fiscal authority is not of a passive, formal nature. In practice, their employees can direct the investigation in the right
direction by participating in the pre-trial investigation. They have the right to participate in the most important investigative actions.

Although the country's tax authorities, as a victim, cannot participate in the interrogation of a suspect or witness during the pre-trial investigation, he has such a right at the main court hearing.

It should be noted that the person who drew up the tax audit report must be recognized as a specialist, and the specialist cannot be recognized as a representative of the victim. In this regard, it is better for tax authority lawyers to exercise these powers.

The tax authorities of our country have the same competence as their German colleagues, using the rights of the victim in accordance with Article 71 of the Code of Criminal Procedure of the Republic of Kazakhstan (Code of Criminal Procedure). In addition, tax authorities have the right to directly participate in a judicial audit and express their opinion on the issues raised for inspection and ask additional questions. In our opinion, the competence provided for by the Criminal Procedure Law should be widely used in investigative and judicial practice. The supervising prosecutor and tax authorities must require this from the investigator.

A significant part of tax offenses are of an organized nature, it should be noted that at present they have a clearly thought-out structure at all stages of preparation and commission, criminals use sophisticated schemes and methods of evasion, taking into account the existing “gaps” in the legislation, allowing an unscrupulous taxpayer to use various “loopholes” to evade paying taxes and hiding your income.

As practice shows, tax offenses, as a rule, are committed by well-educated individuals who are well versed in economic and legal issues and successfully use them to evade taxes.

There are a large number of tax crimes, different in their ways and methods, and the current economic situation in our country only contributes to the formation of many new ways of tax evasion.

Based on the foregoing, it is quite obvious that tax crimes have a huge social danger and the fact that it has a criminal law prohibition is completely illogical and cannot be doubted.

A number of scientists believe that the social danger of this crime is expressed in the primary importance of tax payments in the financial activities of the state, therefore, current regulation and elaboration of all areas of legal protection of citizens are the key
to the normal development of the Kazakh economy.

Regarding the definition of the generic object of crimes related to evasion of taxes from organizations in the doctrine of criminal law, there is a certain unity of opinions.

Currently, in the science of criminal law, there is a pluralism of views on the definition of the type of object of tax crimes in general and criminal offenses related to tax evasion in particular. The problem of determining the specific object of a crime in the field of economic activity has not only theoretical, but also practical significance. The precise definition of the specific object of the corresponding type of crime in the field of economic activity makes it possible to determine the limits of action of industry legislation regulating public relations that are the object of criminal legal protection, which are caused harm or a real threat of harm is created for the corresponding type of crime in the field of economic activity (Criminal Code). Most often, the type of object of crime in the field of economic activity is understood to mean any specific direction, branch of economic activity, public relations in the area of which harm is caused or a real threat of harm is created to a given area of economic activity.

It seems that when determining the specific object of criminal tax evasion from an organization, one should take into account the need for structural isolation within the criminal law of legal norms that ensure the protection of public relations associated with the payment of mandatory payments. In connection with this, the visible object of crimes, responsibility for the commission of which is established by Article 245 of the Criminal Code of the Republic of Kazakhstan, is the totality of public relations arising in connection with the proper fulfillment of obligations related to the payment of taxes and other obligatory payments to the budget system of the Republic of Kazakhstan. In the theory of criminal law, there are various types of definitions of the direct object of crimes related to evasion of taxes from an organization.

