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HISTORICAL ASPECTS OF TAX SYSTEM ESTABLISHMENT IN UKRAINE

Abstract. Purpose. The purpose of the article is to study positive and negative historical aspects and stages of the tax system establishment of Ukraine.

Results. The article studies the tax system of Ukraine and the changes made during the independence of Ukraine. The positive and negative experiences of the tax system are considered. The focus is on the importance of considering the historical experience of tax establishment in the further reform of the tax system of Ukraine. It is underlined that nowadays the tax system of Ukraine cannot be called stable, because for more than 30 years, starting from the historical moment of adoption of the Law of Ukraine “On the Tax System”, it has been undergoing frequent changes and reforms, review of taxes and charges, their amount and manner of levying, etc. For many years this long-standing reform of the tax system is due to its inefficiency. There is a lack of balance between the fiscal component of the tax system and encouraging businesses to be transparent. That is, in such circumstances, either the taxpayer is limited in economic growth or the State does not receive tax revenues, which results in inadequate financing of social benefits and wages.

Conclusions. It is concluded that constant changes in the tax system of Ukraine and attempts by the legislators to improve it, to increase its efficiency and to bring it into line with the realities of public life and the rapid development of trade activity have provoked to increasing tax evasion. Such imperfect legislative changes contribute to the existence of a significant shadow economy, which creates a lack of real national budget. Before introducing further changes in the tax system, the historical aspects of the tax system in Ukraine should be studied and thoroughly analysed in order to prevent the same errors. It is necessary to highlight the ideas and their implementation, especially those that have had a positive influence on the development of the tax system and to build an effective tax system aimed both at taking into account the interests of taxpayers and the interests of ordinary Ukrainians, who may not, for objective reasons, pay any taxes, but want a decent living.

Key words: fees, mandatory payments, taxes, tax system, tax law.

1. Introduction

The tax system in Ukraine is constantly undergoing fundamental or partial changes. Every year, hundreds of changes are made to tax legislation, despite the main principle of the tax system – the principle of stability. With the advent of the new administration lawmakers “differently” see the future tax system and try to reform it. Some taxes are abolished, and others are introduced or modified by combining several into one.

Given the permanent crisis of the Ukrainian economy, the proposed changes in the tax system, as experience shows, are ineffective, and vice versa, create discomfort and instability in legal relations “State – taxpayer”. Therefore, to understand which tax system should be stable and effective, a detailed analysis of the his-

torical aspects of its introduction and existence, as well as positive developments and shortcomings, should be undertaken.

In future, the legal and regulatory framework for the tax system should take into account the relevant research results of its historical introduction, existence and evolution, in order to avoid the same errors. Given that, the subject of the study is quite relevant.

Research into the historical aspects of the tax system in Ukraine is under focus in a considerable number of scientific works, from different perspectives of this topic. However, the establishment of Ukraine’s tax system during the independence period has been little studied. Scientists, such as I.H. Kozynets, O.H. Kozynets, V.V. Kurian, A.V. Tkachenko, S.M. Yurii, F.O. Yaroshenko, and others studied

this problem.

The purpose of the article is to study positive and negative historical aspects and stages of the tax system establishment of Ukraine.

2. Stages of establishment and development of the tax system of Ukraine

Legal scholars still lack a unified approach to defining the stages of development of the Ukrainian tax system. However, this analysis enables to identify the most appropriate four basic stages of the tax system establishment in independent Ukraine: 1) 1991–1993; 2) 1994–1999; 3) 2000–2009; 4) 2010 – to date (Tkachenko, 2013, p. 129).

According to S.M. Yurii, the process of establishing the tax system in Ukraine has three stages: 1) 1991–1993; 2) 1994–1999; 3) 2000 – to the present day (Yurii, 2014, p. 288).

