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МОДЕРНІЗАЦІЯ МІСЦЕВОГО ОПОДАТКУВАННЯ В КОНТЕКСТІ ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ МУНІЦИПАЛЬНОЇ РЕФОРМИ В УКРАЇНІ

MODERNISATION OF LOCAL TAXATION IN THE CONTEXT OF LEGAL SUPPORT OF MUNICIPAL REFORM IN UKRAINE

Анотація. Презентована стаття присвячена критичному аналізу правового забезпечення місцевого оподаткування як невід'ємної складової податкової реформи України і водночас органічного компоненту вітчизняної муніципальної реформи. Встановлено, що перетворювальні процеси, які відбуваються на локально-податковому рівні не входять до кола пріоритетних наукових інтересів представників юридичного загалу.

У контексті побудови оптимальної моделі місцевого самоврядування проаналізовано чинне вітчизняне податкове та муніципальне законодавство, Європейська хартія місцевого самоврядування. Встановлено, що залучені в Україні трансформаційні механізми часто є неефективними і застарілими, не відповідають європейській муніципальній матриці. Місцеве оподаткування не стало ресурсо-забезпечувальним механізмом територіальних громад, жодний

місцевий податок або збір не набув «статусу» бюджетоутворюючого. Критично осмислені підходи вітчизняних науковців до розв'язання окресленої проблематики. Доведено, що зосередження зусиль правознавців на дослідженні загальних моментів фінансово-правового забезпечення муніципальної реформи, на бюджетно-правових аспектах її реалізації суттєво зменшують ракурс наукового пошуку, мінімізують можливість доктринального опрацювання специфіки фіскального забезпечення потреб місцевого рівня. Наголошено, що наявність суттєвих прогалин і протиріч чинного податкового законодавства, його текстуальна недосконалість і складність сприйняття свідчить про поверховість і нефаховість законотворця при формуванні місцевої податкової підсистеми, а також при подальшій регламентації інших матеріальних і процесуальних моментів місцевого оподаткування.

До основних векторів модернізації правового забезпечення місцевого оподаткування віднесено: а) термінологічний; б) компетентнісний; в) системний. Аргументовано, що позитивні результати в наведених напрямках можуть бути досягнуті виключно через корекцію вітчизняного законодавства.

Ключові слова: податкова система України, місцеві податки і збори, податково-правове регулювання, муніципальна реформа, Податковий кодекс України.

Summary. This article is devoted to a critical analysis of legal support for local taxation as an integral part of the tax reform of Ukraine and, furthermore, an essential component of the national municipal reform. It is established that the transformational processes taking place at the local tax level are not among the priority research interests of the legal community.

The current domestic tax and municipal legislation and the European Charter of Local Self-Government have been analysed in the context of developing an optimal model of local self-government. It has been established that the transformation mechanisms used in Ukraine are often inefficient and outdated, and do not correspond

to the European municipal matrix. In fact, local taxation has not become a resource-supporting mechanism for territorial communities, and no local tax or fee has acquired the "status" of a budget-forming one. The article critically examines the approaches of national scholars towards solving the outlined issues. It is proved that the focus of legal scholars' efforts on the study of general aspects of financial and legal support of the municipal reform, on the budgetary and legal aspects of its implementation significantly reduces the scope of scientific research, minimises the possibility of doctrinal elaboration of the specifics of fiscal support for the needs at the local level. The article emphasises that the existence of significant gaps and contradictions in the current tax legislation, its textual imperfection, and difficulty of perception indicate that the legislator was superficial and non-professional in the formation of the local tax subsystem, as well as in the further regulation of other material and procedural aspects of local taxation.

The main vectors of modernisation of legal support for local taxation include: a) terminological; b) competency-based; c) systemic. It is reasoned that positive results in the above areas can be achieved only through the correction of domestic legislation.

Key words: tax system of Ukraine, local taxes and fees, tax regulation, municipal reform, Tax Code of Ukraine.

