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## IMPROVEMENT OF NORMATIVE LEGAL REGULATION OF THE SYSTEM OF AGRICULTURAL PRODUCTION TAXATION

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### Abstract

The article examines legal regulation of the system of taxation of agricultural producers in Ukraine. The main stages of formation of the modern system of taxation in the agricultural sector are reviewed, the legislative mechanism of taxation of agricultural producers is analyzed, the main weak points of its functioning are outlined. The main novelties and ways of improvement of the tax legislation concerning agricultural producers and the sphere of land relations are considered.

**Keywords.** Agricultural producer, taxation system, tax, tax benefit, government subsidy, agricultural land.

In conditions of the agrarian reform implementation in Ukraine, special attention should be paid to adequate regulatory and legal support of the government regulation of agricultural production. Taxation is one of the most important elements of government regulation. Despite the fact that taxation in the agricultural sector has changed positively in recent years, there are still many unresolved issues in terms of legal doctrine. After

all, today the system of taxation of agricultural producers remains inefficient, which negatively affects the development of the agricultural sector and the economy as a whole.

The system of taxation of agricultural producers requires consideration of the peculiarities of agricultural activities, namely the dependence on climatic conditions, duration of production, etc. Important tasks of legal regulation of taxation include the support of equal

approaches to all agricultural producers, consideration of interdependence of agricultural producers and other business entities of the agri-industrial complex, development of taxation based on land fees and uniform tax burden taking into account the profitability of production; provision of preferential conditions for small agricultural producers, etc.

Land reform is being implemented in Ukraine, and one of its main tasks is the control of the shadow land market. In such conditions, it is extremely important to ensure transparent and fair taxation of farmers.

Legal aspects of the taxation system in agriculture are outlined by V. Andrushchenko, V. Borysova, O. Vasylyk, H. Hryghrieva, D. Dema, V. Zhmudynskyi, T. Yefimenko, Y. Ivanova, O. Kyrylenko, A. Krysovatyi, P. Melnyk, P. Sabluk, A. Sokolovska, V. Fedosov, L. Tulush and other scientists. However, urgent issues of improving the legal support of taxation in the agricultural sector are insufficiently studied and require further research.

The system of taxation of the agricultural sector in Ukraine has started to be formed in 1991 with the introduction of preferential taxation of agricultural producers. According to the legislation, the main agricultural producers (collective farms, state farms, farms) were exempted from income tax. Other agricultural producers (cooperatives, their associations, etc.) had to pay income tax within the marginal level of profitability at the rate of 1.5% [14].

Since 1992 agricultural producers have paid the tax only on the income received from the sale of non-agricultural products at the rate of 18%, income from operating activities has not been subjected to taxation [9]. Since 1993 income tax has been calculated again [8].

Some steps aimed at the support of farmers during deep economic crisis were taken due to adoption of a number of regulation acts including the Law of Ukraine "On the Write-off and Restructuring of Tax Debts of Taxpayers as of March 31, 1997", the Law of Ukraine "On the Write-Off and Restructuring of Tax Debts of Taxpayers – Sugar Factories (Plants) as of January 1, 1998 and Agricultural Enterprises as of January 1, 1999" [11], Decree of the President of Ukraine "On the Support of Agricultural Producers" of January 2, 1998 No 1328/98108 [22]. In addition, the Law of Ukraine "On Fixed Agricultural Tax" was adopted in 1998, and according to it the fixed agricultural tax was introduced on January 1, 1999 [13].

In addition, in order to support the agricultural sector, agricultural producers had been exempted from paying the fixed agricultural tax until January 1, 2001, which were treated as its payers in accordance with the provisions of this Law, however, according to many researchers, such exemption could be considered conditional, "since the payers of the fixed agricultural tax were not exempted from the payment of insurance fees for mandatory state pension insurance and mandatory social insurance, and considering the fact that the amount of these contributions was 70% of the total amount of the fixed agricultural tax, the decision on such exemption from tax payment was really "conditional" [17, p. 36].

When the Law of Ukraine "On Amendments to the Law of Ukraine "On Fixed Agricultural Tax" came into force, the possibility of paying a fixed agricultural tax in kind was abolished [4].

