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*Maksym Zabashtanskyi, Vyacheslav Surzhyk, Ludmila Borisenko***MODERN ASPECTS OF CONDUCTING FORENSIC ACCOUNTING EXPERTISE IN UKRAINE***Максим Забаштанський, Вячеслав Суржик, Людмила Борисенко***СУЧАСНІ АСПЕКТИ ПРОВЕДЕННЯ СУДОВО-БУХГАЛТЕРСЬКОЇ ЕКСПЕРТИЗИ В УКРАЇНІ***Максим Забаштанский, Вячеслав Суржик, Людмила Борисенко***СОВРЕМЕННЫЕ АСПЕКТЫ ПРОВЕДЕНИЯ СУДЕБНО-БУХГАЛТЕРСКОЙ ЭКСПЕРТИЗЫ В УКРАИНЕ**

Accounting expertise is an independent source of evidence in legal proceedings. The article presents the peculiarities of forensic accounting in Ukraine, highlights the contemporary key issues of theoretical and practical nature that exist in the activity of the forensic accountant, as well as suggests ways of their solution, which are aimed at the prospects of the development of the profession of forensic accountant. The issue of liability is one of the main issues that should be resolved only by the investigator and the court on the basis of the analysis of all the circumstances of the case. A forensic accountant has the right to investigate the actual compliance of officials with the requirements of regulatory and legal acts within the framework of accounting, which does not mean resolving the issue of the responsibility of these persons, since the basis for liability for the damage caused is the employee's guilt, which is proven in court.

Keywords: *accounting expertise; forensic accounting expertise; accounting; forensic accountant; forensic expert; forensic expert activity.*

Ref.: 8.

Бухгалтерська експертиза є самостійним джерелом доказів у судочинстві. У статті наведено особливості судово-бухгалтерської експертизи в Україні, висвітлені сучасні основні проблемні питання теоретичного і практичного характеру, що існують в роботі експерта-бухгалтера, а також запропоновано шляхи їх вирішення, які спрямовані на перспективи розвитку професії експерта-бухгалтера. Питання про відповідальність – одне з основних питань, що підлягає вирішенню лише слідчим і судом на основі аналізу всіх обставин справи. Експерт-бухгалтер має право досліджувати фактичне дотримання посадовими особами вимог нормативно-правових актів у межах ведення бухгалтерського обліку, що не означає вирішення питання про відповідальність цих осіб, оскільки підставою для матеріальної відповідальності за нанесений збиток є вина працівника, що доказана в суді.

Ключові слова: *бухгалтерська експертиза; судово-бухгалтерська експертиза; бухгалтерський облік; експерт-бухгалтер; судовий експерт; судово-експертна діяльність.*

Бібл.: 8.

Бухгалтерская экспертиза является самостоятельным источником доказательств в судопроизводстве. В статье приведены актуальные моменты судебно-бухгалтерской экспертизы в Украине, освещены современные основные проблемные вопросы теоретического и практического характера, существующие в работе эксперта-бухгалтера, а также определены необходимые мероприятия и пути их решения, направленные на перспективы развития профессии эксперта-бухгалтера. Вопрос об ответственности - один из основных вопросов, который подлежит разрешению только следователем и судом на основе анализа всех обстоятельств дела. Эксперт-бухгалтер имеет право исследовать фактическое соблюдение должностными лицами требований нормативно-правовых актов в пределах ведения бухгалтерского учета, что не означает решения вопроса об ответственности этих лиц, поскольку основанием для материальной ответственности за нанесенный ущерб есть вина работника, которая доказана в суде.

Ключевые слова: *бухгалтерская экспертиза; судебно-бухгалтерская экспертиза; бухгалтерский учет; эксперт-бухгалтер; судебный эксперт; судебно-экспертная деятельность.*

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Formulation of the problem. The development of market relations, the emergence of a non-state form of ownership has greatly changed the system of economic control in Ukraine, an important part of which is forensic accounting expertise. The main facts of the financial and economic activity of business entities in many cases are combined with the risks of possible abuses and thefts, which is facilitated by corruption and impunity as a result. Combating economic offenses is one of the most important issues requiring special research. In the context of the transformation of economic relations in Ukraine, the problems of the functioning of property structures are aggravated, the criminalization of economic and related relations continues to exist. This resulted in the spread of the scale of offenses in the economy, an increase in the "qualitative" and quantitative growth of crime in the economic direction. The introduction of new automated forms of accounting into the practice of accounting for busi-

ness leads to a change in the limits of special accounting knowledge that are applied to the investigation and prosecution of criminal cases of property theft. Forensic accounting expertise in modern conditions increases its scientific and technical capabilities, expands the range of issues that are solved by it. However, it is appropriate to emphasize the need for strict compliance of the expert with his competence and the inadmissibility of setting legal issues for its resolving. In addition, the relevance of the study is deepened by the need to generalize theoretical and practical issues that exist in the work of the forensic accountant, as well as the definition of the necessary measures and ways of their solution.