Statement of the problem and the state of development of the selected issues by legal scholars. The reform of self-governing structures in our state is permanent. This process has started since the restoration of Ukraine's independence and is still ongoing. This area is a matter of concern to everyone, so the government's efforts to improve the Ukrainian municipal model are understood and fully supported by society. Despite different doctrinal approaches, there is also unanimity in the expert community and academic circles about the urgent need for further transformation of the current version of local self-government in Ukraine, bringing it closer to the standards developed in the European Union and time-tested standards.

In the activity aspect, the municipal reform emerges as a complex conglomerate of legally regulated public relations that take place from the initiation to the implementation of the municipal reform goals [1, p.23] and has already caused systemic shifts in all areas of state-government relations. It should become a priority area of state policy for the coming years [2, p.121]. Meanwhile, despite the fact that the restructuring of local self-government in Ukraine has been going on for rather a long time, it remains relevant, perhaps because none of its stages has yet been completed, demonstrating such significant successes that would provide grounds for its completion [3, p.127]. Besides, in practice, local self-government is often replaced by state regional authorities [4, p.103], real decentralisation has taken place only in the context of consolidation of powers, but not in the area of increasing the capacity of such communities and their financial and material independence from the state [5, p.174]. The purpose and priority directions of the transformation of local institutions have not yet been enshrined in legislation, its expected results and time parameters, as well as the legal instruments adequate to build an optimal model of local self-government have not been outlined. Some of the transformation mechanisms used in Ukraine are ineffective and outdated and do not correspond to the modern European municipal matrix. Consequently, the complex nature of the local self-government reform necessitates the involvement of experts in various social sciences in the formation of its ideology, in the implementation of appropriate planning, and in addressing other fundamental issues. Needless to say, legal scholars (in particular, experts in financial law) cannot stand aside from the intellectual support of this important state-building work.

Instead, unlike the financial and legal component, domestic scholars usually avoid a thorough analysis of the tax and legal component of the municipal reform. The following are among those legal scholars who have studied this issue at least partially: V. Ukhach and U. Syrko [6, p.44-45], T. Semenova [7, p.188], J. Pavlovyeh-Seneta [8, p.13], and R. Bedrii [9, p.133].

The aim of the article is to provide a scientific analysis of the tax and legal aspects of the national municipal reform, to identify the problematic areas of the current tax legislation of Ukraine and the shortcomings of its implementation, to develop proposals for building a modern subsystem of local taxes and fees, and to search for effective legal instruments to ensure the relevant area of public relations.

Outline of the main material. Financial scholars are involved in the development of a significant range of issues related to the municipal reform. On the one hand, their "professional responsibility" in the context of ensuring the normal functioning of society at the local level is based on the constitutional injunction (part 1 of Article 142 of the Fundamental Law of our state), which establishes local budget revenues as the resource (material and financial) basis of local self-government [10]. On the other hand, the domestic financial and legal regulation of local self-government is based on the provisions of the European Charter of Local Self-Government [11]. This document defines the basic standards for the financial resources of local self-government bodies [12 p.79], and contains a specialised provision (Article 9) dedicated to the financial resources of territorial communities, which is, in fact, the largest in volume among the other structural elements of this act. The Charter stipulates that local governments have the right, within the framework of national economic policy, to their own adequate financial resources, the amount of which should correspond to the authorities provided for by the Constitution or law. The details of the fundamental positions are specified at the level of domestic ordinary laws (primarily, the Budget Code of Ukraine [13], the Tax Code of Ukraine [14], and the Law of Ukraine "On Local Self-Government in Ukraine" [15]). In particular, the norms of the latter legislative act: a) determine that the independence of local budgets is guaranteed by their own and national revenues assigned to them on a stable basis (part 4 of Article 61); b) establish that local budget revenues are formed from their own sources determined by law and national taxes, fees and other mandatory payments fixed in accordance with the procedure established by law (part 1 of Article 63); c) empower local governments to establish local taxes and fees in accordance with the Tax Code of

Ukraine (part 1 of Article 69). Moreover, the importance of these fundamental principles is so significant that it provokes the national parliamentarian to duplicate them in various legislative acts.

