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МОМЕНТ ВИКОНАННЯ ОBOB'ЯЗКУ ЗІ СПЛАТИ ПОДАТКІВ ТА ЗБОРІВ: ПОДАТКОВО-ПРАВОВИЙ АСПЕКТ

Анотація. *Процедуру виконання податкового обов'язку пов'язують з особливостями регулювання бюджетних відносин. Формування за рахунок податкових надходжень коштів, що забезпечують реалізацію державних функцій, підносить податкові право-відносини до рангу одних з найбільш значущих для існування держави та тих, що вимагають безумовного державного регулювання. Тому основна мета роботи полягає у аналізі зобов'язань щодо сплати податків та зборів з огляду податково-правового аспекту. Сфера дії бюджетного законодавства пов'язується, перш за все, із стадіями бюджетного процесу, процедурами появи, виконання та звітності актів про бюджет. Встановлено, що бюджетне та податкове законодавство відрізняються у питаннях оцінки суб'єктного складу. Держава, надаючи банку ліцензію на здійснення банківських операцій, в тому числі і перерахування податків до доходних частин бюджетів, фактично переконує платника в тому, що банк є саме тим суб'єктом, через якого платник не лише має можливість, але і обов'язок сплатити податок. З огляду на наведене вище, виходячи із системного аналізу статей 1, 3, 4, 5, 16, 38 та 129 Податкового кодексу України можна прийти до висновку, що виконання податкового обов'язку платником регулюється виключно нормами податкового законодавства до якого неможливо віднести ні Бюджетного кодексу України, ні спеціальні Закони, які регулюють питання обігу грошових коштів. За такої умови податкове законодавство не покладає на платника додаткових обов'язків, або ж застосування санкцій за діяння, які призвели до ненадходження коштів, сплачених ним у якості податків та зборів, з вини інших осіб, зокрема, банків. Так само належне виконання платником податків свого податкового обов'язку (сплата у встановлений законом строк та у повному обсязі), але не надходження цих коштів на єдиний казначейський рахунок з вини банку, не може породжувати виникнення у такого платника податків повторного обов'язку сплати податків, або зборів. Інший підхід правозастосування був би підставою покладення на платника обов'язку зі сплати податків та зборів двічі.*

Ключові слова: бюджетне законодавство, платник податків, платоспроможність, комерційний банк.

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MOMENT OF EXECUTION OF THE DUTY TO PAY TAXES AND FEES: A TAX-LEGAL ASPECT

Abstract. *Formation by tax revenues of funds that ensure the implementation of state functions, brings tax legal relations to the rank of one of the most significant for the existence of the state and those who require unconditional government regulation. Therefore, the main aim of the research work is to analyse the obligations to pay taxes and fees in terms of a tax-legal aspect. The scope of the budget legislation is primarily related to the stages of the budget process, procedures for the appearance, execution and reporting of acts on budget. It is established that budget and tax legislations differ in terms of evaluation of the parties. A state, by granting a bank a licence to carry out banking operations, including transfer of taxes to the revenue parts of budgets, actually, convinces a payer that the bank is the entity through which a payer not only has an opportunity, but also a duty to pay tax.*

Key words: budget legislation, taxpayers, platform, commercial bank.

INTRODUCTION

Revealing the fundamentals and particularities of legal regulation of execution of the tax obligations is definitely an actual field of research, in particular, at the stage of reforming the tax legislation of Ukraine. Despite the fact that considerable attention has already been paid to the study of the legal nature of the tax obligation, the necessity for scientific and theoretical development of procedural aspects of its implementation is due to the absence of special domestic studies of tax law theory [1;2]. Since the ultimate meaning of tax relations is contained in their implementation, the clarification of the fundamentals and particularities of the execution of tax duties has both theoretical and practical significance.

