

UDC 351.713 (477)(043.3)

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Demenko, Oleksandr (2023). The role of the State Tax Service of Ukraine in control of compliance with tax and other legislation. *Entrepreneurship, Economy and Law*, 4, 28–34, doi <https://doi.org/10.32849/2663-5313/2023.4.04>

THE ROLE OF THE STATE TAX SERVICE OF UKRAINE IN CONTROL OF COMPLIANCE WITH TAX AND OTHER LEGISLATION

Abstract. Purpose. The purpose of the article is to determine the role of the State Tax Service of Ukraine in control of compliance with the requirements of tax and other legislation. **Results.** The relevance of the article is due to the fact that successful implementation of tax reform in Ukraine is associated with the need to reform tax administration as one of the main elements of the effective tax system and the economy of the entire State. First of all, it implies completeness, timeliness and voluntary payment of taxes and fees, the need to minimise administrative costs for the maintenance of the State Tax Service of Ukraine, and the creation of appropriate conditions for taxpayers to fulfil their tax obligations. The current imperfect tax administration system in Ukraine results in an unproductive burden on business entities and requires significant time and resource for tax reporting, which leads to an increase in tax evasion, imbalanced actions of the authorised state bodies, and an increase in tax offences, etc. This is confirmed by the Association Agreement between Ukraine and the European Union, under which the parties undertook to cooperate to improve tax administration in order to further develop financial and economic relations, trade, investment and fair competition. **Conclusions.** It is concluded that tax control in Ukraine develops in difficult conditions, primarily due to the instability of tax legislation, problems in the organisation of work of tax authorities, negative attitude of taxpayers to the tax system, etc. This has a certain impact on the organisation and effectiveness of tax control. Tax control activities should be performed in accordance with the principle of tax saving, in particular, the costs of control activities should not exceed the revenues from these activities. Therefore, it is important to reduce the state's costs on tax collection by improving the methods and techniques of the controlling authorities. Moreover, the initial costs of the state to create the material basis for tax control, which are usually high, should be recouped as soon as possible by reducing the costs of the ongoing maintenance of tax authorities.

Key words: controlling authority, non-commodity, business transactions, taxpayer, personnel.

1. Introduction

The successful implementation of tax reform in Ukraine is associated with the need to reform tax administration as one of the main elements of the effective functioning of the tax system and the economy of the entire State. First of all, it implies completeness, timeliness and voluntary payment of taxes and fees, the need to minimise administrative costs for the maintenance of the State Tax Service of Ukraine (hereinafter referred to as the "STS"), and the creation of appropriate conditions for taxpayers to fulfil their tax obligations.

The current imperfect tax administration system in Ukraine results in an unproductive burden on business entities and requires significant time and resource for tax reporting, which leads

to an increase in tax evasion, imbalanced actions of the authorised state bodies, and an increase in tax offences, etc. This is confirmed by the Association Agreement between Ukraine and the European Union, under which the parties undertook to cooperate to improve tax administration in order to further develop financial and economic relations, trade, investment and fair competition.

2. Principles of functioning of the state financial system and control of its state

An essential element of any area of public administration, an important prerequisite for the country's social development and an urgent need for its economic growth is control, which is an important condition for the effective functioning of the financial system and the country's economy in general.

The financial support of the state and its socio-economic stability are largely dependent on taxes, the timely and full collection of which should be properly controlled. Among the organisational and economic mechanisms used by the state to realise its interests in the course of tax deductions, control is the most significant. Improving the efficiency and effectiveness of tax authorities' control activities is an important condition for ensuring the successful functioning of the tax system.

In the context of competition between public and private interests in the field of taxation, the state, defending public interests, applies a special mechanism of interaction with each taxpayer to ensure tax compliance behaviour (Pylypenko, 2009). This is control as a function of public administration, which provides feedback between the object and the subject of management (Teremetskyi, 2012).