At the same time, giving different content definitions of the direct object of this type of crime, most authors understand by the direct object of tax evasion the social relations arising in connection with the fulfillment of the obligation to calculate and pay taxes by organizations to the budgetary system of the Republic of Kazakhstan. In general, this definition expresses the essence of social relations that are the objects of criminal legal protection and for which the direct causes harm caused by tax evasion (Monteschio & Teixeira, 2021).
At the same time, most researchers identify only the main direct object of crimes associated with tax evasion from organizations. However, based on the specifics of tax legal relations as economic power relations arising, including in connection with the calculation and payment of taxes, taking into account their significance for the formation of the revenue part of the budget system, it seems possible to define tax as an additional direct object of tax evasion in public relations arising in connection with ensuring proper management in the financial sector of society. The allocation of this additional direct object is due to the following. Firstly, as noted earlier, tax legal relations are, by their legal nature, also power relations associated with public administration in the field of finance. Due to the commission of a criminal offense in the form of tax evasion from an organization, harm is caused to the entire system of tax administration, the normal order of activity of tax authorities. Secondly, the consequence of criminal evasion of taxes from an organization is there is a failure to receive funds to the budgets of public legal entities at the appropriate level, which entails or creates a real threat of improper fulfillment by the state of its obligations in one or another public sphere life, due to insufficient financial resources.

Typically, a tax audit is carried out in most cases using the taxpayer's open accounting documents, bank details and information stored in the information system of the tax authorities. However, in a number of cases, data on tax evasion, that is, the commission of a crime, can only be revealed through urgent investigative measures and urgent investigative actions. The problem is that the exact amount of unpaid taxes is determined by establishing “shadow” records, which can be found in paper or electronic form. Of course, if such data is sufficient to establish only through investigative measures, then it is necessary to begin a pre-trial investigation on the basis of a tax audit report. However, if investigative measures are insufficient to identify specific data, as we mentioned in the previous chapter, according to current legislation, a tax audit is ordered only within the framework of a criminal case on the initiative of the criminal prosecution authorities.

According to the current criminal procedural legislation, if there is no need to carry out urgent investigative actions, then the message of the operational representative is recorded in the accounting book and sent to the tax authorities for verification on the basis of tax legislation in accordance with Article 181 part 5 of the Criminal Code of the Republic of Kazakhstan. In turn, tax authorities have the right to use a risk management
system in order to select taxpayers for tax audits (Article 139 of the Criminal Code of the Republic of Kazakhstan). Based on this, periodic tax audits are appointed based on risk assessment (Article 145 of the Criminal Code of the Republic of Kazakhstan). For example, an entrepreneur engaged in the restaurant business recorded on computer equipment every type of service provided to clients, and thanks to this, recorded all financial and business transactions. However, not all sources of income are properly reported on tax returns. Information about this was received by the authorities carrying out the emergency search service, as a result of which, with the sanction of the prosecutor, special emergency search measures were carried out to secretly obtain information from computers, servers and other devices for collecting, processing, collecting and storing information.

The information received was transferred to the tax authorities, on the basis of which a tax audit report was drawn up and a pre-trial investigation was launched. From this we see that there was no need for urgent investigative actions due to the availability of relevant information in the form of evidence and the absence of the risk of its destruction. With the sanction of the prosecutor, special emergency investigative measures were carried out regarding the secret receipt of information from servers and other devices for collecting, processing, accumulating and storing information. The information received was transferred to the tax authorities, on the basis of which a tax audit report was drawn up and a pre-trial investigation was launched. From this we see that there was no need for urgent investigative actions due to the availability of relevant information in the form of evidence and the absence of the risk of its destruction. With the sanction of the prosecutor, special emergency investigative measures were carried out regarding the secret receipt of information from servers and other devices for collecting, processing, accumulating and storing information. The information received was transferred to the tax authorities, on the basis of which a tax audit report was drawn up and a pre-trial investigation was launched. From this we see that there was no need for urgent investigative actions due to the availability of relevant information in the form of evidence and the absence of the risk of its destruction.

And if traces of tax evasion, recognized as evidence, can only be detected by conducting investigations into “shadow” accounting in the form of a paper document, which cannot be postponed if there is a risk of its destruction and falsification of documents, then the damage must be determined through urgent investigative measures,
confirm it with a specialist’s certificate and submit it to the court. A preliminary investigation should be launched. In addition, in the previous chapter we noted cases where it is impossible to determine the exact amount of damage to initiate a criminal case, and suggested what changes should be made to the legislation.