At the stage of introduction of the fixed agricultural tax, it was expected to be valid until January 1, 2001, however, due to the lack of alternative variant of tax incentives for the development of the industry, this period was repeatedly extended by relevant laws [10], and since January 1, 2010 it has been prolonged without any time limits [3].

When the Tax Code of Ukraine was adopted in 2010, the system of taxation of agricultural producers remained almost unchanged, since the provisions of the Law of Ukraine "On Fixed Agricultural Tax" were transferred to a new normative act.

Thus, during 1999-2014, the system of taxation of agricultural producers covered a special tax regime and the possibility of choosing a simplified system of taxation in the form of a fixed agricultural tax.

According to Kh. Hryhorieva, "the evolution of taxation of agricultural producers, which was relatively progressive until 2014, has become revolutionary since that time, i.e. showed the signs of cardinality and inflated dynamism" [1].

Thus, the system of agrarian taxation significantly changed in 2016 with the adoption of the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform", which abolished the fixed agricultural tax and in fact replaced it with a single tax of group 4. Its payers were the producers whose share of agricultural production over the previous tax year was equal to or exceeded 75%.

The main factors of the introduction of this tax regime by the state include the following ones: reduction of the level of "shadowing" of agricultural activities at the time of implementation of such regime; availability of the additional source of revenues to the budgets, since application of this tax regime caused an increase in the level of taxable capacity of agricultural enterprises; stimulation of entrepreneurial activity for agricultural enterprises to increase agricultural production; attraction of investments and innovations in the field of agriculture targeted at upgrading of the agricultural machinery and equipment; support of the economic development and functioning of both individual regions and agriculture in general [2, p.33].

Single tax payers of the fourth group were exempted from paying such taxes as the income tax, property tax in part of the land tax, rent for special use of water. However, tax rates were significantly increased leading to increased tax pressure on agribusiness. Therefore, most experts and scholars do not consider such a step as a reform and negatively assess the tendency towards the reduction of tax benefits for agricultural producers [1, p.147].

Since 2015, agricultural enterprises that were liable to a general system of taxation have had the right to use a special regime for paying value added tax (hereinafter VAT). According to amendments to the Tax Code of Ukraine, the amount of the tax accrued on the

value of supplied agricultural goods or services of domestic production has not had to be paid to the budget, but it has remained at the disposal of the producer to reimburse the tax on purchased goods or services from which the tax credit was formed, and in case of balance availability it could be used for production purposes [5].

The abolition of the special VAT regime was performed in two stages. At the first stage (during 2016), the share of VAT remained at the disposal of the agricultural producer and its amount depended on the industry. The Tax Code stipulates that 50% of the VAT amount remains on special accounts opened by agricultural enterprises for transactions with agricultural goods/services (except for operations with grain and industrial crops and operations with livestock products); 15% for operations with grain and industrial crops; 80% for operations with livestock products. These amounts remained at the disposal of the agricultural enterprise to be used for the production of agricultural goods/services [5].

In 2017, the rates of a single tax for taxpayers of the fourth group were raised again and there was abolished the norm, which specified that the data of the State Land Cadaster and/or the State Register of Real Property Rights was the basis for calculating a single tax for taxpayers of the fourth group, and a special value added tax regime was abolished as well [6].

Therefore, since from January 1, 2017 agricultural producers have paid VAT on a general basis. At the same time, there were introduced some legislative changes regulating the procedure of providing budget subsidies for the development of agricultural producers and promotion of agricultural products.

However, most scholars and experts are inclined to believe that the abolition of preferential taxation has a negative impact on the development of agribusiness, because "unlike many other types of state support, preferential taxation is large-scale and it covers a large number of business entities involved in agricultural production" [1, p. 148].

When exploring the main directions of improving the system of taxation of agricultural producers, it is necessary to consider legal framework of the current mechanism of their taxation. Despite the lack of a clear definition of this concept in the legal literature, the mechanism of taxation is mainly considered as a set of elements related to the calculation and payment of taxes and fees (taxpayers, object of taxation, tax base, tax rate, tax methods, benefits, tax period, methods and procedure for tax payment) aimed at ensuring the functioning of the taxation system. It is justly believed that "changes in the taxation mechanism (e.g., changes in tax rates, tax procedures, etc.) can lead to the formation of a qualitatively new taxation system and change its structure, but remain quantitative and qualitative composition of taxes unchanged" [17, p. 20].