Control is one of the most important functions of public administration, along with planning, regulation, organisation, management and coordination. Control is a means of fulfilling an important task facing the state – the establishment of law and order. Control enables to check the compliance of the behaviour and activities of entities being controlled (state bodies, organisations and individuals) with the requirements of legal regulations, assesses the discipline of compliance with the requirements of legislative acts, which in turn allows eliminating shortcomings in the functioning of the objects of management. In addition, it is impossible to determine the effectiveness of regulatory mechanism in a particular field of administration, the compliance of legal regulations with the essence and patterns of social relations being regulated without an important regulatory mechanism such as control.

In the field of tax legal relations, control is classified by type. The criteria for classifying control are the content of control activities, the nature of controlling entities, their tasks, the nature of the relationship between the controlling entities and the object being controlled, the stages of management at which control is exercised, the nature of control powers, legal consequences of control, etc.

Depending on the entity exercising control, it is advisable to distinguish between state and public (non-state) control in the field of tax relations.

The most effective and extensive type of public control in the field of tax relations is state control, which is performed only by state bodies within their competence and in accordance with their controlling powers in order to fulfil the goals and tasks assigned to them in accordance with tax and other legislation and is

aimed at ensuring the regime of legality and tax discipline in the activities of entities being controlled (Teremetskyi, 2012). This type of control is one of the functions of public administration. It is performed by state controlling bodies (controlling entities) in relation to the structures under their control (objects being controlled) in order to facilitate the implementation of public policy in certain areas of public life. Subtypes of state control include parliamentary, presidential, governmental control, control of ministries and agencies, control of local state administrations and other local authorities, and judicial control (Teremetskyi, 2012).

An effective means for civil society to combat abuses in public administration is public control, the legal ground for which is primarily the provisions of Articles 5, 38 and 147 of the Constitution of Ukraine. Unlike other types of control, public control does not have state powers, so the decisions of public organisations based on the results of inspections are mostly of a recommendatory nature (Kolpakov and Kuzmenko, 2003).

The content of control activities includes financial, banking and tax control, control of the implementation of management decisions, etc. (Averianov, 1999). These types of state control have the same purpose and object of control, but they have different tasks, forms and methods of control, as well as consequences of its implementation (Kyrychenko, 2009).

Tax control plays a special role in the system of state control. The legal definition of this concept is set out in Article 61 of the Tax Code of Ukraine, according to which tax control is a system of measures taken by the controlling authorities to control the accuracy of accruals, completeness and timeliness of payment of taxes and duties, as well as compliance with legislation on cash circulation, settlement and cash transactions, patenting, licensing and other legislation, control of compliance with which is vested in the regulatory authorities.

The organisation and implementation of tax control of the calculation and payment of taxes is an important function of the state that ensures the normal functioning of the financial system, since market conditions do not eliminate the need for systematic control of financial and economic activities of enterprises, organisations, institutions of all forms of ownership, and for taking measures to prevent and eliminate deficiencies (Vasylyk and Pavliuk, 2004).

Tax control is an integral part of financial control, a specific type that expresses its content and differs from other types of financial control in its scope, control function bearers, i.e. controlling entities, objects and subject of control (Savchenko, 2012). It can also be described as

a special form of implementation of the control function of finance, which is expressed in a set of measures to verify the actions of obligated entities in fulfilling their obligations related to the payment of taxes and fees. Furthermore, tax control is one of the main areas of tax administration and at the same time the most problematic, since it is in the process of tax audits that the taxpayer and tax authorities interact most closely, and ensuring procedural guarantees of taxpayer rights is of particular importance (Demchenko, 2013).

It should be noted that control of the calculation and payment of taxes is one of the main elements of the tax administration system (Proskura, 2014). Therefore, it is inappropriate to place control procedures outside the scope of administration (Article 40 of the Tax Code of Ukraine distinguishes tax administration from control of compliance with tax and other legislation), the structure of Section II of the Tax Code of Ukraine indicates that all issues related to tax administration include control, since the latter is performed by keeping records of taxpayers, information and analytical support of controlling authorities, inspections and reconciliations. The relevant chapters are included in Section II of the Tax Code of Ukraine. In addition, the National Action Plan for improving tax administration refers to the improvement of control and audit work as a part of administration. In this regard, it is inappropriate to place control procedures outside the scope of administration.

