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LOCAL TAXATION: PROBLEMS OF CURRENT LEGISLATION

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Summary

The article highlights basic problems of improving the legislative regulation of local taxation at the present stage. Institutional bases of development of the system of local taxation in Ukraine in the conditions of decentralization are substantiated. The main normative legal acts regulating the collection of local taxes and fees are analyzed. Peculiarities of collecting local taxes and fees, functions of local self-government bodies are considered. The main problems of financial decentralization and local taxation are identified, and the ways of further improvement of the mechanisms of its legal regulation are suggested. It is concluded that not only the legislative base of local taxation needs to be improved, but also the legislation on local self-government through codification. Emphasis is made on the fact that improvement of the legal framework in the field of local taxation should be based on the foundations of the current tax system and should comply with the provisions of the international regulations on local self-government implemented by Ukraine.

Keywords: local taxes and fees, tax system, decentralization, territorial communities, local self-government bodies.

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1. Introduction

Local taxes and fees are an integral part of the tax system of Ukraine. Local taxes and fees are an important source of funding for local budgets, through which financial independence of local self-government bodies is achieved. Tax revenues from local budgets are aimed at ensuring a sufficient level of functioning of local health care facilities, educational, cultural institutions, social infrastructure, development of public utilities, etc.

Proper development of the institute of local taxation in the conditions of decentralization requires appropriate legal support of mechanisms for collecting local taxes and fees. It should be noted that the amendments to the tax legislation of Ukraine adopted in recent years have ensured the functioning of the financial system of local governments, which is being formed. However, in the period of reforms in the field of collecting local taxes and fees there are some problems that need to be addressed. Expansion of fiscal powers of local self-government bodies and introduction of effective mechanisms for filling local budgets require appropriate legislative regulation, which determines the urgency of this problem.

The issues of legal regulation of taxes and fees in the conditions of decentralization, improvement of legislation in the field of local taxation have been studied by such scientists as O. Bandurka, P. Bilenchuk, T. Bondaruk, R. Halamai, V. Hrechko, O. Kyrylenko, V. Kravchenko, E. Kuzkin, P. Kucheriavenko, Y. Pasichnyk, K. Pavliuk, N. Prots, L. Savchenko, H. Starostenko, A. Ryzhyi and many others. Despite a large number of scientific papers on the problem of legal regulation of local taxes and fees, this problem remains quite relevant and requires further research.

The purpose of the study is to analyze the current normative and legal base of Ukraine, which determines the legal framework for regulating local taxes and fees in conditions of decentralization, to highlight urgent problems at the present stage and clarify the main ways of their solution. The main methods of scientific research are comparative law, dialectical, abstract logic, method of systems analysis, etc.

2. Research results

Local taxes and fees are an important element of the institute of local finances, i.e. a statutory group of legal norms that regulates implementation of tax payments by local governments, the mechanism of their collection within relevant administrative and territorial units and crediting to local budgets to exercise powers within the competence of local governments. Normative and legal regulation of local taxes and fees in Ukraine is carried out in accordance with the constitutional norms, norms of tax, budget legislation, normative and legal acts of other branches of law.

Constitutional and tax legislation provide for the exercise by local self-government bodies of tax powers within the limits set by law (*Babin, Vdovichen, 2021: 153*).

Collection of local taxes and fees is carried out on the basis of normative and legal acts, i.e. according to legally established rules. Such a legislative definition of the procedure of their administration is a kind of manifestation of the sovereignty of democratic states and execution of proper functions of power by their institutions. Thus, the process of mobilization and use of revenues from the payment of local taxes and fees has a legal basis and becomes the subject to control by the fiscal service (*Local taxation in Ukraine, 2015: 49*).

The process of formation and development of the system of legal regulation of local taxation in Ukraine should be divided into four stages: stage 1 – establishing the legal basis for taxes and fees in Ukraine (adoption of the Law of Ukraine “On Taxation”) (June 1991 – July 1998); stage 2 – introduction of a simplified taxation system (July 1998 – 2011), stage 3 – formation of the tax system of Ukraine (entry into force of the Tax Code of Ukraine) (2011–2015); stage 4 – administrative reform (decentralization) (2015 – present) (*Ryzhyi, 2021: 40-41*).