Based on these reasons, immediately after the start of the pre-trial investigation, it is necessary, with the sanction of the court, to conduct a search and seizure in the places where evidence is stored. The success of implementing measures often depends on the agreement and cooperation of those who implement these measures. At the initial stage of the investigation, the participants, in addition to the investigator and operatives, usually include specialist economists from the forensic department, employees who are proficient in computer equipment, software and information technology.

After discovering “shadow” accounting, witnesses should be urgently questioned in order to prevent collusion between those involved in the crime. It should be noted that “shadow” accounting can be kept in rough notes (drafts) in notebooks, and accordingly, it is difficult to conduct a tax audit on the basis of which people’s personal bank accounts were used and to which people goods were sold from which suppliers' goods were purchased. Perhaps they still have documents confirming their testimony. Additionally, community members are currently using the popular Kaspi app. Therefore, direct evidence can be found. At the same time, rough notes serve as a guide for collecting direct evidence. Next, having ordered a forensic medical examination of these records, it is necessary to identify the author of the notes and carry out appropriate investigative actions depending on the investigative circumstances. At the end, a tax audit report is drawn up and, if necessary, a forensic economic examination is appointed.

In addition, tax audits are carried out in every area of business (construction, transport, etc.). At the same time, in accordance with tax legislation, the tax authority has the right to involve a specialist with such special knowledge and skills, including officials of other government bodies, in conducting a tax audit, to study and advise on issues requiring special knowledge and skills. Based on the written questions, the specialist participating in the audit draws up a conclusion, which is used when conducting a tax audit. Copies of such written questions and conclusions are attached to the tax audit report, including a copy of the tax audit report being handed over to the taxpayer.

Therefore, if a specialist with special knowledge and skills is involved in a tax audit, then it is necessary to involve a specialist during the pre-trial investigation.
Any criminal procedural law requires that the person being interrogated begin with a free conversation about the circumstances of the case known to him, prohibits asking leading questions and requires participants in the process not to disclose data from the pre-trial investigation without the permission of the investigator. Consequently, the investigator not only has the right to take measures to conceal the content and volume of evidence collected in the case, but also has an obligation.

Interrogation on tax crimes usually begins with witnesses, and the person who performed the tax audit must be interrogated as a specialist in accordance with the new criminal procedural legislation; the procedure for interrogating him is similar to the procedure for interrogating an expert, which will be discussed separately below.

The interrogation should begin with ordinary people as witnesses, since most of them are not interested in deception. Among them are managers and representatives of counterparties, accounting employees, cashiers, storekeepers, as well as drivers and forwarders who delivered goods. In accordance with their official duties, they can testify about the procedure for organizing and maintaining records, reporting, delivery and receipt of inventory items, their storage, sale, delivery of cash receipts to the cash desk, as well as the location of unofficial documents.

In addition, if the witness does not appear at the invitation of the investigator; does not truthfully report everything that happened in the case and does not answer questions; if he is warned about this by the investigator, if he divulges information about the circumstances known to him in the case, the court may impose a monetary penalty on them in the amount of up to fifty monthly calculation indices. A witness, victim, specialist, translator who have the right to such protection are subject to monetary penalties for failure to fulfill their procedural duties.

Thus, in order to conduct a high-quality interrogation during the investigation of tax crimes, and its results influence the establishment of objective truth, it is necessary to have the appropriate knowledge and skills in the field of financial and tax legislation. Of course, when receiving, searching and checking documents, he is assisted by specialists, and when interrogating people, he must conduct this investigation himself.

4 RESULTS AND DISCUSSION

Let's consider those acts that are named in this article as ways to evade paying taxes (other mandatory payments).
Article 245 of the Criminal Code names the following methods of tax evasion (mandatory payment): “failure to submit a declaration, when filing a declaration is obligatory to include in the declaration deliberately distorted data on income and (or) expenses by concealing other objects of taxation and (or) other obligatory payments, if this act resulted in non-payment of tax and (or) other obligatory payments on a large scale”.

