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TAXATION AS A CONFLICT SPHERE OF STATE AND LOCAL, PUBLIC AND PRIVATE INTERESTS

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ABSTRACT:

The article analyses taxation as a conflict sphere at different levels: state and local authorities, public and private interests. It is highlighted that provision of a balance between public and private interests is a prerequisite for effective functioning of the tax system as a whole. It can be achieved only through legislative consolidation and compliance with the basic taxation principles, as well as provision of real legal guarantees for implementation and protection of the interests of all participants in tax legal relations.

INTRODUCTION.

Each participant in his activities realizes a certain interest, it is through social

relations that the interaction of interests is manifested. Depending on the relationship participants, we deal with different interests. Such interests may coincide completely, partially or be totally opposite; as a result, the situation may reach a conflict of interest.

STUDY METHOD

A set of techniques and methods of scientific knowledge, namely: dialectical, historical, comparative legal, formal legal, system analysis and synthesis method, etc. serve as the methodological framework. The dialectical method was used as the core method of our study, it helped to clarify the studied phenomena essence in the unity of their material content and legal form. The systemic-structural method made it possible to reveal and consider the formal and legal content of taxation, the content of modern financial policy, implemented both by central state bodies and local governments. The analysis of legal regulation of financial relations in Ukraine, as compared with foreign countries, was performed using the comparative legal method. As a whole, general scientific and special methods were used for a complete and comprehensive study of the modern tax collection problem and modernization of financial legislation. Theoretical conclusions of the study are based on scientific developments of the general theory of state and law, economic theory, financial, administrative, constitutional, civil law and other branch legal sciences.

Study analysis and problem statement.

A comprehensive study of the taxation system as the basis of conflict of different-level interests is of great theoretical and practical significance. At different times, many scientists investigated this issue: Yu. Krokhina, S. Pepelyaev, V. Rossikhin, G. Rossikhina et al. Despite of a great number of opinions and scientific matter, this problem needs further improvement and constant attention of scientists. In this respect, reorganization process of the tax system of Ukraine, analysis of the legal regulation of taxes and fees is of great importance.

STUDY RESULTS

Any social relationship is a form of expression and realization of interests. Social relations arise and are realized among individuals, therefore the entire set of social relations is "strung" by potential, actual or realized interests [1, p. 74].

If in the civil law sphere, various private interests usually collide, then in the taxation sphere, interests interact, being not just different in their content, but different by nature - between private and public interests. Relations and social ties, arising between private and public entities during financial activities of the state and local government are multidimensional and complex, and in terms of their social, political and legal content, they are initially conflicting by nature [2, p. 68].

The conflicting nature of public and private interests interaction is due to the essence of tax legal relations, which, in addition to the general features inherent in any legal relations, are characterized by certain specificity, due,

first of all, to their public law origin. The public-law nature of tax legal relations lies in the fact that such legal relations, regardless of their type, are ultimately aimed at solution of the main task of tax and fee collection, that is, providing the state with the financial resources, required to perform its functions [3, p. 95].

Tax legal relations are public-law by nature, since it is a form of the state interests (public interests) realization. The state, by establishment of tax rules, ensures the implementation of tasks. In this case, tax rules serve as one of the tools to ensure realization of fiscal interests [4]. That is, the public-law nature is a key feature of tax legal relations and consists in the fact that the state activities for tax collection are performed to satisfy public interests, that is, the state and public interests, needed for their functioning and development. It is this concept, the focus on satisfaction of public interests, that forms the basis of tax and legal regulation, where the state unilaterally establishes taxation rules, and the tax payment itself is represented in the form of a general constitutional debt.