The mechanism of taxation of the agricultural producer includes the following obligatory elements: taxpayers; object of taxation; tax base; tax rate; tax benefits; the procedure of tax calculation; tax period; term and procedure of tax payment; term and procedure of submission of reports on tax calculation and payment.

According to the Tax Code of Ukraine, there are currently three systems of taxation of agricultural producers: a general system of taxation (income taxpayer); single tax of the third group (with or without VAT); single tax of the fourth group. An enterprise can independently choose any of these three taxation systems, if it meets the requirements established for each of them [18].

A general taxation system is used automatically by all enterprises (including agricultural enterprises), unless they have chosen another system.

For agricultural producers, there is applied an annual tax period that is a calendar year from the first to the last day of the reporting calendar (tax) year, i.e. from January 1 to December 31 (paragraph "b" of paragraph 137.5 of Article 137). It is also possible to choose a special annual tax (reporting) period, which begins on July 1 of the previous reporting year and ends on June 30 of the current reporting year (subparagraph 137.4.1 of paragraph 137.4 of Article 137).

The object of taxation is the profit with a source of origin from Ukraine and abroad, which is determined by the adjustment (increase or decrease) of the financial result (profit or loss) determined in the financial statements of the enterprise in accordance with the national accounting regulations (standards) or international financial reporting standards, for differences that arise in accordance with the provisions of this Code (paragraph 134.1.1, paragraph 134.1 of Article 134).

The financial result reduced by tax differences (if applicable) is the object of taxation on which income tax is calculated. Thus, tax amount depends on the capacity of the financial result and tax differences. For the agricultural enterprise, the advantage of the general taxation system is that the tax is paid based on the real financial result.

The basic tax rate is 18%. The tax is accrued by the taxpayer independently at the rate of 18% of the tax base – financial result reduced by tax differences (if applicable) (paragraph 37.1 of Article 37). The amount of income tax depends on the capacity of the financial result and tax differences. The term of tax payment is 10 calendar days following the last day of the term provided by law (paragraph 57.1 of Article 57).

It should be noted that the income taxpayer does not have benefits for the payment of the land tax and rent for the special use of water, as provided for single tax payers (paragraph 297.1 of Article 297).

As for the single taxpayers of the third group, the subjects of taxation are legal entities – business entities of any organizational and legal form with the amount of income that has not exceeded UAH 5,000,000 during the calendar year (paragraph 291.4 of Article 291). In this case, the income is determined over the previous calendar year preceding the year, during which the transition to a single tax is planned.

Agricultural producers engaged in production, export, import, sale of excisable goods, the authorized capital of which contains a set of shares owned by legal entities that are not single tax payers is equal to or exceeds 25%; taxpayers who on the day of filing the application for registration as a single tax payer have a tax debt, except for bad tax debt, which arose as a result of

force majeure (force majeure). It should also be noted that single tax payers of the third group have to pay for the shipped goods (work performed, services rendered) exclusively in money terms (cash and/or noncash). Therefore, if an agricultural producer who is a single tax payer violates this rule, he must switch to another system of taxation (part four of paragraph 298.2.3 of paragraph 298.2 of Article 298).

The single tax rate for taxpayers of the third group is 3% of the income in the case VAT is paid; 5% of income in the case of inclusion of VAT in the single tax. Thus, the amount of the single tax payable to the budget does not depend on the performance of the agricultural enterprise. The entire amount of income received is taken into account, without its reduction by the amount of expenses incurred. The income is calculated based on the income received. The term of tax payment is 10 calendar days following the last day of the term provided by law (§ 57.1 § 57).

Single taxpayers of the third group do not pay corporate income tax; VAT on transactions for the supply of goods, works and services supplied in the customs territory of Ukraine, single taxpayers who apply the rate of 5% – property tax (in part of the land tax), except land tax for the land unused for business activities.