A comprehensive view on the process of execution of tax duty and paying taxes sometimes leads to common views and conclusions. At the same time, the very procedure for execution of the tax duty is tried to be associated with the particularities of regulating budgetary relations, that is, the relations connected with the turnover of funds, namely, the regulation of banking activity [3]. It goes without saying that the comprehensiveness of public relations allows to form a complete picture of the movement of a taxpayer's funds to the final recipient, a state-owner or the territorial community (depending on the type of tax or fee and the budget to which it is entirely or partly directed). At the same time, such comprehensiveness of social relations objectively implies

clarification of the place of each branch of law (or sub-branch or institution) in such a regulation [4;5;6]. It is in this sense that we consider it necessary to clearly delineate these two constructions: a) relations on payment of taxes and fees at the time of execution of the tax duty in this regard; b) relations on the movement of funds from taxpayers and fees to the account of their tax liability and their receipt on the relevant treasury accounts of budgets. That is why it is advisable to pay attention to the correlation and regulation measure of budgetary and tax relations, relations on money turnover and execution of tax duty.

For proper execution of the tax duty in terms of the Tax Code, two conditions should coincide: 1) payment of tax amounts in full; 2) payment of the relevant amounts within the period established by tax legislation [7].

The first condition provides for payment of the tax amount by a taxpayer in full. The tax duty from the payment of relevant money sums can constitute the content of the legal relations, that is, to be an element of the tax obligation. The tax amount should be calculated by a payer on the basis of the provisions of the current tax legislation. This coincides to some extent with another aspect of the execution of the tax duty of a payer prior to the tax payment, namely, tax accounting. In this case, a payer has the right to turn to the tax authorities for consulting or explanations of tax legislation, in particular, regarding the calculation of tax amounts, but the state tax service authorities do not have the obligation to calculate a tax amount for a taxpayer [8]. Consequently, the responsibility for its incorrect calculation is always assigned to a payer. The execution of the tax duty in time stipulates paying off tax amounts which are payable no later than the last day of the period which is determined by the legislation in respect of a tax or fee. The beginning of this period is determined by a certain calendar date from which a payer has an obligation to pay tax. According to general rule, making the change of the tax payment term is not allowed either to a payer or the supervisory authority except for the cases specially stipulated by the Tax Code of Ukraine [7].

1. MATERIALS AND METHODS

The methodological basis of the research work is a set of general and special methods of scientific knowledge, the use of which allowed to achieve a set goal and ensure the scientific reliability of the results. For comprehensiveness, completeness, objectivity, correctness and consistency of conclusions, these methods were used in the interconnection.

Dialectical method allowed to reveal objective and comprehensive knowledge of legal reality and determination of the essence of the phenomena under study in the unity of their material content and legal form. Structural and functional analysis allowed to take into account such features of the system as integrativity, correlation of the whole and a part, structure and functions and singling out the elements of the tax duty construction as well as the stages of its implementation. The comparative-legal method was used in the analysis of the current domestic and foreign tax legislation that made

it possible to summarise the scientific concepts of leading scientists in relation to theoretical and practical problems of execution of tax duty [9]. The use of historical-legal method helped clarify the evolution of legal thought about the nature and importance of taxes in the system of budget revenues. Special-legal (formal-dogmatic) method allowed to conduct an informative analysis of the current state of legislative provisions and develop proposals to eliminate the existing theoretical and legal contradictions as well as shortcomings in the legislation.

The methodological basis of the possibility to research a tax duty of a taxpayer as a law implementation process of adoption of the newest forms of interaction between government and taxpayers which essence is partnership and socially useful result was studied by such scholars as D. O. Hetmantsev, A. V. Holovach, P. M. Duravkin, O. V. Larina, D. H. Muliavka, O. V. Onishko, N. Yu. Onishchuk, H. V. Rossikhina, I. L. Samsin, R. V. Stetsko, M. M. Chynchyn, S. V. Shakhov and the others.

