

ФИНАНСОВОЕ И НАЛОГОВОЕ ПРАВО

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COMPARATIVE LEGAL ANALYSIS OF DOMESTIC AND FOREIGN SYSTEMS OF LOCAL TAXATION

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SUMMARY

The article is devoted to a comparative analysis of the legal regulation of local taxes in Ukraine and certain foreign countries. It is determined that the formation and development of the system of local taxation in Ukraine began with the receipt of its independence, even before the ratification of the European Charter on Local Self-Government. However, the ongoing tax reform does not have the proper success, and therefore requires a constant appeal to the positive experience of foreign countries, with respect to the construction and effective functioning of the local taxation system, with a view to its analysis and use in the process of forming the domestic tax regulatory and legal framework.

Key words: domestic and foreign, local taxes, international regulations, local budget revenues, Tax Code of Ukraine, comparative analysis of legal regulation.

АННОТАЦИЯ

Статья посвящена сравнительному анализу правового регулирования местных налогов в Украине и отдельных зарубежных странах. Определено, что становление и развитие системы местного налогообложения в Украине начались с получением ею независимости, даже до ратификации Европейской хартии о местном самоуправлении. Однако продолжающаяся налоговая реформа не имеет должного успеха, а потому требует постоянного обращения к положительному опыту зарубежных государств в части построения и эффективного функционирования местной системы налогообложения, с целью его анализа и использования в процессе формирования отечественной налоговой нормативно-правовой базы.

Ключевые слова: отечественные и зарубежные местные налоги, международные правовые акты, доходы местных бюджетов, Налоговый кодекс Украины, сравнительный анализ правового регулирования.

Background. Pursuant to paragraph 3 of article 9 of the European Charter of local self-government [1], at least some part of financial resources of local authorities should be received from local taxes and fees, rates of which are determined by these authorities as permitted by law.

Therefore, financial resources are partially formed using local taxes and fee, i. e. those imposed by the mentioned authorities autonomously. At the same time, this approach is recommendatory since the amount of this part is difficult to regulate due to different socio-economic and fiscal stipulations of each state. Besides, pursuant to this paragraph local authorities may autonomously determine the rate of local taxes and fees as permitted by law.

The commentary on the said Charter contains the following explanation: a political choice between services provided and costs to cover them, paid by a local taxpayer or their user, is the most primary responsibility of elective representatives [1]. It is considered generally accepted that the limit of local authorities' taxation powers are determined by the laws of central or regional governing institutions, but may not hinder the effective functioning of the local financial system.

Thus, the Charter indicates that local authorities, for the most part, have a right to impose taxes or fees as they deem appropriate, but it is largely regulated by the national legislation [1]. Essentially the international standards of local finance lay stress only on the subsistence of local taxes and fees, but not on the giving a right to local authorities to impose them.

Relevance of the topic. Local government is one of the components of power in Ukraine and is intended to provide economic development, creating conditions for the life and welfare of the population at the local level. Nowadays, the political vector of our country is strengthening the role of local

government through decentralization and the establishment of all necessary legal, social, economic, political and other conditions for the operation and the development of united communities

The aim of this study is a comprehensive analysis of the current tax regulatory framework in foreign countries to improve the formation mechanism of the financial capacity of local authorities to divide in Ukraine.

According to this goal should be to identify priority urgent tasks of investigation of the mechanism of local budgets of our country and foreign countries in terms of:

- the presence of differences in the legal and regulatory framework governing the procedure for the formation and use of financial resources of local budgets;
- prospects for forming a source of local budgets in Ukraine, and establishing efficient state income redistribution.

The object of the study are theoretical and practical problems associated with the development of legal regulation of local taxation in Ukraine and selected foreign countries.

The subject of the study is the system of legal norms of the tax legislation of Ukraine and certain foreign countries devoted to the legal regulation of local taxation.

Material and methods. In writing the article used acts of tax laws for the period of Ukraine's independence, including the rules of the Tax Code of Ukraine, which regulate the system of local taxation. To ensure the reliability of research results apply such methods of scientific knowledge as a historical and legal, system analysis, formal-legal.

Results. The world practice shows that local budgets revenues are formed using the sources of financial resources and local taxes and fees constitute irremissibly a certain part in the financial capability of the local self-governance. It is clear

that amid slumping amounts of central funding the problem of filling of local budget revenues becomes most prominent. The most rational solution to this problem is to broaden the powers of local authorities and to reform the local tax system. The strive to accomplish this goal itself led to numerous attempts of altering the legal framework regulating local taxation in the years of building the financial and budgetary system of Ukraine.