Analysis of recent studies and publications. The leading Ukrainian and foreign scholars and practitioners of both economic and legal direction made quite a significant contribution to studying and solving the existing problems of different nature in the forensic accounting expertise, in particular: M. F. Bazas, M. T. Bilukha, M. I. Kamlyk, M. D. Korinko, G. G. Muminova-Savina, V. D. Ponikarov, O. R. Rosynska, V. S. Rudnytski, B. F. Usach, V. M. Sharmanska and others. The analysis of recent researches and publications revealed important professional studies, which are devoted to issues of methodical and organizational support of forensic accounting expertise. L. V. Gutsalenko, L. G. Mikhalchyshina, I. K. Pentiuk, V. M. Sydoruk are among such authors.

The above-mentioned authors conducted in-depth studies of the issues of conducting forensic accounting expertise and the role of forensic accountant in it, and also examined his rights and responsibilities during the audit. However, a comprehensive and systematic analysis of scientific literary sources suggests the existence of a significant range of discussion issues faced by academics and forensic accountants in conducting forensic analysis, which necessitates their further research.

Unsolved aspects of the general problem. Despite the considerable experience, it should be noted that the problems of providing the effectiveness of the forensic accounting expertise results in Ukraine, its quality, and the existence of diverse approaches to the formation and development of the profession of forensic accountant remain insufficiently researched. All this leads to the search for alternative ways, the definition and application of necessary methods and approaches that would contribute to solving the problem issues of conducting accounting expertise.

Research objective. The main purpose of this study is to highlight the current state of forensic accounting expertise in Ukraine, to reveal the most important and acute problems that exist in the professional activity of forensic accountant and to find ways to solve them, aimed at improving the efficiency and prospects of this area of activity.

Main material. In the process of conducting forensic accounting expertise forensic accountants conduct research of primary accounting documents, accounting registers, forms of financial and tax reports provided to them by the investigator or the judicial authorities with the help of general scientific methods and special techniques and methods. Special methods of cognition are the methods which consist of information obtained by individuals in the process of study and work on the basis of the study of a certain branch of science, technology, art or crafts. Proceeding from the correct definition of special knowledge, it is necessary to solve the problem issues about the competence of the expert, the presence of a sufficient amount of knowledge. In practice, there is often a mix of technical, economic, technological and legal methods of cognition with the accounting ones. According to article 10 of the Law of Ukraine "On Forensic Expertise" [3] the persons who have the necessary knowledge in a particular field can be the forensic experts. Specialists of specialized state institutions and departmental services conducting forensic examinations should have higher education, undergo appropriate training and certification as forensic experts of a certain specialization. Persons recognized as incapacitated in accordance with the law, as well as those who have a criminal record, can not be involved in the performance of duties of a forensic expert. Forensic accountant is a highly qualified specialist in the field of accounting, analysis and economic control, whose duty is to study the correctness of the reflection of the economic activity of the enterprise in the ac-

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counting documents during the investigation and hearing of criminal and civil cases. The competence of an expert is a common concept, which includes special knowledge, on the one hand, and the validity of their application, that is, the set of rights and obligations defined by the criminal procedural law - on the other hand [2]. Violation of the competence of an expert may occur when an expert is intruding into someone else's area of knowledge or performing functions that fall within the competence of the investigator or court. Such violations are:

- resolving legal issues related to the subjective part of the crime;
- independent clarification and collection of evidence by obtaining testimony from defendants and witnesses.

Sometimes, forensic accountants are trying to solve issues that fall within the competence of specialists in other areas of knowledge: technologists, builders, chemists, etc.

The Law of Ukraine "On Forensic Expertise" gives certain rights to forensic expert [3]. In particular, regardless of the type of proceedings, the expert has the right:

- to get acquainted with the materials of the case concerning the expertise;
- to file a petition for the investigator (court) to provide additional and new materials necessary for the solution of the questions raised;
- with the permission of the person or body that appointed the expertise, be present during investigative and judicial proceedings, to file petitions concerning the conducting of expertise and to ask questions to the persons being interrogated;
- to list in the expert opinion the facts that are relevant to the case, about which he was not questioned;
- in case of disagreement with other members of the expert commission to draw up a separate expert opinion;
- to give written answers to questions asked during interrogation;
- to challenge in the appropriate way the actions and decisions of person or body that appointed the expertise, which violate the rights of an expert or the procedure of conducting an expertise.