2. RESULTS AND DISCUSSION

2.1. Particularities of tax and budget regulation

When analysing the above problem, very often at the stage of law enforcement, when resolving tax disputes, the courts focus on the fact that the moment of execution of the tax duty should be associated with the receipt of a taxpayer's funds on account of his tax duty to the relevant treasury account [10;11]. So, according to para. 5 Art. 45 of the Budget Code of Ukraine, taxes and fees and other incomes of the state budget are recognized credited to the state budget from the date of transfer to the single treasury account – it is difficult to agree with it. When delimiting budgetary and tax relations, it is necessary to consider that according to Art. 9 of the Budgetary Code of Ukraine tax revenues are one of the main sources of the budget incomes formation. But this does not mean that the time of tax payment and collection ends at the time of receipt of taxes and fees to the budget.

First, crucial is the reference to para. 1.1 Art. 1 of the Tax Code of Ukraine according to which this act regulates relations arising in the field of taxes and fees, in particular, it determines a full list of taxes and fees levied in Ukraine, and the procedure for their administration as well as payers of taxes and fees, their rights and obligations, the competence of the supervisory authorities, the powers and duties of their officials during tax administration and liability for the violation of tax legislation. At the same time, Art. 1 of the Budgetary Code of Ukraine determines that it regulates relations arising in the process of preparation, consideration, approval and implementation of budgets, reporting on their implementation and control over compliance with fiscal legislation and issues of responsibility for violation of fiscal legislation as well as the legal principles of formation and repayment of state and local debt. It is demonstrably clear that the scope of the fiscal legislation is primarily associated with the stages of the budget process and the procedures for the appearance, implementation and reporting of budget acts. This does not give grounds to assume that the Budgetary Code of Ukraine at least

partially regulates the execution of tax duty. It regulates fund revenues to the profitable parts of budgets, but not the relations connected with the transfer of these funds by taxpayers to the authorized entities.

Second, the execution of the tax duty is regulated exceptionally by the tax legislation. On the basis of para. 3.1. Art. 3 Tax Legislation of Ukraine of the Tax Code of Ukraine, tax legislation of Ukraine consists of Constitution of Ukraine; this Code; Customs Code of Ukraine and other laws on customs matters in terms of regulation of legal relations arising in connection with the taxation of transaction fee of displaced goods across the customs border of Ukraine; current international treaties, consent on obligatoriness of which is given by the Verkhovna Rada of Ukraine and which regulate taxation issues; normative- legal acts adopted on the basis of and for the implementation of this Code and laws on customs issues; decisions of the Verkhovna Rada of the Autonomous Republic of the Crimea and local authorities on local taxes and fees adopted under the rules established by this Code. So, the Budgetary Code of Ukraine is not included in the legislation that regulates the execution of tax duties, namely, the tax payment. That is why one may not extend the validity of its rules regarding regulation of the payment of taxes and fees on determining the moment of such a payment [7].

Even if to imagine a situation that the execution of the tax duty regarding transferring funds to the single treasury account should occur in compliance with the norms of the Budgetary Code of Ukraine and the Law of Ukraine On Payment Systems and the Transfer of Funds in Ukraine, there will be an unconditional collision of the norms of these normative legal acts with the norms of the Tax Code of Ukraine (they lay different approaches to determining the moment of payment of taxes and fees). Also, on the basis of para. 4.1.4 Art. 4 of the Tax Code of Ukraine (legality presumption of a payer's decisions) in any case a decision should be made in favour of a taxpayer.