Scholars quite reasonably believe that financial decentralisation is the main factor in the success of the municipal reform [4, p.104], refer to the main directions of municipal reform as financial and economic (reform of the financial and economic foundations of local self-government) [16, p.37], and the necessary elements of state policy in the field of local self-government reform include the legal and regulatory framework for its resource supply [17, p.180]. The specificity of financial legislation gives a distinctive tone to the regulation of the outlined sector of public relations. According to Kostiantyn Soliannik, it altogether destroys independence in decision-making and implementation, and creates a general atmosphere of a strong centralised state in the management of local development [18, p.82]. To a large extent, this thesis is correct. Such characteristics of financial legislation generally correlate with objective reality, as they reflect its sectoral specificity. The crucial factors in this evaluation are the enormous weight of the national fund of means and the traditional understanding of local finances as a secondary, auxiliary, or even subordinate economic and legal phenomenon. The decentralisation processes in the field of public finance that have recently been taking place in our country do not significantly violate the established general financial and legal approaches, the clear hierarchy of financial legislation, and the imperative and categorical nature of its injunctions.

Therefore, the focus of legal scholars' efforts on analysing the general aspects of the financial and legal support of the municipal reform or the preference for a study of the budgetary and legal aspects of its implementation not only significantly reduces the scope of scientific research, but also minimises the possibility of a doctrinal study of the existing problems of fiscal support for the needs at the local level. Such a position is hardly justified, since the state of the current tax legislation of our country (the presence of significant gaps and contradictions, textual imperfections, complexity of perception and application) indicates the superficiality and sometimes

unprofessionalism of the national legislator when forming the subsystem of local taxes and fees, as well as when further regulating other material and procedural aspects of local taxation.

A striking example of such an attitude of parliamentarians to the results of their legislative work can be found in the wording of the title of Section XII of the Tax Code of Ukraine and the approach to its construction currently implemented [14]. In fact, it is devoted to the regulation of a wide range of issues – the regulation of the collection of two local taxes and two local fees. For four years, this section had a corresponding title [19], and now its name is formulated as "Property Tax". In this context, a well-known saying can be cited: "As you name the boat, so shall it float". Such an illogical decision significantly distorts the actual state of affairs and does not embellish the first codified act in the history of our country in the field of taxation. In the context of the implementation of the provision of the European Charter of Local Self-Government on the formation of local financial resources at least partially at the expense of local tax payments, an important indicator of the financial independence of territorial units lies in the share of local taxes and fees in tax revenues and local budget revenues [20, p.92]. Whereas in Ukraine, a high share of tax revenues is typical only for national level revenues, local budgets are formed mainly through transfers, subventions, and other revenues defined by the Law on the State Budget of Ukraine [21, p.39]. Thus, the domestic practice of lawmaking and law enforcement in the field of taxation is far from the benchmarks chosen by European countries. Along with this, it is important to avoid the opposite situation when modernising the tax system - the dominance of local taxes and fees over national ones. However, given the current attitude of the legislator to the "quality" of local taxation regulation and the definition of its role in the taxation system of our country, this threat is unlikely to be real. Nevertheless, the subsystem of local tax payments needs to be substantially revised by eliminating inefficient tax levers and including taxes and fees that will lead to a significant increase in local budget revenues. The transformation of the legal support for local taxation should be considered an effective mechanism for achieving this goal. Moreover, it should be taken into account

that it will be both an integral part of the tax reform and a mandatory component of the municipal reform. This connection is objective and must be considered when determining the immediate and long-term goals and tasks of tax and municipal transformation processes. In our opinion, this approach will allow domestic reformers to achieve the expected result. Before moving on to the analysis of the legal regulation of local taxes and fees in the context of the municipal reform, attention should be paid to one fundamental provision.