It should be noted that at the present stage the system of local taxation in Ukraine is built in accordance with the principles of the European Charter of Local Self-Government. Thus, Article 9 of self-government declares the right of local self-government bodies to their own financial resources that can be freely used in accordance with the powers of local governments. In addition, part 3 of Article 9 of this document states that part of the financial resources of local self-government bodies should be formed at the expense of local taxes and fees, the amount of which is determined by law (*European Charter of Local Self-Government, 1985*). The basic principles of the European Charter of Local Self-Government are implemented in the Constitution of Ukraine, the norms of which declare basic principles of local self-government and taxation. Thus, in accordance with Part 2 of Article 92 of the Constitution of Ukraine, taxes (both national and local) are established exclusively by the laws of Ukraine. At the same time, Article 143 of the Constitution of Ukraine enshrines the right of territorial communities to establish local taxes and fees directly through local self-government bodies in accordance with the law (*Constitution of Ukraine, 1996*).

Local taxes and fees have distinctive features that distinguish them from national payments. Thus, local taxes are established and levied only in the relevant territory, within their powers the local self-government bodies exercise the right to administer local taxes and fees in

the relevant territory, perform a regulatory function for them, local taxes are one of the sources of local communities and come exclusively to local budgets.

The main principles of reforming the local taxation system are laid down in the Concept of Reforming Local Self-Government and Local Self-Government and Territorial Organization of Power in Ukraine. According to the Concept, one of the main tasks is “to determine a sufficient tax base that will allow local self-government bodies to exercise their powers, taking into account the objective criteria for the state funding of delegated powers”. The Concept substantiates the need to determine the appropriate tax base; granting local self-government bodies the right to regulate the rates of local taxes and fees; prevention of granting tax benefits to other local self-governments and executive bodies that reduce own revenues of local budgets, in particular, it is stated that benefits from local taxes and fees can be established only by the local government, the budget of which will include such taxes and fees. The concept stipulates that the receipt of taxes and fees that are related to the territory of the relevant administrative and territorial unit is the financial basis for the exercise of local authorities’ powers. In addition, it is noted that local self-government bodies have the right to regulate the rates of local taxes and fees (*The concept of local government reform, 2014*).

In Ukraine, collection of local taxes and fees is regulated by the Tax Code of Ukraine (hereinafter – TCU). The TCU regulates relations in the field of local taxes and fees, defines an exhaustive list of local taxes and fees, the procedure for their administration, determines the rights and obligations of taxpayers, the competence of regulatory authorities, powers and duties of their officials, liability for violations of tax legislation. According to the TCU, there are 11 taxes and fees, including 7 national and 4 local one, in Ukraine (*Tax Code, 2010*).

Article 8 of the TCU stipulates that “local taxes and fees are established in accordance with the list and within the limits of rates set by this Code, decisions of village, settlement, city councils and councils of united territorial communities established in accordance with the law and a long-term plan for the formation of community territories within their powers and are mandatory for payment on the territory of the corresponding territorial communities”.

The Code stipulates that local taxes include property tax and a single tax, while local fees include a fee for parking spaces for vehicles and a tourist fee, and the following elements must be determined when setting a tax: taxpayers; object of taxation; tax base; tax rate; the procedure for calculating the tax; tax period; term and procedure for tax payment; the term and procedure for submitting reports on the calculation and payment of tax (Article 7 of the TCU).

The reduction in the number of taxes and fees as a result of the reform has contributed to effective functioning of the tax system and financial decentralization of local self-government. However, optimization of taxes was due to the combination of taxes (tourist fee is the result of combining hotel and resort fees).