Tax control as an element of tax system management is objectively necessary, as it is aimed at maintaining the normal functioning of the state's fiscal system by identifying deviations (violations of tax legislation), correcting them (debt collection) and preventing negative phenomena in the future (in particular, through the system of sanctions). High efficiency of tax control is one of the key conditions for maintaining high efficiency of the entire tax administration system (Proskura, 2014).

Therefore, the legal nature of the institution of tax control is complex, has various manifestations, and can be considered from different perspectives.

The purpose of tax control is to ensure the legality and efficiency of the process of collecting taxes and fees, which should result in the understanding by taxpayers and other participants in tax relations of the need to fulfil their tax obligations in good faith. In countries with established tax traditions, taxpayers' confidence that tax evasion is likely to be detected leads to voluntary compliance with the obligations imposed by tax legislation, which results in strict compliance with tax discipline

and the formation of a tax culture in society.

The main purpose of tax control is to ensure strict compliance with the provisions of tax legislation by the obligated parties to tax relations. The level of revenues of budgets and state special-purpose funds directly depends on the degree of efficiency of the controlling activities of tax authorities. Tax control is a guarantee of meeting public property interests and an important factor of socio-economic stability of the state and its financial security (Tsybaliuk, Anistratenko, 2008).

The essence of tax control is reflected in its tasks, the main of which are:

1) Check the correctness of accrual, completeness and timeliness of payment of taxes and fees;

2) Ensure compliance with the legislation on regulation of cash circulation, settlement and cash transactions, patenting, licensing and other legislation, control of compliance with which is vested in the regulatory authorities;

3) Prevent violations of tax legislation, identify perpetrators and bring them to justice (Demchenko, 2013).

3. Particularities of tax control

The particularity of tax control, in comparison with other types of financial control, is the scope of its application – the relations arising from the collection of taxes and fees, i.e. the formation of public funds. After all, while the basis of the controlling function of finance is the movement of financial resources in centralised and decentralised form, the implementation of the controlling function of finance in relation to taxation is the control of the flow of funds into public monetary funds (Kucheriavenko, 2013).

Characteristic features of tax control that reveal its content are as follows:

1) It is a type of state control exercised by specially authorised entities vested by the state with competence in the field of collection of taxes and fees;

2) It is performed in relation to a special object – centralised and decentralised monetary funds (Azarova, 2010);

3) Imperative nature – tax control expresses the relationship of power and subordination;

4) It is related not only to money, but also to material assets that are involved in this process indirectly, in particular, as an object of determining monetary obligations or as a means of securing monetary obligations when certain property is sold and monetary obligations are repaid with the proceeds (Kucheriavenko, 2013);

5) Clear purposefulness due to the targeted nature of cash funds in the context of public regulation, etc.

A clear definition of its elements, such as controlling entities and entities being controlled, objects and subject matter of tax control, and stages of tax control, is essential for the effectiveness of tax control.

Tax control is performed by the controlling authorities, which are defined in Article 41 of the Tax Code of Ukraine as the State Tax Service of Ukraine. However, the legislator in para. 61.2 of Article 61 of the Tax Code of Ukraine specifies that tax control is performed by the bodies referred to in Article 41 of the Tax Code of Ukraine within the scope of their powers.

A controlling authority influences the behaviour of an entity being controlled in order to ensure that it properly fulfils its tax obligations, prevents tax violations, eliminates identified violations, etc. The effectiveness and efficiency of tax control depends on a clear definition and legislative consolidation of its object and subject matter.