Single taxpayers of the fourth group may be agricultural producers whose share of agricultural production over the previous tax (reporting) year is equal to or exceeds 75% (paragraph 4 of paragraph 291.4 of Article 291). Peculiarities of determining the share are separately established for agricultural producers formed through the merger, acquisition, transformation, division or separation (paragraphs 291.4.3-291.4.6 of paragraph 291.4 of Article 291); newly formed agricultural producers (paragraph 291.4.7); agricultural producers due to the occurrence of force majeure circumstances (paragraph 298.8.4 of paragraph 298.8 of Article 298).

Since 2018, the range of single taxpayers of the fourth group has expanded due to the inclusion of sole proprietors who operate exclusively within a farm registered in accordance with the Law of Ukraine “On Farming” [12]. In accordance with the Tax Code of Ukraine, the amendments have been made to establish the time from which sole proprietors are considered to be payers of the fourth group, the procedure of action for these entities in case of non-compliance with the conditions (criteria) to the single taxpayer of the fourth group, and the procedure for independent transfer to the payment of the single tax and other issues.

Single tax payers of the fourth group do not pay corporate income tax; property tax (in part of the land tax) for agricultural production; rent for the special use of water by single tax payers of the fourth group (paragraph 297.1 of Article 297). Owners of land plots, land shares and land users are exempted from paying the land tax during the period of validity of the single tax of the fourth group under condition of transfer of land plots and land shares to rent to the single tax payer of the fourth group (paragraph 281.3 of Article 281).

The object of taxation is the area of agricultural land (arable land, hayfields, pastures and perennials) and/or lands of the water fund (inland waters, lakes, ponds, reservoirs) owned by the agricultural producer

or provided to him for the use, including those on the lease terms (paragraph 2921.1 of Article 2921).

The tax base is the normative monetary assessment of one hectare of agricultural land (arable land, hayfields, pastures and perennials) taking into account the indexation coefficient determined as of January 1 of the base tax (reporting) year (paragraph 2921.2 of Article 2921).

The tax base for water fund lands (inland reservoirs, lakes, ponds, reservoirs) is the normative monetary assessment of arable land taking into account the indexation coefficient determined as of January 1 of the base tax (reporting) year.

The Tax Code of Ukraine determines the amount of tax rates per hectare of agricultural land and/or water fund lands, which depends on the category (type) of land, their location. The tax (reporting) period for single tax payers of the fourth group is a calendar year beginning on the first day of the first month of the tax (reporting) period and ending on the last calendar day of the last month of the tax (reporting) period (paragraphs 294.1, 294.2 of Article 294).

Taxpayers of the fourth group independently calculate the amount of tax annually as of January 1 and submit tax declaration over the current year to the relevant supervisory authority where the taxpayer is located and where the land site is located no later than February 20 of the current year.

The main novelties regarding the land tax were introduced in 2015. Currently, the land tax is a component of the payment for land and it is included in the property tax. This tax is a key one for agribusiness, as the development of any branch of agriculture is impossible without the use of agricultural land (agricultural or non-agricultural land).

The basis for determining the amount of land tax is the normative monetary value of land, which is subjected to annual indexation. The central executive body that implements the state policy in the field of land relations according to the consumer price index for the previous year annually calculates the indexation coefficient of the normative monetary value of land, which is indexed by normative monetary value of agricultural land, as of January 1 of the current year according to a certain formula. If the consumer price index exceeds 115%, such an index is used with a value of 115 (Article 289).

Land tax rates are set by local governments that which submit to the relevant supervisory authority the decision on land tax rates and provided land tax benefits to legal entities and/or individuals in the prescribed form by December 25 of the year preceding the reporting year.

Specific land tax rates may be set within the tax rates for agricultural land, the regulatory monetary value of which has been carried out. The rates are set in the amount that is not less than 0.3% and not more than 1% of their regulatory monetary value. For agricultural lands located outside the settlements, the normative monetary value of which has not been carried out it is set in the amount that is not less than 0.3% and not more than 5% of the normative monetary value of a unit of

arable land area in the region (Articles 274, 277). These rates of the land tax were set in December 2016.