Other specialists argue that the evolutionary path of development of the tax system of Ukraine is sufficiently long and consists of stages that are generally in line with the general periodicity of the history of the State and the law of Ukraine:

1) the tax system of Kievan Rus (IX–XIII centuries);

2) the Lithuanian-Polish tax system (the beginning of XIV–XVII centuries);

3) the tax system of Hetmanshchyna (XVII–XVIII centuries);

4) the tax system of the Russian and Austro-Hungarian Empires (the end of XVIII – the beginning of XX centuries);

5) the tax system of the USSR (1917–1991);

6) tax system of independent Ukraine (since 1991) (Kozynets, Kozynets, 2018, pp. 88–89).

F.O. Yaroshenko groups the development of the Ukrainian tax system in stages as follows:

1) the oldest tax system of Kievan Rus (IX–XIII centuries);

2) monetary, natural tribute, corvee and other taxes of the Lithuanian-Polish era (the beginning of XIV century);

3) the tax system of the Cossack State (1648–1654): spoils of war, wine sales, royal grain monetary salary, and foreign trade;

4) the Moscow-Russian tax system (the middle of XVI – the beginning of XX century);

5) the tax system of the Soviet era (1917–1991);

6) the establishment and development of the Ukrainian tax system (1991–2001);

7) modernization of the State Tax Service of Ukraine (Yaroshenko, Pavlenko, 2002, pp. 41–42).

However, in our opinion, it is not necessary to consider aspects of the tax system establishment in Ukraine in times from Kievan Rus to the proclamation of independence of Ukraine in 1991, since tax relations at that time have no

influence on the construction of a modern tax system and ancient experience is though very interesting, but not much useful. We believe that the study of aspects of the establishment of the tax system of Ukraine, starting in 1991, will be relevant in the light of the mistakes and achievements of the legislator of independent Ukraine.

According to V.V. Kurian, the tax system of modern Ukraine began its formation before the Verkhovna Rada of the Ukrainian SSR proclaimed the independence of Ukraine. On June 25, 1991 the Law of Ukraine “On the Tax System”, which entered into force on November 1, 1991, while Verkhovna Rada of the Ukrainian SSR proclaimed the independence of Ukraine on August 24, 1991. Consequently, two months before Ukraine’s declaration of independence, the legal foundations of the tax system of modern Ukraine were laid (Kurian, 2016, p. 73).

With the declaration of independence, Ukraine sought to create its own tax system, which was established at a difficult time of the development of statehood, under conditions of economic instability and hyperinflation. Tax legislation was developed on the basis of a regulatory framework inherited from the command-and-control system, and the basis of national tax policy was developed not only under the pressure of objective economic, but also political factors without adequate research and analysis of the micro and macroeconomic effects of different taxes and their rates (Yurii, 2014, p. 287).

The advent of the domestic tax system took place against the backdrop of a profound economic crisis, a transitional and imperfect monetary system and political instability. Therefore, in the context of the economic and political crisis, together with the advent of the State of Ukraine, the acquisition of sovereignty by the State of Ukraine the process of establishing the domestic tax system took place and continues to this day (Donchenko, Oliinyk, 2019, p. 48).

3. Tax system of Ukraine at the present stage of State development

Nowadays the tax system of Ukraine cannot be called stable, because for more than 30 years, starting from the historical moment of adoption of the Law of Ukraine “On the Tax System”, it has been undergoing frequent changes and reforms, review of taxes and charges, their amount and manner of levying, etc. For many years this long-standing reform of the tax system is due to its inefficiency. There is a lack of balance between the fiscal component of the tax system and encouraging businesses to be transparent. That is, in such circumstances, either the taxpayer is limited in economic growth or

the State does not receive tax revenues, which results in inadequate financing of social benefits and wages.

For example, according to article 5 of Law 1251-XII on the tax system of the Ukrainian Soviet Socialist Republic of 25 June 1991, the republican taxes, duties and compulsory payments include: tax on profits; tax on profits of foreign legal entities from activities in the Ukrainian SSR; tax on turnover; excise duty; value added tax; tax on exports and imports; tax on income; tax on the labour fund for collective farms; income tax on citizens; payment for natural resources; payment for land; forest income; environmental tax; State duty; vehicle ownership tax; customs duty (Law of the Ukrainian Soviet Socialist Republic "On the Taxation System", 1991).