Traditionally, several features of tax legal relations are distinguished, however, we assume that it is their public-law nature, that is, the focus on meeting the public interest, is of paramount importance for all other features. Taxation is a form of public interest realization and it is this interest that determines legal regulation features in this area, as well as features of interaction among entities (their interests) of tax legal relations. It is the nature of realized or protected interest that determines possible use of one or another mode of legal regulation. In this respect, the main principles of public-law regulation are as follows: 1) actions of entities are strictly within the framework of regulations, regardless of their will, 2) actions of entities in the interest of others, 3) establishment of boundaries for realization of interests of one party through by the scope of duties. Public-law regulation is performed with a predominant use of obligation, subordination and the permitting type of legal regulation. The public-law approach is dominated by power-organizational, compulsory principles, associated with implementation of public and state interests [5, p. 110-111].

The public-law regulation is manifested in tax law, based on public fiscal interest. The public interest, directly determining the degree of normative regulation of these legal relations, forces the state to introduce these relations into a rigid legal framework to exclude or minimize the margin of appreciation of the parties. The purposes of legal regulation are achieved through positive obligations and legal prohibitions [6, p. 80].

Considering the public-law nature of tax legal relations, the tax payment is determined by the state as a universal constitutional obligation. In this respect, it should be noted that that constitutional obligations are considered as a form of public interests expression. They represent the need to provide a citizen behaviour, ensuring realization of not only public, but ultimately private interests. The failure to comply with constitutional obligations can cause destabilization of relations in society and destruction of state sovereignty and weakening the state security [7, p. 125].

Any legal obligation is a form of the relevant interest realization, namely, the authorized person's interest [8, p. 18]. As for the tax payment obligation, it is expressed in constitutional regulations and regulated by tax and fee legislation as a measure of legally necessary behaviour of the entity, determined by the public-law nature of tax legal relations and established to satisfy the state interests [9, p. 87].

The state is one of the tax legal relations participants, which not only obliges other persons to pay taxes in its favour, but acts so to meet general needs. Public interest in the tax sphere is aimed not only at monetary funds accumulation, but ultimately at satisfaction of other, both public and private interests (in the sphere of economics, defence, education, pension provision, healthcare) [10].

Therefore, the fiscal interest itself is not independent, it is aimed at treasury formation for further distribution of funds. Although it is no longer the sphere of budget expenditures regulation, ultimately, it is the formed monetary funds, helping to realize the budget consumers interests. In this respect it is worth mentioning the principle of tax viability, as well as their budgetary orientation: emergence of new taxes shall be associated with coverage of corresponding costs but not with the budget deficit elimination [11].

The formation of financial resources of the public authorities is not a goal in itself, but a mechanism, providing conditions for the performance of public authorities of its functions. At the same time, the methods of fund raising by public authorities shall be consistent with those functions, for the implementation of which public authorities are formed [12, p. 86-87].

The resolution of the Constitutional Court of the Russian Federation in the Decree of December 17, 1996 No. 20-P was representative, it said that the public interest of all members of society is embodied in the constitutional obligation of taxpayers, therefore the state has the right and is obliged to take measures to regulate tax legal relations to protect rights and legitimate interests of not only taxpayers, but also other members of society [13]. Considering the above, tax payment cannot be regarded as a deprivation of the owner of his property - it is a legal partial confiscation of the property based on arising from the constitutional public-law obligation [14, p. 119, 120].

Analysing the specific features of tax legal relations, another characteristic shall be mentioned, determining their conflicting nature. The point is that such legal relations are "power-subordination" relations. In these relations, the state unilaterally establishes taxation rules and is an authorized entity, while taxpayers are obliged and shall unconditionally follow tax and legal regulations. Thus, if in the private law sphere the coordination provides possible coordination of interests of participants in public relations, finding common points of intersection, then in the tax and legal sphere relations are based on the power subordination of one party to the other. Actually, the idea of subordination and use of coercion does not initially imply consideration of the obliged persons' interests to fulfil their tax obligations. It is evident, that in

a state governed by the rule of law, the activities of all entities, and in the first place an authoritative entity, shall be based on legal requirements. The boundaries of tax authorities powers and their implementation procedure shall be established by law, considering the balance between public and private interests.