The current budget and tax reform, as well as the self-governance reform, demand constant adverting to the good practices of foreign countries so that to adapt and apply them when establishing the native legal framework.

There are two groups of local taxes in the legislation of a number of foreign countries:

1) own taxes (local taxes in direct meaning) imposed and charged by within the boundaries of administrative entity and that come to the budget in full;

2) general taxes provided for in the state budget for the benefit of local authorities. The state determines rates of these taxes and they may not be changed at the local level.

In our opinion, the attest examples of grouping local taxes on these principles in foreign countries are the administration models of:

– the income tax in Germany, where revenues from it are distributed among the federation, federal states, and communities;

– deductions from the income tax in the USA;

– deductions from the income tax and VAT in France [2, p. 41].

Also, there is a separation of taxes on direct and indirect: To the direct local taxes in foreign countries belong, for instance, the income tax for legal and physical persons, the land tax. to the indirect local taxes belong the sales tax, the excise duties for fuel, tobacco, alcohol beverages, etc.) Also, there is a rather diverse group of so-called other taxes (taxes levies for performance, dog owners, being in trade) which usually does not make any significant financial implication in the Western countries' budgets [3, p. 42].

In order to overcome these problems in Ukraine the reform of local government is declared and its main trends are identified in the Concept of reforming the local self-government and territorial organization of power in Ukraine, which aim is to determine trends, mechanisms and timing of the formation the effective local self-government and territorial organization of power to create and maintain full living environment for citizens, establishment of institutions of direct democracy, satisfying the interests of citizens in all spheres of life in the territory, reconciling the interests of the state and local communities [4].

The world practice shows that the planned local budget revenues and expenses should reflect priorities of the socio-economic policy and be estimated on the basis of the analysis of the major factors of economic interaction between the budget system and enterprises and the population.

The in-depth analysis of the foreign experience in the development of legal regulation of local taxation allows one to distinguish three theoretic models depending on the amount of fiscal powers to impose and charge local taxes and fees that local authorities enjoy.

One may describe the first model as an absolute possibility to regulate local taxation systems when local authorities have a right to impose taxes and fees, the list of which is not determined by the law, as they deem appropriate. The advantage of this model lies in the fact that local authorities can be receptive to socio-economic changes and better adjust their revenue source to expenses.

However, foreign countries do not use such a taxation model and, in our opinion, this is so because it is flawed in several ways:

– there is a danger that some institutional differences may appear at the taxation level consequently causing undesired movement of production factors and human migration;

– there is a probability that many different not adjusted to each other taxation instruments may appear making establishing of a rational taxation system impossible (when this is the case, tax rates for some income types can be rather high whilst other are not taxed at all);

– impossibility to conduct a single economic and financial policy.

According to the second model, local authorities may impose taxes and fees according to the list determined by the central authorities. There are several variations of this model:

1) all questions concerning charging of taxes and fees are regulated at the legislation level;

2) the tax base and the marginal rates are stated in the list, local authorities determine the rest;

3) the list of taxes and fees that may be imposed by local authorities is formalized in legislation, local authorities determine the tax base rate, tax rates, payment time limit, etc.

If there is a formalized by law list of local taxes and fees, central authorities can regulate the compulsoriness of their imposing.

Three variants seem appropriate in this case:

1) all the taxes and fees according to the list are imposed by local authorities only as they deem appropriate;

2) all the taxes and fees according to the list are compulsory for imposing by local authorities;

3) taxes and fees are separated into the ones that are compulsory for imposing and the ones that are imposed by a decision of local authorities.

According to the third model, the central authorities determine the list of local taxes and fees (compulsory or not compulsory for imposing, or either), but local authorities have a right to impose taxes and fees that are not on the list.

In our opinion, it is impossible to decide which model is the most effective since it depends first of all on a country, overall economic development, its historical traditions and national features. To a great extent, it has to do with a territorial organization. Usually, in unitary states local authorities enjoy limited rights when it comes to imposing and charging of local taxes, fees, levies, whereas in federal states a federal subject deals with the primary matters of local self-governance. Types of local taxes are determined by bodies of authority in states in the USA, cantons – in Switzerland, ruling establishments in Quebec – Canada Municipalities determine tax rates in these countries [5, p. 15].