Improvement of the system of taxation of agricultural producers is impossible without reformation of land taxation, which is implemented through collection of the land tax, a single tax of the fourth group. According to the results of the study, the key problem in land taxation is that the legislation does not specify what land plots should be considered as those used for agricultural production and exempted from the land tax. It can be solved by exemption of agricultural enterprises from paying land tax for all agricultural lands intended for commercial agricultural production, provided that these land plots are classified as agricultural lands in accordance with the land management documentation and data of the state land cadaster [2, p. 35].

Having analyzed legislation on the taxation of agricultural producers, it can be noted that no significant changes have been made in this direction during 2017-2020. The main novelty of the tax legislation regarding agricultural producers has been the introduction of changes in VAT compensation for grain exports.

At the present stage, the main priority of the legislator concerning changes in the system of taxation of agricultural producers is to control the shadow land lease market. This conclusion can be made by reviewing some of the drafts of the legislator. First of all, it can be applied to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on De-Shadowing of Agricultural Production" [20].

The shadow land market is an acute problem of our state. According to experts, it comprises 28% of the total area of agricultural land or about 12 million hectares out of 42 million hectares of agricultural land in Ukraine. At the same time, about 25 million hectares of agricultural land are under official lease. According to the results of expert research, in 2019 the volume of shadow lease of agricultural land in Ukraine ranged from 19 to 69 billion UAH. At the same time, budget losses at all levels from underpayment of taxes and other payments amount to UAH 6-22 billion per year [19].

According to statistics of 2019, Ukraine has 3.6 million holders of land shares who own 16.4 million hectares of land, and the average share size is 4.1 hectares. Among all shareholders, 2.3 million people cultivate their shares themselves and 1.4 million people lease their shares with a total area of 6.1 million hectares. Most of these lands are leased by agricultural enterprises, including farmers working in fourth group of the simplified taxation system [15].

In addition, according to experts, an important problem is the concealment of actual income of producers obtained from the sale of their own agricultural products and avoidance of their taxation. Agricultural producers who comply with the law and pay all the established payments and taxes find themselves in unequal conditions with the "minimizers", whose burden is much lower. This prevents the development of adequate competition and the market of agricultural products and negatively affects attraction of investments in the agricultural sector of Ukraine [19].

This draft law provides the establishment of an equal tax burden for all owners and users of agricultural land. The draft law aims to create conditions for the elimination of shadow relations in the use of agricultural land and to ensure equally intense taxation of income obtained from such land by all its owners and users. To for this purpose, it is proposed to establish the mechanism of taxation of the income of individuals and legal entities – owners and users of agricultural land, which provides the level of income taxes on the use of such land that is not lower than the minimum tax (tax liability). This will stimulate them to formalize the relationship of lease and labor, make it impossible to hide income from rent and sale of agricultural products and avoid their taxation, as well as create equal conditions for doing business for all agricultural producers [21].

The legislator proposes to impose income tax on the owners and users of agricultural land received from such land based on the imposed tax liability. The imposed tax liability is a minimum tax liability of the individual or legal entity-owner, permanent user, user on other terms, tenant (including emphyteusis) of agricultural land (except non-agricultural land), land shares (units), both allocated and not allocated in kind, except for land plots specified by paragraph 165.1.24, paragraph 165.1 of Article 165 of the Tax Code of Ukraine, which is determined by the appropriate formula, taking into account normative monetary value of land and its area.

The mechanism for taxation of the income of owners and users of agricultural land will be based on the comparison of taxes paid by individuals or legal entities due to use of their own or leased land plots and the tax liability specified [21].

According to the project developers, the establishment of fair and transparent taxation of owners and users of agricultural land will help to improve the investment climate in the country and increase the level of Ukraine in the world rankings for doing business [19].

It should be noted that under the proposed establishment of the tax liability, it is the conditionally probable income that is taxed, not actually received one. At the same time, the proposed tax mechanism based on the tax liability does not take into account the specifics of agricultural production, such as seasonality of production, dependence on the weather and biological factors, specifics of certain types of agricultural production, e.g. their unprofitability and the need for government subsidies that determine the level of profitability (loss) of agricultural production, and hence the solvency, including those in terms of tax payment. Under introduction of tax liability, which significantly increases tax burden for the relevant category of producers, availability of such factors increases the risk of occurrence and significant growth of their tax debts with the corresponding socio-economic consequences.