The resolution of interest contradictions of entities in society shall be based on the following political and legal principle: the state, through security agencies, shall try to ensure that observance of public interests is beneficial to every private interest bearer. At the same time, it is essential, through legal limitation of entity interests, not corresponding to the interests of society and the state, to achieve their correct understanding by the bearer of private interest. Consequently, legal regulation shall be constantly improved for complete and timely fulfilment of their obligations by all entities (it also applies to state authorities) would be more beneficial than non-fulfilment. This approach allows observing the principle of solution of contradictions of interests [15, p. 20].

One of the features of tax legal relations is also their property-related nature, since such relations involve the transfer of part of the taxpayers' property, in the form of monetary funds, to the state and local budgets. Actually, this characteristic expresses the economic tax essence and serves as the main factor, determining the conflict nature of tax legal relations. Even if the taxation system is organized in compliance with basic principles, ensuring the balance of private and public interests, each taxpayer understands in his own way the method and amount of taxes to be paid. It is a natural situation, when a taxpayer does not want to transfer part of his private property to the state at all. If the objective need for financial support of the state, existing at the level of society as a whole is transformed into political interest and is recognized by the whole society, then at the level of an individual, such transformation objectively does not occur [6, p. 80]. That is why, each individual is objectively not interested in tax payment to the state treasury, since it is related with direct oppression of his private interests [15, p. 15].

K. I. Sklovsky notes that all restrictions on property rights will inevitably give rise to rather sharp conflicts. There can be no restrictions without undesirable consequences, as property restrictions are restrictions on the freedom, autonomy, and initiative of a person, being is the only source of human well-being. Therefore, the problem of property restriction is the problem of the least worst choice, the choice between two horrible options. The reason for restriction cannot be a simple sign of the contradiction of property rights to the other right or interest [16, p. 156]. One can partially agree with the stated statement. So the restriction of property rights will in any case create a conflict of interest. However, there is a significant difference between restriction of the right of one person in favour of another person and restriction of the right of a person, considering the public interest. In the first case, this restriction presents the risk of the principle of equality violation. Regarding the second case, when human rights are restricted based on public interests, then the restriction is permissible.

Taxes are characterized by signs of individual gratuitousness and non-target nature. The taxpayer, having fulfilled his tax obligation, does not receive anything in return from the state. The fact that the monetary funds, accumulated as a result of tax payment will be used for the “common good”, does not mean that such a benefit will be provided to this particular taxpayer, and it will be equivalent to the amount of the tax paid. Consequently, at first glance, a single individual may not be interested in tax payment in general, or at least in the amount, established by law. At the same time, considering use of taxes as a financial source of public authorities' activities, paid on a gratuitous basis, the financial base for the performance of public functions of the state is formed not on the basis of repayment and payment, but on the basis of guaranteeing all citizens of a certain volume of public functions of the state, regardless of the solvency of citizens [12, p. 86, 87].

By all means, implementation of the public interest in the tax sphere shall be performed by keeping a balance between public and private interests. The focus of tax regulation on meeting, first of all, public fiscal interest shall not mean ignoring the interests of taxpayers, violating their fundamental rights and freedoms. The balance of public and private interests is a constant purpose to achieve a certain balance between the goal pursued by the state (to collect as many taxes as possible for the performance of its functions) and the creation of such a taxation system that would not be overly burdensome for taxpayers [17, p. 19]. Thus, the balance between public and private interests of the entities of constitutional legal relations in the tax sphere in practice shall not be expressed in the fact that the requirements for taxpayers imposed by tax legislation must be met, take into account the actual ability to pay tax and not infringe unnecessarily on their rights [18;19]. In other words, restrictions on the rights and freedoms of citizens shall be proportional to socially significant interests and goals.

CONCLUSIONS.

Provision of a balance between public and private interests is a prerequisite for effective functioning of the tax system as a whole. It can be achieved only through legislative consolidation and compliance with the basic taxation principles, as well as provision of real legal guarantees for implementation and protection of the interests of all participants in tax legal relations.