In fact, the domestic legislator understands the special significance and important role of local taxes and fees. This is no coincidence that at the level of the Basic Law of our country, this group of tax payments (part 1 of Article 143 of the Constitution of Ukraine) is mentioned alongside national taxes (part 3 of Article 143 of the Constitution of Ukraine) [10]. Furthermore, the establishment of local taxes and fees in accordance with the law is one of the authorities of territorial communities of villages, urban-type settlements, towns, and cities, which they exercise directly or through local self-government bodies established by them. Along with that, the said injunction contradicts the position enshrined in paragraph 1 of part 2 of Article 92 of the Basic Law - the taxation system, taxes and fees are established exclusively by the laws of Ukraine (i.e., the right to make such specialised decisions is granted only to the Parliament). Further analysis of this constitutional provision reveals other logical contradictions. Therefore, if the competent local government body ignores the direct instruction of the Tax Code of Ukraine and fails to make a timely decision on the establishment of, for instance, a tax payment such as transport tax, which is defined by the Code as mandatory (clause 10.2¹ of Article 10 of the Tax Code), it is levied in accordance with the provisions of the Tax Code, applying the rates that were in force before 31 December of the year preceding the budget period in which such tax is planned to be applied. The specificity of this mandatory payment is that its rate is absolute and is set by clause 267.4 of Article 267 of the Tax Code of Ukraine without any alternatives (in the amount of UAH 25,000 for each passenger car that is a subject to taxation). Hence, in the above case, local authorities do not establish the said tax

payment, it will be collected regardless of their "will". Thus, we are dealing with the problem of legal support of the municipal reform at the competency-based level.

In order to solve this problem, it is necessary to clearly delineate the authorities of the ruling subjects and to grant local governments discretionary competence over taxes and fees that belong to the local layer of the tax system of Ukraine. In our opinion, the vector of regulation of these issues chosen by the national legislator (by giving priority to the category of "establishment of taxes and fees") is questionable, it is not justified either in the context of theoretical developments or from the point of view of law enforcement practice. Therefore, we propose to enshrine in the Fundamental Law of our Country the definition of such a system-forming concept as "establishment of taxes and fees" and to introduce into the constitutional and legal circulation a related but not identical term "introduction of taxes and fees". Their clear definition in the Constitution of Ukraine and wide application in other acts of the current tax legislation of our country will minimise collisions in tax and legal regulation. The matter of terminology is the most important. It is the instrument that allows not only to determine the content of a legal document but also to ensure adequate understanding of the content of the legal requirement by the subjects [22, p.7]. It is not by chance that the accuracy of legislative terminology is considered in the legal literature as a mandatory element of legal certainty. The categorical legislative apparatus must meet the requirements of consistency, unambiguity and uniformity of interpretation. If such qualitative characteristics are achieved, it will contribute to the accurate application of regulatory acts and the elimination of ambiguities.

A direct study of the local level of the tax system should be carried out not only from the perspective of analysing the structure of this peculiar local tax "toolkit", but also on the basis of the possibility of ensuring the fiscal, regulatory and control functions of local taxes and fees, defining the principles of local taxation and the possibility of their consolidation in the Tax Code. It is important to take into account the fact that the subsystem of local tax payments is a complex phenomenon. As a matter of ideal, it ought to combine, one the one hand, direct (income and property) and

indirect tax levers, and, on the other hand, contain both local taxes (tax payments that are abstractly neutral in the context of their purpose) and local fees (targeted tax payments levied to meet specific needs of the local community). The first ones are aimed at filling the revenue section of the local budget, while the second ones are used to provide resources for clearly defined programmes (in particular, socio-economic and cultural development) and activities of local importance, to replenish targeted funds, etc. Such a diverse and balanced tax arsenal will serve the successful municipal reform (primarily its financial and economic vector).

The composition of the local tax subsystem is fixed in Article 10 of the TC of Ukraine. According to the first edition of the Code, local taxes included the tax on immovable property other than land plots and the single tax, and local fees included the fee for certain types of business activities, the fee for vehicle parking spaces and the tourist fee. Subsequently, this subsystem has undergone a certain transformation and now includes four components: two local taxes (property tax and single tax) and two local fees (vehicle parking fee and tourist fee). All of them are direct tax payments by their legal nature. Meanwhile, the formation of this subsystem is biased in favour of property taxes and fees. This type of tax payment is traditionally a local tax, so giving it preference at the local level among a wide range of tax instruments is not surprising, as this emphasis is fully in line with the European tax matrix.