At the time, the legislator seemed to have incorporated all known taxes into the tax system. It looked like only ancient "beard taxes" and "chimney taxes" were not included. Obviously, it was a completely imperfect tax system which involved inefficiency, complexity of administration, injustice and double or triple taxation of the same object.

Some experts stated that in 1991 there were 29 national and 16 local taxes and fees. This number was a heavy burden for enterprises and entrepreneurs who had just started their activities in the conditions of independent Ukraine. That is why this period is characterized as the most shadowy in our country's tax system (Molodetska et al., 2016, p. 711).

According to Law of Ukraine 3904-XII of February 2, 1994 on amendments and additions to the Law of the Ukrainian SSR "On the Tax System", the Law of the Ukrainian SSR "On the Tax System" was set out in a new edition. According to articles 14 and 15 of the new version of the Law of Ukraine "On the Tax System", national taxes and other compulsory payments were: 1) value added tax; 2) excise duty; 3) tax on the income of companies and organizations; 4) personal income tax; 5) customs duty; 6) State duty; 7) tax on the property of enterprises; 8) real estate tax of citizens; 9) tax on owners of vehicles and other self-propelled machines; 10) trading tax; 11) payment for the cost of exploration work; 12) payment for the special use of natural resources; 13) payment for pollution of the natural environment; 14) deductions and charges for the construction, repair and maintenance of roads; 15) contributions to the Fund for Chernobyl Disaster Mitigation and Social Protection; 16) contributions to the Fund for the Promotion of Employment; 17) contributions to the Social Insurance Fund of Ukraine; 18) contributions to the Pension Fund of Ukraine.

The local taxes and charges were: 1) hotel fee; 2) car parking fee; 3) market fee; 4) fee for issuing a warrant for an apartment; 5) resort fee; 6) fee for race at the hippodrome; 7) fee for win in races on the hippodrome; 8) fee from persons participating in the hippodrome betting; 9) advertising tax; 10) a levy on the right to use local symbols; 11) a levy on the right to cinema and television productions; 12) a levy on the right to hold local auctions, competitions and lotteries; 13) a municipal levy; 14) tolls for the transit of vehicles travelling abroad in border areas; 15) levies for the issuance of permits for the placement of objects of trade (Law of Ukraine "On Amendments and Addenda to the Law of the Ukrainian SSR «On the Taxation System»", 1994).

It can be considered as the first tax system of independent Ukraine. Though it was too cumbersome, and some taxes, like the non-real estate tax, never worked, but it already seemed to be a more efficient tax system. Despite the fact that the tax system included all payments, even those that were not of tax nature, such as contributions to the Pension Fund of Ukraine, it ensured stable financing and development of the State until the adoption of the Tax Code of Ukraine in 2010.

Between 1994 and 2011, different taxes or levies supplemented the tax system or were excluded, but its effectiveness did not change much.

It was only with the adoption of the Tax Code of Ukraine in 2010, which entered into force on 1 January 2011, that the tax system acquired modern features that took into account certain international experience. But, unfortunately, with the adoption of the Tax Code of Ukraine, the tax system did not provide anti-shadowing effect of Ukraine's economy.

According to articles 9 and 10 of the Tax Code of Ukraine (revised as of January 1, 2011), national taxes and duties were:

- corporate income tax;
- individual income tax;
- value added tax;
- excise tax;
- first vehicle registration fee;
- environmental tax;
- rental payment for the transportation of oil and oil products through main oil and oil product pipelines, the transit transportation of natural gas through natural gas and ammonia pipelines on the territory of Ukraine;
- rental payment for oil, natural gas and gas condensate produced in Ukraine;
- fee for mineral resources use;
- land fee;
- fee for the use of radio frequency resource of Ukraine;

- fee for the special water use;
- fee for special use of forest resources;
- fixed agricultural tax;
- grape-growing, horticultural and hop-growing tax;
- customs duty;
- fee in the form of an additional levy to the current tariff for electricity and thermal energy except for electricity generated by qualified co-generation plants;
- fee in the form of an additional levy to the current tariff for natural gas for consumers of all forms of ownership.