The expert may refer complaints about the actions and decisions of the bodies of inquiry or investigator to the prosecutor. The current legislation gives three days to the prosecutor to consider the complaint and give the answer to the expert. In case of rejection of the expert's complaint, the reasons for its rejection should be clearly formulated in the answer. A complaint about the prosecutor's decisions and actions is addressed to higher prosecutor's body.

During the course of forensic expertise, a forensic accountant is not allowed to:

- to conduct an expertise without a written permission of the head of the expert institution (its structural unit), except for the examinations entrusted to him immediately after the investigation, in which he participated as a specialist, as well as the examinations carried out during the trial;
- to collect materials to be investigated by himself, as well as to select the source data for the examination, if they are reflected ambiguously in the materials provided to him;
- to disclose the preliminary investigation data without the permission of the prosecutor or investigator;
- to come into contacts, not agreed by the expertise procedure, with any persons, if such persons are directly or indirectly related to the expertise;
- to keep criminal, civil and arbitration cases, as well as material evidence and documents that are subject to examination, outside of the office.

For violations committed during the forensic expertise, which did not lead to criminal or administrative liability, the staff member of the expert institution may be brought to disciplinary responsibility, and freelancer - dismissed from the position of a freelance expert.

According to art. 12 of the Law of Ukraine "On Forensic Expertise" [3] the following responsibilities are assigned to an expert:

- to accept for execution the assigned to him expertise;

- to notify in writing the person or body that appointed the expertise about the impossibility of conducting it, if the submitted question goes beyond the competence of the expert (specialist) or if the materials provided to him are insufficient for the solution of the question, and the requested additional materials have not been received;

- to appear on the call of the person or body that appointed the expertise, in order to be interrogated about the conducted expertise or to report about the impossibility of conducting it;

- to declare a self-discharge in the presence of circumstances stipulated by law;

- to conduct research in the presence of a suspect, accused, defendant or parties in civil and commercial cases with the permission of the person or body that appointed the expertise;

- to give an explanation of his expert opinion at the request of the inquiry authority, investigator, prosecutor, judge, court.

A forensic accountant is obliged to declare a self-discharge in case that he: is personally, directly or indirectly interested in the consequences of the case; is a relative of the parties or other persons involved in the case; is in personal relations with the persons involved in the case; is or was on service or in other dependence as to the parties, other persons involved in the case; conducted an audit, the materials of which formed the basis for this case; was found incompetent; concealed the circumstances that cast doubt on his impartiality [4].

The expert is obliged to declare his self-discharge on the same reasons. Moreover, it is his duty even when he personally believes that the above circumstances are not the obstacles to his participation in the case. A forensic accountant should not give an opinion on matters that go beyond his competence. In such cases, as well as when the data provided to him are not enough, the expert must inform in writing the investigator or court about the impossibility to make a conclusion. Actual data are established by accounting documents, case materials, witnesses', victim's, suspect', accused' statements, expert opinion, material evidence, records of investigative and court actions and other documents. Records of investigative and court actions can certify the circumstances and facts discovered during inspection, search, seizure, during the experiment and other actions. Seizure or search records that contain information about accounting transactions will help the expert to determine the source of the origin of accounting documents seized at the enterprise or officials and the reliability of the conduct of business operations [1].

Acts of documentary audit play a dual role for a forensic accountant:

- firstly, they are the source of obtaining the data necessary for the expert, which he uses in drawing up a conclusion;

- secondly, it is necessary to check the validity of the audit results.

At the same time, the forensic accountant is not connected with the assessment of the facts provided by the auditor. A forensic accountant may take into account the testimony of the accused, witnesses and victims about facts that help him to establish the circumstances of clarification by means of accounting expertise. The conclusions of experts of the other specialty play important role for a forensic accountant. In many cases, without these conclusions, it is impossible to determine the amount of damage, the period of its formation, as well as to make a report about the state of accounting. As for unofficial accounting documents of materially responsible persons ("draft records"), they are used for comparison with the data of accounting. Sometimes, if it is allowed by their system of records, it is possible to make calculations using them, to analyze the movement of commodity-material values, to take them into account when determining the size of the shortages and the time of their formation.

Such an expert's attitude to unofficial records is possible only in case of presence of two conditions: if their receipt and storage are recorded in strictly prescribed order (that is, when their origin is reflected in the materials of the case, the data containing in them are confirmed by evidence, taken by the investigating authority and the court as reliable ones and are subject to research); if the investigator and the court ask questions about it.