In our opinion, giving a right to local authorities determine tax rates without fixing their upper limit is not reasonable, because above all things it makes orienting in tax rates of different territorial communities difficult for a taxpayer which noticeably influences his activity and tax planning in particular. At the same time, such a system has certain advantages, which the USA's experience proves rather persuasively. In this country some tax rates for each level are determined by the legislation, other are determined by municipalities or states, in particular, real estate, sales tax rates [5, p. 16].

The tax level influences noticeably the business activity in territorial communities, ensuring the establishment of an attractive investment climate. But market mechanisms even rates of such taxes on different territories in the conditions of the stable economy. And, what is really important, in circumstances when risks of deterioration or destabilisation of the economic situation arise and when special aims appear local authorities can easily correct elements of the taxation system. Therefore, local taxes can and have to be used as an efficient instrument of regulation.

There are other models that are in use. The Norwegian and Belgian local authorities have a right to impose local taxes

and fees autonomously, the central authorities limits only their marginal rate. In Sweden, the Parliament determines the list of taxes, and municipalities determine their rate.

There is an interesting model of local taxation in Spain. This country comprises of 17 regional structures and two territories having a special status. By the level of tax competence they are divided into three groups:

1) The Basque Country and Navarre that have the broadest rights in matters of local taxation. They are able to autonomously impose different tax types, revenues of which come the regional budget as well as to the local one;

2) a number of regions, including Catalonia, that are able to regulate different tax rates;

3) other regions that do not have any fiscal powers [3, p. 44].

Coming into being and development of local taxes and fees began with Ukraine becoming independent, even before the ratification of the European Charter of Local Self-Government [1]. In 1990, the law of Ukraine "On councils of people's deputies and local and regional self-governance" had been passed, giving the power for imposing taxes and fees to the competence of the basic level councils (rural, village and town councils). This broadened financial capabilities of local councils in terms of ensuring economic the self-dependence in the respective administrative-territorial entities [2, p. 45].

The passing of the law of Ukraine "On taxation system" and the decree of the Cabinet of Ministries of Ukraine "On local taxes and fees" dated 20.05.1993 № 56-93 [6, c. 50] may be considered a key moment in the legal establishing of the institute of local taxes and fees. These documents defined the legal principles of exercising the fiscal powers by local authorities.

In the early development of the tax system of our country a system of local government revenues (local budgets), which consisted of such species, was formed:

1. Taxes and charges formed and fixed at the state level:

– taxes, installation and collection of which are carried out exclusively at the national level, and the funds are well received by the local budgets (land tax, income tax);

– taxes formed as deductions from state taxes (the share of VAT, income tax, excise tax) and are only regulated on the state level.

2. Taxes and fees were collected on the state level, and were formed on the local self-government – local taxes and dues (municipal tax and tax on advertising, as well as in different periods of about 18 local fees, among which the most effective in terms of filling the budget, were: the market fee, charge for issuing a permission for placing an object of trade, etc.). The following local taxes were less effective: hotel tax, tax on issuing a certificate of (residence) ownership, dog owners tax, levy for the use of local symbols, resort levy, levy for the right to do filming and video recording, levy for vehicles going abroad though border areas, levy for the right to conduct an auction, competitive sale or lottery, levy for partaking in a horse-race, levy for winning in a horse-race, levy for those who gamble, parking levy.

3. Local untaxed earnings which filled up the local budgets (fines, license fees) [2, c. 42].

There here are the following achievements of the Tax code of Ukraine [7]:

– abolishing a number of fiscally inefficient tax payments;

– simplifying the administration system of local taxes;

– putting in order powers of local authorities in terms of imposing and administrating local taxes and fees by limiting unrestricted interpretation of their administration procedure by local authorities;

– regulation of the interaction between local and controlling authorities;

– imposing the real estate tax considered in the majority of the European countries the most effective one;

– granting the status of a local tax to the single tax allowing to broaden the financial independence of local budget.

Along with that, as the results of the scientific researches indicate, when the Tax code of Ukraine were being made, the main principles of establishing the local fiscal policy that appear in the Recommendations were not to full extent adhered to by the European Council on carrying out the European Charter of Local Self-Government [1] that, in particular, foresee the following:

1) qualifying localized taxes and fees that appear in the Recommendations and payment of which is difficult to avoid as local ones;

2) giving to local authorities a right to determine tax rates in certain but broad limits, that are enough for providing finance for local programmes;

3) determining preferences and exemptions concerning local taxes and fees only by the decision of local authorities representatives, not legislatively;

4) ubiquity of the taxable base for the majority of administrative-territorial entities of the respective level.