If to speak about the absence of legal regulation of the issue at the level of the Tax Code of Ukraine and characterise it as a gap in the legislation, overcoming this negative legal phenomenon in public areas of law by analogy is not allowed. This follows from the content of Art. 3 and Art. 5 of the Tax Code of Ukraine. Thus, according to para. 5.2. 5 of the Tax Code of Ukraine, if the concepts, terms, rules and provisions of other acts contradict the concepts, terms, rules and provisions of this Code, for regulation of the taxation concepts relations, the terms, rules and provisions of this Code are applied. And the concepts and content of "execution of tax duty" are determined by the norms of the Tax Code of Ukraine. There is also no need to refer to para. 5.3 of article 5 of the Tax Code of Ukraine which establishes the possibility of applying the analogy of the law as a means of overcoming the gaps of tax and legal regulation. First, there is no term that would not have been determined in the tax legislation (payment, transfer, execution of tax obligations – all these categories are determined by the Tax Code of Ukraine). Second, para. 5.3 and 5.2 Art. 5 of the Tax Code of Ukraine contradict each other, thereby creating a collision of norms which in tax and

legal regulation should be resolved again in favour of a taxpayer (para. 4.1.4 para. 4.1 Art. 4 of the Tax Code of Ukraine) [7].

According to para. 38.1. Art. 38 of the Tax Code of Ukraine, the execution of the tax duty is the payment in full by a payer of the relevant amounts of tax obligations within the period established by the tax legislation. That is, according to the current tax legislation there are two established requirements (quantitative and temporary) for the recognition of a taxpayer one who has fulfilled his tax duty properly:

- a) payment of tax obligations in full;
- b) payment of tax liabilities within the period established by law.

The norms of the Tax Code of Ukraine also prohibit the establishment of methods and procedure for the execution of tax obligations than those provided by the Tax Code of Ukraine (para. 38.3 Art. 38 of the Tax Code). Moreover, taking into account a taxpayer's status in relations with the subject of authority (supervisory authority), a payer can not have additional obligations than those provided by the current Tax Code of Ukraine. A taxpayer can not bear the negative consequences of the activity of other state authorities which are obliged to control the financial institutions through which the payment of taxes and fees is settled [12]. In this case, it is the state that acts as an interested party that should take all possible measures to prevent violation of the rights and interests of bona fide taxpayers as well as for the timely and full fund revenues paid by such a payer through financial institutions. Otherwise, there will be a violation of the balance of public and private interests in the tax field, and a taxpayer will be obliged to double the execution of tax duty and the obligation to monitor financial institutions what is impossible. Such a situation is confirmed by the analysis of Art. 16 of the Tax Code of Ukraine Duties of a Taxpayer that, first, contains a full list of a payer's obligations, and second, it also establishes two criteria (quantitative and temporary) for the formation of the completion of the obligation to pay taxes and fees (para. 16.1.4 of the Tax Code of Ukraine).

Third, budget and tax legislations do not coincide in principle regarding the evaluation of the parties. Thus, the principal approach of financial-legal regulation (sub-sectors of which are budget law and tax one) regarding the existence of two parties (power and obligated) in the budget and tax regulation preserves. At the same time, if the execution of tax duty is associated, first of all, with the behaviour regulation of payers of tax and fees which are legal entities and individuals, the parties of budgetary relations radically differ from this. First of all, individuals are not the participants of the budget relations, at the same time, they are one of the main subjects of tax relations [13;14]. Besides, legal entities-taxpayers can not be automatically considered the subjects of budgetary legal relations either.

Thus, according to Art. 2 of the Budgetary Code of Ukraine Determination of Basic Terms, one can found out the approach of a legislator to the parties-participants of budgetary relations (the main holders of budget funds, recipients of budget funds and holders of budget funds), but their authorities are associated with the receipt and

expenditure of funds that come from the budget. Thus, for example, a recipient of budget funds is understood as a business entity, public or other organisation that does not have the status of a budgetary institution, authorised by the disposer of budgetary funds for implementation of the activities provided by the budget programme and receives on their implementation budget funds. So, the main condition of determining a recipient of budgetary funds is connected with receiving the funds from the budget instead of their paying or receipt to the budget. Thus, if we assume that the actions of a taxpayer, in whose behaviour the time of tax payment is evaluated, is related to the execution of his duty to transfer funds to the budget, then no provision of the budget legislation can be applied to the evaluation of these actions.