REFERENCES:

- Pershina I.V. Interest in law: dis.... Candidate of Juridical Sciences: 12.00.01 /I. V. Pershina. Nizhny Novgorod, 2002. 183 p.
- Krokhina Yu.A. Legal conflict in financial sphere: causes, essence and its solution procedures//Journal of Russian Law. 2003. No. 9. p. 68-76.
- Tax law in the decisions of the Constitutional Court of the Russian Federation in 2004: Materials of the 2nd International Scientific and Practical Conference. April 15-16, 2005, Moscow: Walters Clover, 2006. 300 p.
- Rossikhina H., Rossikhin V., Barbash T., Shcherba V., Sydorenko O. (2019). Theoretical and Legal and Economic Characteristics of Novellization of Taxation in Ukraine. *Journal Of Advanced Research In Law And Economics*, 10(7), 2091–2096. doi:10.14505/jarle.v10.7(45).21
- Kravchenko O. Yu. Public and private interests in law: political and legal

- study: dis. ...Candidate of Juridical Sciences: 12.00.01. Kazan, 2005. 156 p.
- Karaseva M. V. Financial legal relationship: dis. ...Candidate of Juridical Sciences: 12.00.12. M., 1998. 394 p.
- Voropaeva G. Yu. Constitutional obligations of citizens of the Russian Federation as a form of expression of public interests//Bulletin of Samara State Medical University. 2006. No. 10/3 (50). p. 123-127.
- Karimova R. R. Legal obligations: essence and problems of implementation: author's abstract of dis. of Candidate of Juridical Sciences: 12.00.01. Yekaterinburg, 2008. 22 p.
- Lukyanov V.V. Legal basis for tax payment obligations: author's abstract of dis. of Candidate of Juridical Sciences: 12.00.14. Saratov, 2006. 22 p.
- Rossikhina H., Svitlychna Y., Brusakova O. Local taxes and charges in local budgets' income generation. *Baltic Journal of Economic Studies*. Vol. 4. No. 4. 2018. DOI: <https://doi.org/10.30525/2256-0742/2018-4-4-291-294>
- Rossikhin V., Burdin M., Mykhalskyi O. Legal regulation issues of cryptocurrency circulation in Ukraine. *Baltic Journal of Economic Studies*. Vol. 4. No. 3. 2018. DOI: <https://doi.org/10.30525/2256-0742/2018-4-3-254-258>
- Public services: legal regulation (Russian and foreign experience)/Ed. by E. V. Gritsenko, N. A. Sheveleva. M.: Walters Clover, 2007. 256 p.
- Resolution of the Constitutional Court of the Russian Federation dated 12/17/96. No. 20-P "In the case of checking the constitutionality of paragraphs 2 and 3 of the first part of Article 11 of the Law of the Russian Federation of June 24, 1993 "On federal bodies of the tax police"//SZ RF. 1997. No. 1. Cl. 197.
- Tax law in the decisions of the Constitutional Court of the Russian Federation in 2006: Materials of the 4th International Scientific and Practical Conference. April 13-14, 2007, Moscow: Walters Clover, 2007. p. 119-120.
- Tax planning in business: legal regulation: monograph/Ed. by N.I. Khimicheva. – M.: Walters Clover, 2006. 413 p.
- Principles, limits, grounds for restriction of human rights and freedoms under Russian law and international law//State and Law. 1998. No. 7. p. 156-157.
- Payushin M. K. Constitutional and legal basis for implementation of the obligatory tax payment of taxes and fees in the Russian Federation: author's abstract of dis. of Candidate of Juridical Sciences: 12.00.02. Moscow, 2011. 28 p.
- Rossikhina H., Bondarenko I., Kobylnik D. Tax Amendment as a Mechanism of Economic Leadership: A Case Study of Ukraine // *Advances in Social Science, Education and Humanities Research*. 6th International Conference on Social, economic, and academic leadership (ICSEAL-6-2019) Vol. 441. p. 167-171.
- Rossikhin V., Burdin M., Musiienko O. Taxpayer in the Legal Mechanism of Tax as a Leader and Engine of Economic Transformation // 6th International Conference on Social, economic, and academic leadership (ICSEAL-6-2019). – Atlantis Press, 2020. – p. 100-104.