Introduction of a tax liability may lead to some increase in budget revenues and a certain level of de-shadowing in the field of agricultural production, but at the same time possible negative socio-economic consequences should be taken into account. In particular, the enhancement of tax pressure on small producers may cause the sale or lease of land and result in the growth

of unemployment in rural areas, outflow of labor abroad, reduction of competition and monopolization of agricultural production, changes in the structure of agricultural production, commodity structure of exports and imports, growth of the price offer in the domestic market, etc.

Another novelty of the legislator is the introduction of certain tax incentives for agricultural producers working on irrigated lands. The Verkhovna Rada is drafting the Law of Ukraine on the Amendments to the Tax Code of Ukraine on State Support of Agricultural Producers, which proposes to introduce tax certain incentives to support crop production on irrigated lands, including exemption of agricultural producers from the income tax, if these funds are used for construction, reconstruction and/or acquisition of fixed assets for crop production on irrigated lands; purchase and maintenance of irrigation equipment. It is also proposed to exempt from taxation the operations on import (supply) into the customs territory of Ukraine of goods and services used directly for the construction, reconstruction and/or the purchase of fixed assets for crop production on irrigated lands. The released funds can be used by agricultural producers to introduce up-to-date production and energy-saving technologies, including those related to their own economic activities; to increase the output of agricultural products and the capacity of its industrial processing, as well as to enhance competitive attractiveness of such products; repayment of loans and payment of other borrowings. This project concerns the establishment of the state support for agricultural producers not in general, but in a specific area of activity related to the functioning of the irrigation system, and it also concerns both agricultural producers and producers of relevant industrial products [20].

Thus, effective development of the national economy is impossible without improvement of the tax system and creation of special conditions for taxation for some businesses, in particular in agri-industrial sector. Formation of taxation of agricultural producers dates back to the declaration of independence, and having gone through a number of key stages it has become an important component of current Ukraine's tax policy. The norms of the Tax Code of Ukraine provide three systems of taxation for agricultural producers: the general system of taxation (payer of income tax); single tax of the third group (with or without payment of income tax); single tax of the fourth group. One of the main unresolved problems in the taxation system is the significant tax burden on those agricultural enterprises that are in the general taxation system. The fourth group of single tax payers also requires the improvement of the legal regulation of taxation. By its nature, this type of tax should be applied exclusively by small businesses having low income, and its main functions should be aimed to ensure the employment of rural population in the agricultural sector, its solvency. However, today this tax regime can be applied to any agricultural producer without the restriction of the amount of income, land area. Large and medium-sized farmers use it to minimize taxes and fees, which leads to a significant reduction in budget revenues and uneven tax burden.

Inequality in taxation is manifested, first of all, in relation to small producers, which is also exacerbated by the imperfection of the mechanisms of their state support, difficulty of obtaining subsidies, access to crediting, etc. Today, the state is trying to solve the problem of the tax burden through the system of state subsidies, but this does not provide necessary support for agricultural producers.

Today, the main attention of the legislator in the field of taxation of the agricultural sector is focused on the development of regulations aimed at de-shadowing of agricultural producers and control of the shadow land lease. The legislator proposes to introduce taxation of agricultural producers on the basis of the tax liability, which, in our opinion, is unlikely to solve the problem of de-shadowing of the agricultural sector, but will only lead to additional tax pressure on small farmers and private farms. One of the factors for the existence of shadow agrarian relations is the general inefficiency of the system of taxation of agricultural producers, lack of the adequate regulatory support for this system.

Therefore, taxation reformation in the agricultural sector requires comprehensive and constructive approaches. In our opinion, at the present stage it is necessary to improve the legal mechanism of tax collection in the agricultural sector, which will differentiate tax burden on businesses depending on the organizational and legal form of management, land area, number of employees, income from agricultural activities, efficiency of various types of agricultural production, etc.; identification of the features of taxation of incomes of individuals from rent, emphyteusis of agricultural lands, incomes received from the sale of agricultural commodities; strengthening of mechanisms of the land use control as well as tax control.

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