According to paragraphs 12.3 and 12.4. of Article 12 of the TCU, the powers of village, settlement, city councils and councils of united territorial communities established in accordance with the law and a long-term plan for the formation of community territories on taxes and fees include:

- decision-making on the establishment of local taxes and fees and tax benefits for the payment of local taxes and fees;
- setting rates of local taxes and fees within the rates set by the TCU;
- determination of the list of tax agents in accordance with Article 268 of the TCU;
- decision-making on the establishment of local taxes and fees, change in their rates, object of taxation, procedure for collection or provision of tax benefits, which causes a change in tax liabilities of taxpayers and which comes into force from the beginning of the budget period (*Tax Code, 2010*).

The decision of local self-government bodies to establish local taxes and fees is a normative and legal act on taxation of local taxes and fees, which is taken on the basis, according to the rules and in compliance with the provisions of the TCU and promulgated in the manner prescribed by the TCU (*Ruling of the Supreme Court, 2021*).

It should be emphasized that the legal regulation of local taxes and fees is carried out at the state and local levels, has a two-tier structure, which determines the specifics of their collection. In accordance with the Constitution of Ukraine and norms of the TCU, the state determines an exhaustive list of local taxes and fees, establishes the basis for their collection, provides appropriate powers to local governments. Local self-government bodies exercising the powers granted by the state regulate the mechanism of collecting local taxes and fees. Regulation of local taxation is carried out, in addition to the norms of tax and budget legislation, normative legal acts regulating local self-government in Ukraine, acts of local self-government bodies. These are, in particular, the Laws of Ukraine “On Local Self-Government in Ukraine” (1997), “On Voluntary Association of Territorial Communities” (2015), etc.

According to Babin and Vdovichen (2021), the procedure for establishing local taxes and fees consists of two stages, namely national and local ones. In the science of tax law, they are called definition and establishment. At the first stage, the state determines an exhaustive list of such taxes, necessary elements of their legal structure, giving local self-government bodies the authority to introduce them on its territory by making a decision. At the second stage, local self-government bodies exercise the powers granted by the state establishing and regulating in detail the mechanisms for collecting each of the taxes and fees separately as well as enacting them (*Babin, Vdovichen, 2021: 152*).

During the fourth stage of the local taxation system development, a number of important laws and other normative documents were adopted.

Thus, the Law of Ukraine “On Amendments to the Budget Code of Ukraine on the Reform of Inter-Budgetary Relations”, which redistributed budget revenues at various levels as well as functioning of the inter-budgetary equalization system, became an important document in reforming the local taxation system (*On amendments to the Budget Code, 2014*).

Legal mechanisms of the formation and functioning of united territorial communities were enshrined in the Law of Ukraine “On Voluntary Association of Territorial Communities”, which strengthened the mechanism for forming the financial capacity of territorial communities, including through local taxes and fees (*About voluntary association of territorial communities, 2015*).

The Law of Ukraine “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform” defines the rules for collecting and crediting taxes to the budgets as a result of redistribution of revenues between different levels of government, formation of the system of local taxes and fees as a result of allocating budget revenues to local powerful tax sources (*On amendments to the Tax Code, 2014*).

The Law of Ukraine “On Amendments to the Budget Code of Ukraine on the Peculiarities of Formation and Execution of Budgets of United Territorial Communities” defined the forms of norms of interaction of local budgets of different levels, improved the procedure of formation and execution of budgets of united territorial communities, which are not united, but are located on the territory of the district, where part of the territorial communities has united (*About modification of the budget code of Ukraine concerning features of formation and execution of budgets of the united territorial communities, 2015*).

In order to implement the tasks set by the Laws of Ukraine on Amendments to the Budget and Tax Codes, additional budgetary powers were transferred to local self-government bodies and stable sources of local budget revenues were consolidated. A new financial basis

for the development of local self-government was formed as a result of: 1) redistribution of national taxes and fees between the budgets of different levels; 2) formation of the system of local taxes and fees as a result of allocating budget revenues to local significant tax sources; 3) expansion of tax revenues of budgets through the introduction of excise tax on the sale of excisable goods; 4) ensuring the powers of local councils to establish local taxes and fees (Halamaï, 2021: 42).