2.2 Analysis of tax legislation and legislation which regulates the money circulation

When maintaining the position on the complexity of regulation in determining the time of tax payment and, actually, banking legislation applying they often try to distinguish between the relations between a payer and the bank and those between a payer and the budget. The main problem here is reduced to the situations where a payer gave money to the bank in compensation of his tax duty and that is what he considers the moment of tax payment. Having received funds from a payer, the bank did not transfer them to the relevant treasury account for various reasons (bankruptcy, etc.).

But some researchers and judges note that it is advisable to distinguish between the onset of sanctions against a payer and tax repayment [15]. They believe that a payer should not be held liable in this situation, but the duty to repay the tax remains with a payer. A clarification of the relations between a payer and the bank separates from tax relations and goes into the sphere of private regulation.

Arguing such a position, in this situation they refer to para. 129.6 Art. 129 of the Tax Code of Ukraine according to which for violation of term of tax receipt to the budgets or state trust funds because of the fault of bank or the authority which performs treasury service of budget funds in which payers' accounts are opened in the electronic administration system of value added tax, such a bank / authority shall pay a fine for each day of delay, including the day of payment, and penalties in the amounts established by this Code as well as bears other responsibility established by this Code for violation of the order of timely and full receipt of taxes, fees and payments to the budget or state trust fund. At the same time, a taxpayer is exempt from liability for late or incomplete transfer of such taxes, fees and other payments to the budgets and state trust funds including accrued interest or penalties [7].

Therefore, such a logic of the supporters of the above position proves to be artificial. It is very difficult to distinguish between the relations of a payer and the state as well as the relations of a payer and the bank at the execution of tax duty. It is unlikely that the relations between a payer and the bank at the moment of tax payment should be regulated by dispositive means. The interests of the state can not be satisfied with any

(even illogical and inconsistent methods), and the receipt of funds from a payer is the main aim under any circumstances, regardless of whether such a non-receipt is connected with violations in a taxpayer's behaviour.

Moreover, it should be taken into account that the bank in these relations acts as a subject that has obtained the state legalisation. Thus, the bank's violation at transfer of funds from a payer to the budget is the circumstance to which actions of the state led, namely, unreasonable granting a banking licence and improper control over the procedure for the introduction of the temporary administration. Since a payer can not bear responsibility for unreasonableness in the actions of the state in granting a licence of the bank and the implementation of control functions on the market of financial and banking services.

Also, one should pay attention to the additional guarantees of tax legislation which are enshrined in para. 129.7 Art. 129 of the Tax Code of Ukraine. According to the mentioned norm, the violation committed in the result of the regulation of economic standards of such a bank by the Ukrainian National Bank that leads to a lack of free balance on such a correspondent account is not considered to be a violation of the term of transfer of taxes, fees and payments through the bank's fault. If in the future the bank or its successors recover solvency, the countdown of the term of transfer of taxes, fees and other payments starts with the date of such a recovery, that is, even in Art. 129 of the Tax Code of Ukraine, a legislator confirms the duty not of a taxpayer, but, namely, the Ukrainian National Bank to act as a regulator of commercial banks.

One more reason for the impossibility of extending the regime of dual execution of tax duty to a taxpayer as well as implementation of control by supervisory authorities exceptionally for the completeness and compliance with the terms of tax payment, but not the transfer of funds to the single treasury account is the provision of Art. 19-1 of the Tax Code of Ukraine. Thus, according to para. 19-1.1.5 para. 19-1.1 Art. 19-1, the functions of the supervisory authorities include, in particular, monitoring of compliance by the executive authorities of rural and village councils and councils of united territorial communities created according to the law and the long-term plan of formation of territories of communities, order of acceptance and accounting of taxes and fees from taxpayers, timeliness and completeness of transfer of the specified amounts to the budget. Namely, the movement of funds paid as taxes and fees within the treasury accounts (local governments, that is, state bodies) is under the control of the State Fiscal Service authorities (in the context of tax-legal regulation). In its turn, as it was noted, regarding tax payers, the supervisory authorities monitor only the timeliness and completeness of payment of taxes and fees, and, in fact, until their transfer to the bank. Control over compliance with the legislation by the bank when transferring a taxpayer's funds to the single treasury account is the subject of control of quite other authorities – the Ukrainian National Bank and the Deposit Guarantee Fund.