Forensic expert is subject to liability: for malicious evasion from coming to court, to the authorities of preliminary investigation or inquiry under art. 185³ or art. 185⁴, part 2 of the Code of Ukraine on Administrative Offenses, as well as for the provision of knowingly false conclusions or for refusing, without reasonable reason, to perform the duties assigned to him in accordance with art. 384 and art. 385 of the Criminal Code of Ukraine. The procedural rights of an expert are also established by the Criminal Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and are more extensive than the rights of an expert, established by the Code of Ukraine on Administrative Offenses. Thus, as the analysis of the data of the procedural codes shows, they considerably increase the range of expert authority in criminal and administrative-judicial processes. In our opinion, it is advisable to consolidate the special rights of an expert during an expertise with the participation of several experts: to consult with each other; to give a separate expert opinion in case of disagreement with other members of the expert commission. Forensic expert, on the grounds and in the manner prescribed by the law, may be subject to disciplinary, administrative, material and criminal liability. Thus, only those operations, in which only certain parts of financial and economic activity are recorded, are investigated with the help of forensic experts.

One can not ignore the duties of the head of an expert institution, the main among which are:

- organizational provision of conducting an expertise;
- material and technical provision of conducting an expertise;
- observance of the legislation and normative acts concerning an expertise;
- control over the timely conduct of an expertise.

An expert has no right to engage in the collection of materials that is necessary for him to give an expert opinion. If it turns out that the materials provided are insufficient to resolve the questions posed to the forensic accountant, he has the right to file a petition (both verbally and in writing) about the provision of additional materials. In the event of non-compliance with this request, when the materials do not allow solving the issue at all, the expert must inform the appointing authority in writing about the impossibility of giving an expert opinion [2]. Acting within the range of his special knowledge, a forensic accountant in the process of studying accounting documents assesses them and on this basis discovers the facts related to the performing of accounting, the validity of the reflection of business transactions in accounting. The attitude of the forensic accountant to other materials of the case differs from the study of the documents of accounting. The expert may use data discovered by other case materials; they are taken into account during the analysis and evaluation of accounting operations, used in formulating answers to the questions asked. However, the research of these materials is limited by expert's special knowledge and subject of examination. An expert takes them into account when they are taken by the investigator or court as evidence. The right of the expert to investigate and use such materials of the case does not mean that he may assess the sources themselves, means of proof, for example, to assess the appropriateness of the organization of the audit and the competence of persons included in the audit commission, the veracity or false of testimony of the witnesses, defendants and victims, the validity of the results of other examinations, etc. Answers to such questions go beyond the competence of the expert. Correct use of the materials of the case helps the forensic accountant to find out the circumstances associated with the process of registration of accounting documents according to their purpose, the conditions under which they were subsequently presented, as well as to obtain information about the stages of passing the documents in the accounting system and on the committed on their basis actions (e.g. settlements with debtors and creditors, accountable persons, etc.). Only using all the case materials related to the subject of examination, the expert can complete the study and give comprehensive answers to the questions asked. This goal will not be achieved if the expert is restricted within the bounds of the accounting documents

and the conclusions of other experts and deprived from taking into account the testimony of witnesses, defendants, victims, etc. It is difficult to talk about the direct responsibility of forensic experts, since the forensic expert activity is mainly regulated by the administrative-legal method, and the legislation of Ukraine provides for criminal liability for giving a knowingly false conclusion. In the event that the expert opinion violates the rights of the plaintiff or defendant, the lawyer of either party may apply to the court for a new expertise [5].

Conclusions and suggestions. Thus, we can conclude that the current administrative-procedural legislation of Ukraine only in general terms outlines the rights and obligations of an expert in criminal proceedings and cases on administrative offenses, without specifying them. The limitation of these elements of the legal status of an expert testifies to the necessity of expanding the range of rights and obligations of the given subject of proceedings in cases on administrative violations, who, not being the main participant of the cases, however, actively contributes to its correct resolution. Further scientific research of the theoretical and practical aspects of the rights and obligations of an expert in cases on administrative violations, as well as other elements of his legal status, the development of specific proposals for the improvement of legislation will contribute to increasing the legality, efficiency, validity of decisions in cases on administrative violations in particular, and in the sphere of administrative-legal relations in general. It should be noted that at present in Ukraine the legal and regulatory framework is imperfect, namely, it does not contain certain norms concerning a forensic accountant, but is based on the principles of classical accounting, and therefore requires specific normative documents, which will specify detailed rights, obligations and responsibility of a forensic accountant.

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