Thus, even at the beginning of the administrative reform and decentralization, the legal framework for financial decentralization, formation and proper functioning of local budgets, and improving the local tax system was created. However, newly created territorial communities, directly at the local self-government bodies, had difficulties, inconsistencies, technical problems with the collection of local taxes and fees. Due to the need to eliminate such contradictions, a number of amendments were made to the TCU regarding local taxes and fees.

The changes directly affected the powers of local self-government bodies of united territorial communities created in accordance with the law and a long-term plan for the formation of community territories (Article 12 of the TCU). Thus, the TCU stipulates that information on the rates and tax benefits of local self-government bodies of united territorial communities, “established in accordance with the law and a long-term plan for the formation of community territories, is sent within ten days of decision-making, but not later than July 25, which precedes the budget period during which it is planned to apply the established local taxes and/or fees and tax benefits for the payment of local taxes and/or fees to the controlling body”. Thus, the legislation sets the deadline for submitting information on tax benefits – ten days after the decision of the self-government body, but not later than July 25. In addition, the body of local self-government is obliged to send information on regulatory monetary valuation of land to the controlling body and the central executive body implementing state policy in the field of land relations within ten days from the date of approval of technical documentation on regulatory monetary valuation of land. If the local self-government body has not made a decision on tax rates and benefits and has not notified the controlling body by the specified deadline, the rates and benefits of the previous period will be applied.

The powers of controlling bodies are also defined. Thus, “no later than August 25 of the current year, controlling bodies compile summary information on the amount and date of setting rates of local taxes and/or fees in the respective territories, as well as tax benefits established in the respective territories and submit it electronically to the central executive body, which implements the state tax policy”.

In addition, in accordance with the Budget Code of Ukraine, the controlling bodies are obliged to submit monthly to local self-government bodies in terms of sources of income the reports on the amount of accrued and paid taxes and/or fees, the amount of tax debt, taxes and/or fees overpaid to local budgets in the relevant territories. They must provide information on the amount of bad tax debt written off, the amount of installed and deferred monetary liabilities and/or taxpayers’ tax debt to be paid to local budgets in the respective territories, as well as the amount of tax benefits provided. At the same time, it is noted that reporting in terms of taxpayers-legal entities is provided by the controlling body at the request of the local government.

Summary information on the rates and tax benefits in the relevant territories is published within the deadlines set by the TCU (no later than September 25 of this year) on the official website of the Central Executive Body implementing the state tax policy. In the same way, the consolidated information on the conducted normative monetary valuation of lands is published.

Hence, the law abolishes the obligation to set annual rates and benefits in local taxation. Thus, the single tax and property tax (in terms of transport tax and land fees, except land tax for forest lands) will cope with the application of rates that were in force until December 31 of the year preceding the budget period in which such local taxes and/or fees are planned to be used; property tax (in the part of real estate tax, other than land), fee for parking spaces for vehicles, tourist tax and land tax for forest lands (if established) at the rates specified by the current decisions. Changes in the rates of local taxes and/or fees, tax benefits for the payment of local taxes and fees requires the adoption of a new decision or making amendments to the existing decision by local self-government bodies (*Ryzhyi, 2021: 71-70*).

Further directions of tax reform and decentralization were identified in the Sustainable Development Strategy “Ukraine 2020”. Thus, one of the main directions of building a modern state was shifting from the centralized model of governance in the state, ensuring the capacity of local self-government and building an effective system of territorial organization of power in Ukraine, full implementation of the European Charter of Local Self-Government, principles of subsidiarity, ubiquity and financial self-sufficiency of local self-government (*Sustainable development strategy, 2015*).

On November 30, 2021, the Law “On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine to Ensure Balanced Budget Revenues” was adopted. It is one of the three laws included in the 2022 budget package.