Local taxes and fees include tax on real estate, other than land; single tax; fee for the certain business activities; fee for parking of vehicles; tourist fee (Tax Code of Ukraine, 2010). When adopting the Tax Code of Ukraine, the tax system was based on the 2010 Law of Ukraine “On the Tax System”, which, in our opinion, was a mistake. It was necessary to introduce, for a transitional period of up to three years, an updated tax system, ensuring efficiency, growth of filling budgets at all levels and bringing the economy out of the shadows.

According to articles 9 and 10 of the Tax Code of Ukraine (amended as of January 1, 2021), national taxes and duties are: corporate income tax; individual income tax; value added tax; excise tax; environmental tax; rental payment; customs duty. Local taxes and fees include tax on real estate; single tax; fee for parking of vehicles; tourist fee (Tax Code of Ukraine, 2010).

The 2021 tax system in force, in our opinion, is significantly better than that of 1991, 1994 and better than that introduced with the adoption of the Tax Code of Ukraine in 2010. However, it is not without significant shortcomings, which make the economy shadowy. Therefore, an effective tax system is one of the main tasks of the legal experts in tax law and legislators in the coming years.

It should be noted that in accordance with Article 2 of the Law of Ukraine “On Succession of Ukraine” until the adoption of the new Constitution of Ukraine, the Constitution (Basic Law) of the Ukrainian SSR of 20 April 1978 was in force on the territory of Ukraine (as amended by Law of Ukraine 1554-XI of 17 September 1991 – Constitution of Ukraine) (Law of Ukraine “On Succession of Ukraine”, 1991).

Article 97¹, parts 1 and 2, of the Constitution of Ukraine provides for that the Verkhovna Rada of Ukraine, in exceptional cases, by two thirds of the total number of people’s deputies of Ukraine, may by law delegate to the Cabinet of Ministers of Ukraine, for a specified period, the power to issue regulatory decrees on separate issues, provided for by Article 97, para-

graph 13, of the Constitution of Ukraine (The Constitution (Basic Law) of Ukraine, 1978).

The Cabinet of Ministers of Ukraine adopts decrees having the force of law for the exercise of delegated powers.

For example, Law of Ukraine 2796-XII of 18 November 1992 “On temporary delegation of powers to the Cabinet of Ministers of Ukraine to issue decrees in the field of legislative regulation” (in the revision of Law of Ukraine 2886-XII of 19 December 1992) the Verkhovna Rada has delegated to the Cabinet of Ministers temporary powers, until 21 May 1993, to issue regulatory decrees on matters provided for in article 97, paragraph 13, of the Constitution of Ukraine concerning real estate relations, entrepreneurship, social and cultural development, State customs, scientific and technical policy, credit and financial system, taxation, State wage policy and pricing (Law of Ukraine “On Temporary Delegation of Powers of the Cabinet of Ministers of Ukraine to Issue Decrees in the Sphere of Legislative Regulation”, 1992).

With the adoption of the Constitution of Ukraine on 28 June 1996, the Constitution of Ukraine of 1978 ceased to have effect.

Since 1991 independent Ukraine has been characterized by rampant inflation, a lack of funds in the budget, chronic arrears in wages and pensions, and a lack of everyday goods and food in shops. Along with the crisis phenomena of the Ukrainian economy at the time of statehood establishment, the Ukrainian legislator faced the impossibility of making an effective tax system due to lack of experience, skills, analysis data in tax relations. In this context, the Verkhovna Rada of Ukraine, as a legislative body, was not in a position to address and overcome all these challenges in a timely manner and therefore transferred the powers to regulate, inter alia, taxation, by issuing decrees to the Cabinet of Ministers of Ukraine. In our view, that was the right decision at that time. It is understandable that such decrees were issued without any thorough elaboration, as there was no time or practice to do so in the context of the transition from communism to a market economy, and the country had to fill the budget with tax money very quickly. The Cabinet of Ministers of Ukraine issued the following Decrees: 1) № 13-92 “On income tax from citizens” of 26 December 1992; 2) № 18-92 “On excise tax” of 26 December 1992; 3) № 4-93 “On single customs rate of Ukraine” of 11 January 1993; 4) № 7-93 “On the State customs duty” of 21 January 1993; 5) № 24-93 “On trading tax” of 17 March 1993; 6) № 56-93 “On local taxes and duties” of 20 May 1993.