Prior to the entry into force of the TC of Ukraine, the local tax subsystem was established by the Decree of the Cabinet of Ministers of Ukraine "On Local Taxes and Fees" [23]. According to the latest edition of this legislative act, it included 16 tax payments (4 taxes and 12 fees). Even if we count as independent the three tax payments that now form the property tax (land payment, transport tax and tax on real estate other than a land plot), we have a significant reduction in the number of local taxes and fees. However, the most important thing is that local taxation has not become a resource-securing mechanism for territorial communities, and no local tax or fee has acquired the "status" of a budget-forming one. Besides, the legal mechanism of a number of local tax payments is structured in such a way that they cannot serve as an effective

fiscal and regulatory tool. For instance, over the past five years, the share of local fees (tourist tax and fees for parking spaces) in local tax and fee revenues has ranged from 0.31% to 0.43%. Needless to say, such low performance provokes a decision either to modernise the legal mechanism of these fees or to exclude them from the tax system of Ukraine. The introduction of such a mandatory payment as the transport tax also failed to meet expectations. Its collection was accompanied by public dissatisfaction, numerous taxpayer appeals and litigation. However, the specifics of the legislative regulation of this tax payment often allowed tax evasion. From our point of view, the parameters of its main elements of the tax and legal mechanism, such as the object of taxation and the tax rate, chosen by parliamentarians, need to be significantly adjusted.

According to our opinion, the actual state of local taxation can be improved by returning a number of taxes and fees that were once excluded from the relevant tax subsystem. For instance, the issue of updating the fee for the first registration of vehicles is worth an expert discussion, a scientific debate, and a detailed project study. And there will be no internal double taxation here, as the payment to the Pension Fund of Ukraine, which is currently paid in case of acquisition of ownership of passenger cars subject to the first state registration in our country by the territorial bodies of the Ministry of Internal Affairs of Ukraine, is paid in accordance with the Law of Ukraine "On the Compulsory State Pension Insurance Charge" [24], and is not a tax payment. Simultaneously, with such a renewal decision, the pension system will not suffer any losses, and local budgets, even with a low rate (e.g., 0.5% of the vehicle's value), will receive a significant replenishment. An essential positive aspect of the return of this fee to the tax system is the possibility of using the system of mandatory state registration of vehicles, which has been developed over decades, for taxation. Another option for expanding the range of local tax payments is to return to this subsystem the advertising tax, which was levied in our country for 17 years. Since its cancellation, significant changes have taken place in the field of advertising. We are witnessing the rapid growth of external advertising, advertising on television, radio, etc. Powerful resources are being used for advertising and, in our opinion, entrepreneurs can and

should pay this local tax. The main thing is to formulate and enshrine an optimal tax and legal mechanism in the Tax Code of Ukraine. It is hardly possible to cover all aspects of tax and legal support of the municipal reform in this article. Instead, it is our hope that we have been able to draw the attention of the scientific community to the existing problematic areas of the tax legislation of Ukraine, and to encourage the legal community to search for promising areas of constructive solution.

Thus, this study leads to the following **conclusions and proposals**. The tax and legal support of the municipal reform in Ukraine is extremely insufficient and imperfect, and has low efficiency. The current tax legislation is subject to ambiguities and contains significant gaps. These negative factors are fully reflected in the law enforcement in this area. Accordingly, the doctrinal support of local tax and legal regulation needs to be significantly strengthened. Modernisation of the legal support for local taxation in the analysed context should be carried out on the following main vectors: **systemic** – involves reviewing the composition of the group of local taxes and fees by eliminating inefficient tax levers and including taxes and fees that will increase revenues to local budgets; **competency-based** – will allow to delimit the authorities of the ruling subjects in the field of taxation, to provide local self-governments with discretionary competence over taxes and fees that belong to the local layer of the tax system of Ukraine; **terminological** - requires consolidation in the Basic Law of our country of the definitions of such system-forming concepts as "establishment of taxes and fees" and "introduction of taxes and fees", revision of the categorical apparatus used in the Tax Code and its structure.

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