The adopted law establishes the submission of reports to local self-government bodies by controlling bodies on all taxpayers, and not only on legal entities; transfer of personal income tax accrued by the tax agent on income from the sale of electricity produced from alternative energy sources by generating plants to the appropriate budget at the location of such generating plants. These changes shall enter into force on the day following the day of their publication. It is extremely important for territorial communities to restore the indexation of normative monetary valuation of lands: since 2022 for the lands of settlements and other non-agricultural lands, including for the purposes of single taxation of the fourth group – water lands (inland waters, lakes, ponds, reservoirs), since 2023 for agricultural lands (arable lands, perennial plantations, hayfields, pastures and fallow lands), including those intended for the purposes of single taxation of the fourth group of agricultural lands (arable land, hayfields, pastures and perennial plantations), which will provide additional income to local budgets (*On amendments to the Tax Code, 2021*).

The analysis of the current normative and legal acts gives grounds to claim that the regulatory framework for the development of the local taxation system has ensured the formation of an appropriate legal framework for its functioning.

However, local taxes have not yet become the main source of local budgets. One of the reasons is the inconsistency between the norms of tax legislation and the legislation governing local self-government. Today, the main shortcomings of local taxation are the insufficient fiscal importance of local taxes and fees; a small list of such taxes and fees compared to other countries; lack of local governments’ right to independently introduce their own taxes and fees in the community; low interest of local self-government bodies in attracting additional funds from local taxes and fees; insufficient interdependence between public services provided in a certain area and taxes paid by the residents; inefficient administration of local taxes.

It should be noted that according to a large number of scholars and experts, a number of the TCU norms do not meet basic international standards for local tax policy, in particular those defined in the recommendations of the Council of Europe. Such requirements include granting

local self-government bodies the right to set rates within sufficient limits to ensure funding for local programs; determination of benefits and exemptions for local taxes and fees by decision of local governments, etc.

The problems that arise when collecting local taxes and fees are caused by their peculiarities, namely the appointment of local taxes and fees to ensure sufficient development of territories, proper satisfaction of the needs of territorial communities. In addition, it should be taken into account that the mechanisms for establishing, calculating, planning local taxes and fees are quite complex, inefficiency of certain tax rates affects the stability of revenues to local budgets.

Codification is one of the ways to solve the problems associated with a large number of normative and legal acts, their imperfection, gaps in Ukrainian legislation on the collection, administration and implementation of local taxes and fees and inefficient performance of local governments. A significant number of scholars consider that it is necessary to adopt the Code of Local Self-Government of Ukraine, which will fully regulate all legal relations arising on issues of local self-government in Ukraine. Adoption of such a legal act will promote transparent administrative and financial, territorial and administrative activities of local self-government bodies in Ukraine, increase the independence of local budgets, increase their revenue base, create guarantees of rights and responsibilities of both local self-government bodies and citizens.

Legislative regulation of the system of local taxes and fees should take into account a number of factors, including the possibility of using other sources of revenue of local budgets, which would ensure a stable income and funding of local authorities; coordination of the interests of the state and local self-government while limiting the unjustified influence of state power on local taxation; expediency and validity of collecting local taxes and fees in the relevant territory; proportionality of budget revenues from such taxes and fees, with the costs associated with their collection, etc.

3. Conclusions

Legal regulation of local taxes and fees in Ukraine is carried out in accordance with constitutional norms, norms of tax, budget legislation, legislation on local self-government and legal acts of other branches of law that constitute the legal institution of local self-government. At the present stage the system of local taxation in Ukraine is built in accordance with the principles of the European Charter of Local Self-Government. After all, the amendments to the tax legislation of Ukraine adopted in recent years have ensured the formation and development of the financial system of local governments. However, there are some problems that need to be addressed in the field of local taxes and fees. It should be noted that not only the legal framework for local taxation needs to be improved, but also the legislation on local self-government, in particular through codification. It should be noted that the improvement of the legal framework in the field of local taxation should be based on the foundations of the current tax system and comply with the provisions of international normative documents on local self-government implemented by Ukraine.

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