At the same time, the textual analysis of the provisions of the current Tax Code of Ukraine shows that the concept of "tax payment" and "transfer of taxes" are identical. For example, Art. 54 Determination of Tax and Monetary Obligations of the Tax Code of Ukraine states that "the monetary obligation which concerns the amount of tax obligations from the tax which is subject to deduction and payment (transfer) to the budget in case of charge/payment of the income in a taxpayer's favour. A similar approach of a legislator can be traced in other articles of the Tax Code of Ukraine: Art. 126 Violation of the Rules of Payment (Transfer) of Taxes"; and Art. 127. Violation of the Rules of Charge, Withholding and Payment (Transfer) of Taxes at the Source of Payment and the like. The above allows to conclude that the transfer of taxes and fees as well as the execution of the tax duty of a payer ends at the time of payment of such taxes and fees in full and within the stipulated time. In its turn, payment of taxes and fees is completed at the moment of debiting the current account of a payer or transfer of a payer's funds to the cash desk of the bank that makes impossible the reexecution the tax duty in terms of taxes and fees.

CONCLUSIONS

Tax duty is defined as the obligation of a taxpayer to calculate, declare and / or pay the amount of tax and fee in the manner and within the terms determined by the Tax Code of Ukraine. In view of the above, on the basis of system analysis of Art. 1, 3, 4, 5, 16, 38 and 129 of the Tax Code of Ukraine, one can conclude that the execution of the tax duty by a payer is regulated exceptionally by the norms of tax legislation which include neither the Budgetary Code nor special Laws that regulate the monetary circulation issues. Under such a condition, the tax legislation does not impose any additional obligations on a taxpayer or the application of sanctions for the acts which led to the non-receipt of funds paid to them as taxes and fees, through the fault of other persons, in particular, banks. Proper execution of the tax duties by a taxpayer (payment within the period established by law and in full), but non-receipt of these funds to the single treasury account through the bank's fault can not lead to arising a duty of repayment of taxes or fees regarding such a taxpayer.

Another approach of law enforcement would be the reason to impose on a taxpayer the obligation to pay taxes and fees twice. The execution of the tax duty is the payment in full by a payer of the relevant amounts of tax obligations within the period established by tax legislation.

Characterising the latest changes in the tax legislation of the country, the system of tax revenues and fees accruing eleven obligatory payments to the budget was structured, four of which, although established, accounted for and charged by local authorities and their cost level, compliance procedures are controlled by the state. The preconditions for the further productive functioning of the country's tax system are adaptation of new criteria for the collection of taxes and fees through the settlement of procedures for the

calculation and payment of tax payments which are related to buiding a stable and efficient banking system in Ukraine.

Given the above, the main problems of tax system functioning in Ukraine include first, the fact that a large number of low-efficient taxes requires significant administrative expenses which exceed budget revenues; second, the contradictions and inconsistencies of certain tax laws, their instability, unsystematic provision of benefits and misrepresentation of the essence of certain types of taxes; fourth, a significant number of normative-legal acts on taxation which both taxpayers and employees of the Ukrainian State Fiscal Service should know and be guided by in practice; fifth, the lack of proper regulation of legal guarantees for participants of tax relations and the lack of transparent and effective mechanisms of rights protection of taxpayers; sixth, the tax system is now a factor of reducing the level of economic growth and investment activity and tax evasion stimulating.

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