The shortcoming is that such decrees has been in force too long. Many decrees remain

in force today. In particular, Decree № 7-93 of the Cabinet of Ministers of Ukraine of January 21, 1993 “On State customs duty” is in force. Although the State customs duty is legally related to taxes, and more specifically to fees, it was not included in the Tax Code of Ukraine when it was drafted with the aim of artificially reducing the number of taxes (fees) to raise Ukraine in the World Bank Doing Business rating, which assesses business enabling environment. In particular, the lower a country’s taxes, the higher its rating. For example, in 2012, Ukraine ranked 152nd; in 2014 – 112th; in 2016 – 83rd; and in 2020 – 64 (Doing Business-2020. Due to which Ukraine has risen to 64th place in the ranking, 2019). Although foreign direct investment in 2020 shows that Ukraine is not particularly affected by this rating. For example, in 2012, there were \$8.4 billion in foreign direct investment; in 2020, there were minus \$343 million in foreign direct investment (Foreign direct investment (FDI) in Ukraine, 2021). That is, the higher rating, the less amount of investment. We assume that even if Ukraine was in the top ten of this rating, ordinary Ukrainians would not get a better life from this. These ratings are only needed by politicians to have something to talk about at various talk shows for political PR about raising Doing Business ratings, such as 13 positions per year in 2016, and halving the shadow economy in two years. Obviously, records like that are all political manipulation. As soon as such politicians leave their posts, the shadow economy suddenly returns to its “natural” place for Ukraine, which according to different estimates is about 50% (The level of the shadow economy in Ukraine is 47.2% of GDP, 2018). At the same time, there are many different payments in Ukraine today, which by their legal nature are taxes (fees), but they are not included in the Tax Code of Ukraine artificially for the same purpose.

Moreover, according to Section XV, paragraph 4, Transitional provisions of the Constitution of Ukraine of 1996 (Constitution of Ukraine, 1996), within three years of the entry into force of the Constitution of Ukraine, the President of Ukraine had the right to issue decrees approved by the Cabinet of Ministers of Ukraine and signed by the Prime Minister of Ukraine on economic issues not regulated by law; accompanied by the draft law submitted to the Verkhovna Rada in accordance with the procedure established in article 93 of the Constitution. Such decree of the President of Ukraine took effect if within 30 calendar days from the date of submission of the draft law (with the exception of the inter-sessional period) the Verkhovna Rada of Ukraine would

not adopt a law or reject a draft law submitted by a majority of its constitutional membership and would be in force until a law on these issues adopted by the Verkhovna Rada enters into force.

Thus, in accordance with Section XV, paragraph 4, Transitional Provisions of the Constitution of Ukraine, Decree № 727/98 of the President of Ukraine on the simplified system of taxation, accounting and reporting of small business entities of 3 July 1998 was issued and was in force until the adoption of the Tax Code of Ukraine. In our view, the promulgation of such decree was an erroneous decision, because its effects are still being felt in 2021 and will continue to be felt for a long time to come. The introduction of the simplified system came under pressure from street protests, on the one hand, and, on the other hand, from a political perspective, in the run-up to the 1999 presidential elections, with a view to mobilizing an entrepreneurial electorate. With the adoption of the Tax Code of Ukraine in 2010 there were attempts to eliminate the simplified tax system, but under pressure of “tax Maidan” the authorities did not find enough political will to eliminate the simplified system of taxation, accounting and reporting of small business entities. There was an extensive public debate on the issue implying only one idea as follows. Entrepreneurs in the simplified system of taxation, accounting and reporting do not have primary documents on the origin of the goods they trade and therefore cannot issue a cash cheque to the buyer. There were no other comments. This suggests that they are selling contraband, which for tens of billions of US dollars passes through customs without paying taxes to the budget, and only paying bribes to customs officers. The only people who get rich are the customs officers and the people involved.