Starting from 01.01.2015, according to the article 10 of the tax code of Ukraine, local taxes include a tax on property and a flat tax and local fees – charges for parking vehicles; tourist tax. Local councils establish a tax on property in the part of the vehicle tax and land tax on real property, other than lot of land. Establishment of local taxes and fees not stipulated by the tax code of Ukraine is forbidden. Enrollment of local taxes and charges made to the relevant local budget [[2, c. 44].

The system for charging real estate tax, different from the land property, remains flawed. At the stage of imposing the said tax, only residential property was determined to be its tax base. Whereas housing over 120m² was excluded, i.e. the major part of property in this category. At the stage of making changes to the Tax code of Ukraine during the Tax reform, the tax base was broadened, in particular, by using non-residential real estate's assets and also by fixing the upper limit of the tax rate at 2% of the minimum wage per a square meter. However, the said changes did not bring the desired effect: the amount of the real estate tax returns came only to 225 million hryvnias in 2015 (for comparison: land fees returns came to 12,8 billion hryvnias in 2014) [8]. So, the real estate tax remains not effective enough and a significant financial instrument for local self-governance.

Qualifying the land fees as local taxes is an important step in increasing the potential of local taxes and fees to which it belongs inherently. Thus, in the Budget code of Ukraine, this type of incomes is fully included in own budget revenues of local authorities. Besides, rental payments as a part of the land fees may qualify as local taxes and fees. The local authorities' not being able to determine preferences and rates of the land fee creates a disbalance in the dynamic increase of nominal revenues from rental payments with the slower increase of revenues from the land tax, does not facilitate the development of the land market and does not increase revenues to the local budgets. The necessity of indexation of rates yearly, unlike tying them to the minimum wage, does not improve the administration of the land tax. By the way, local authorities in the majority of the EU countries consider the land tax the most effective because of the possibility to broaden tax bases and influence rates, the importance of its regulating and motivation functions.

Qualifying business entities as the only payers of the fee for vehicles parking practically turns it into a concession of the part of the territory (land plot) of a local council that prevents the introduction of world-wide spread technical devices (parking meters) and is a significant corruptive danger. In the EU countries, vehicle owners are fee payers who pay for the

parking itself and charging of the fee rests with respective business organizations.

Conclusions. To reform the native system of local taxation one needs to ascertain which from the above-mentioned model is the most effective in the modern conditions. The question concerning the right of local authorities to impose taxes and fees as they deem appropriate needs further scientific investigation. In our opinion, it is rational to give that right to bodies of power of consolidate territorial communities since the local finance system cannot be independent if local authorities do not have a tax autonomy, if separate objects of taxation for local taxation are not distinguished from the array of objects of taxation. That is why it is necessary to give to bodies of power of consolidate territorial communities the right to impose own taxes and fees and to autonomously determine tax rates (provided it is controlled by the national bodies of the general taxation level).

There are the following arguments to support this standpoint:

- local authorities have a better knowledge as to how the matters stand in their community hence can choose the most effective taxes and fees. It is in the interest of these authorities that taxes and fees be effective;

- mentioned taxes help local authorities regulate the socio-economic situation, create an attractive investment climate, etc;
- giving the right to impose taxes and fees to local authorities increases their financial autonomy.

However, when determining the list of local taxes and fees on should keep in mind such aspects:

- the importance of tasks to be carried out with their help;
- the accordance with the principles of economic efficiency and fairness;

- the fulfilment of the condition that only those taxes and fees may be local, administration expenses of which at the local level are lower than at the national one, and also those revenues from which exceed the said expenses;

- the low mobility of taxation base (when imposing a tax it is impossible to move an object of taxation from one community to another).

Thus, the reforming of the local self-governance institute by forming territorial communities in Ukraine should be considered

in the context of the developed model of local taxation. Within it, the list of taxes and fees is legislated which local authorities may impose and also tax rates according to the upper limit set forth by the tax legislation. Such approach allows local authorities to flexibly use fiscal instruments according to the rate of economic growth of the country and also development trends of business activity in a certain community.

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