Failure to file a declaration of total annual income. Since this action involves a “declaration of total annual income,” it is therefore a matter of corporate income tax - no other tax paid by organizations uses such a category as “total annual income.”

In accordance with Article 315 of the Tax Code, “The payer of corporate income tax submits to the tax authority at the location of its location a declaration on corporate income tax no later than March 31 of the year following the reporting tax period, with the exception of a non-resident who receives from sources in the Republic of Kazakhstan exclusively income subject to taxation at the source of payment, without operating in the Republic of Kazakhstan through a permanent establishment, unless otherwise established by this article.”

We also note that the disposition of Article 245 of the Criminal Code also deals with the objects of taxation. However, in this article, the term “declaration” is associated with “total annual income.” The objects of corporate income tax are not “total annual income,” but the following types of objects: “1) taxable income; 2) income taxed at the source of payment; 3) the net income of a non-resident legal entity operating in the Republic of Kazakhstan through a permanent establishment” (Article 223 of the Tax Code).

Let us emphasize once again that the crime covered by this offense will not be the failure to submit a declaration in itself, but such failure to submit it, which acts as a method of tax evasion and actually leads to this non-payment.

Entering into the declaration deliberately distorted data on income or expenses. Since in this case we are talking about a declaration related to income and expenses, we can only talk about a tax such as corporate income tax. When calculating, for example, property tax, data on income and expenses is not required. The same can be said about the vehicle tax and land tax. Note that all of these taxes also require the submission of a declaration (Víghová, 2022).

There can be no general discussion about other taxes or obligatory payments in
relation to this income as an object of taxation. The above also spoke about “income and expenses”, which are also not the object of any of the taxes or obligatory payments.

Thus, we are faced with a clearly sloppy wording of the article, which makes it difficult to both understand and apply

Evasion of advance payments of corporate income tax is not covered by this article.

Firstly, non-payment of these payments does not express non-payment of this tax. Failure to pay this tax can only be judged at the end of the tax period, the expiration of the deadline for submitting a tax return and the deadlines established by the Tax Code for the payment of the tax itself.

Secondly, non-payment of these payments is not carried out through the actions provided for in Article 245 of the Criminal Code.

The same can be said about current payments provided for land tax, vehicle tax, and property tax.

The article in question establishes liability for evasion of payment not only of taxes, but also of mandatory payments.

By obligatory payments we mean payments of a financial and legal nature listed in the Tax Code. In addition, the article in question only talks about those obligatory payments that are included in the state budget.

Failure to pay other obligatory payments (for example, payments to non-state pension funds, as well as guilty non-budgetary funds) does not constitute a crime under this article.

As mentioned above, a qualifying feature is non-payment of tax on a large scale.

Consequently, there is an internal inconsistency of this article. Therefore, this note should be interpreted broadly, extending the indicator established in it to both taxes and obligatory payments of a financial and legal nature. By the way, the very title of Article 245 of the Criminal Code “Evasion of taxes and (or) other obligatory payments to the budget from organizations” should also be interpreted broadly: in fact, the article deals not only with the evasion of taxes, but also with mandatory payments budget.

The amount of unpaid tax, when determining whether this failure to pay is large, is calculated in relation to the tax that is the subject of the crime. Thus, if we are talking about non-payment of corporate income tax, then the amount of unpaid tax, as a
qualifying element of a crime, is determined only by corporate income tax. Debts for other taxes are not taken into account when determining this amount.

5 CONCLUSION

The legislation regulating the payment of taxes from an organization is imperfect; in particular, it is necessary to present the wording more clearly and specifically, which makes it difficult to understand. Evasion of advance payments of corporate income tax is not covered by this article. Failure to pay other obligatory payments (for example, payments to non-state pension funds, as well as guilty non-budgetary funds) does not constitute a crime under this article. To solve tax crimes, it is necessary to involve specialists in the field of tax and financial law, accounting and economic analysis. A legal entity is not liable for the obligations of the founder, and the founder is not responsible for the obligations of the legal entity, does not apply to persons who have committed tax crimes on behalf of the organization.

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