Therefore, in our opinion, the development of the tax system can be divided into stages as follows:

1) from the day of independence on 24 August 1991 until the end of the possibility of regulating tax legal relations by decrees of the Cabinet of Ministers of Ukraine, namely until 21 May 1993;

2) from 22 May 1993 until the termination of paragraph 4 Transitional provisions of the Constitution of Ukraine from 1996, namely until 28 June 1999;

3) from the date of termination of the transitional provisions of the Constitution of Ukraine of 1996, namely from 29 June 1999, until the date of entry into force of the Tax Code of Ukraine, namely, until 1 January 2011;

4) from 1 January 2011 to date.

4. Conclusions

The constant changes in the tax system of Ukraine and attempts by the legislators to improve it, to increase its efficiency and to bring it into line with the realities of public life and the rapid development of trade activity have provoked to increasing tax evasion. Such imperfect legislative changes contribute to the existence of a significant shadow economy, which creates a lack of real national budget.

Before introducing further changes in the tax system, the historical aspects

of the tax system in Ukraine should be studied and thoroughly analysed in order to prevent the same errors. It is necessary to highlight the ideas and their implementation, especially those that have had a positive influence on the development of the tax system and to build an effective tax system aimed both at taking into account the interests of taxpayers and the interests of ordinary Ukrainians, who may not, for objective reasons, pay any taxes, but want a decent living.

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ІСТОРИЧНІ АСПЕКТИ СТАНОВЛЕННЯ ПОДАТКОВОЇ СИСТЕМИ В УКРАЇНІ

Анотація. *Метою статті* є дослідження позитивних і негативних історичних аспектів та етапів становлення податкової системи в Україні.

Результати. У статті досліджено податкову систему України та зміни, що вносилися до неї за часів незалежності України. Розглянуто позитивний і негативний досвід становлення податкової системи. Наголошено на важливості врахування історичного досвіду встановлення податків у подальшій реформі податкової системи України. Обґрунтовано, що податкова система України сьогодні не може називатися стабільною, оскільки вже впродовж 30 років, починаючи ще з історичного моменту прийняття в 1991 р. Закону України «Про систему оподаткування», зазнає частих змін і реформувань, перегляду податків та зборів, їх розмірів, порядку справляння тощо. Така зatoryжна реформа податкової системи протягом багатьох років пов'язана з її неефективністю. Відсутня збалансованість між фіскальною складовою частиною податкової системи та заохоченням бізнесу до прозорої діяльності. Відповідно, у таких умовах виникає ситуація, за якої або платник податку обмежений у господарському зростанні, або держава не отримує податкові надходження, через що відсутнє достатнє фінансування соціальних виплат і заробітних плат.

Висновки. Констатовано, що постійне внесення змін до податкової системи України та намагання законодавців її вдосконалити, підвищити рівень її ефективності та узгодити з реаліями суспільного життя й стрімкого розвитку торговельної активності дедалі більше спонукають платників до ухилення від оподаткування. Такі недосконалі зміни законодавства сприяють існуванню значної тіньової економіки, що зумовлює відсутність реального наповнення бюджету країни. Перш ніж вносити якісь чергові зміни до податкової системи, необхідно вивчити та ретельно проаналізувати історичні аспекти становлення податкової системи в Україні з метою недопущення одних і тих же помилок. Потрібно виокремити ідеї та їх реалізацію, особливо тих, що мали позитивний вплив на розвиток податкової системи, а також побудувати ефективну податкову систему, спрямовану на врахування інтересів як платників податків, так і пересічного українця, який, можливо, з об'єктивних причин не сплачує жодних податків, проте хоче гідних умов життя.

Ключові слова: збори, обов'язкові платежі, податки, податкова система, податкове законодавство.

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