The object of tax control is an act, i.e. actions or omissions of a taxpayer, fee payer, tax agent or representative of a taxpayer regarding the calculation, payment of taxes and fees, other mandatory payments, provision of information for registration, as well as the performance of other duties provided for by the Tax Code of Ukraine, which are assessed in terms of their legality, reliability, timeliness, completeness, and correctness.

When describing the object of tax control, it is important to note that it should be distinguished from the subject, which is a carrier of information about the actions, inactions, entities being controlled, i.e. a certain material object to be studied in the course of control activities of the controlling authorities. Accordingly, certain documents are subject to tax control, including accounting reports, declarations, estimates, payment documents, etc.

The need for regulatory mechanism, structuring, and proper allocation of funds and capabilities required for more efficient performance of tax control tasks leads to its division into certain stages. Common to all stages are the goals and objectives, as the tax control process is aimed at ensuring legality in taxation. However, each stage is characterised by time limits, a range of control and procedural actions, and intermediate tasks, which are a condition for the emergence and existence of the next stage if the necessary control actions are performed at the previous stage.

The stages of tax control are: 1) preparatory; 2) implementation of control measures and preparation of tax control materials; 3) decision-making based on the results of control actions; 4) implementation of the decision (Demenko, 2013).

At the preparatory stage, actions are taken that will further facilitate the proper conduct of control measures, and their planning and organisation are carried out. This stage implies actions such as determining the controlling entities, the object of control, the timing of controlling actions, their goals and objectives. Actions taken at this stage are of great practical importance, as the effectiveness of control activities depends on the proper organisation and development of a plan for conducting control activities.

At the stage of implementation of control measures, through direct examination of the entity being controlled, the actual circumstances of the case are established, i.e. control measures are taken, appropriate control methods are applied, and the results of control measures are documented (certificates or reports are drawn up).

Pursuant to the Tax Code of Ukraine, Article 86, clause 86.1, the results of tax audits (except for desk audits) are drawn up in the form of an act or certificate signed by officials of the state tax service and taxpayers or their legal representatives (if any). If violations are found during the audit, an act is drawn up. If there are no such violations, a certificate is issued.

If the taxpayer or his/her legal representatives disagree with the conclusions of the audit or the facts and data set out in the audit report (certificate), they have the right to submit their objections to the state tax authority at the main place of registration of such taxpayer within five business days from the date of receipt of the report (certificate). Such objections are considered by the state tax authority within five business days following the day of their receipt.

The taxpayer (his/her authorised person and/or representative) has the right to participate in the consideration of objections, as indicated by such taxpayer in the objections. Moreover, the participation of the head of the relevant state tax authority (or his/her authorised representative) in the consideration of the taxpayer's objections to the audit report is mandatory.

The third stage of the tax control process begins when the controlling authority makes a decision based on the results of the control and submits the relevant documentation. The decision on the determination of monetary liabilities is made by the head of the state tax authority (or his/her deputy), taking into account the results of consideration of the taxpayer's objections (if any). The taxpayer or his/her legal representative may be present when such decision is made.

Control of the implementation of the decision is the fourth stage of the tax control process, as control actions involve the implementation of the results obtained, which is impossible without organising control of its implementation. The decision should be implemented in a full and timely manner.

Tax control is performed by means of methods that can be defined as a set of actions of the relevant controlling authorities regulated by the tax legislation to perform tax control tasks. In accordance with Article 62 of the Tax Code of Ukraine, the methods of tax control are as follows:

- 1) Keeping records of taxpayers;
- 2) Information and analytical support for the activities of the State Tax Service;
- 3) Inspections and reconciliations in accordance with the requirements of the Tax Code of Ukraine, as well as inspections of compliance with the legislation, control of compliance with which is vested in the controlling authorities, in accordance with the procedure established by the laws of Ukraine regulating the relevant area of legal relations.

Each of the methods relates to a separate area of control activities and covers actions of controlling authorities, taxpayers, and other persons in fulfilling their taxation duties that are homogeneous in content.

In law enforcement practice, there are cases when, in the course of tax audits, the controlling authority determines (additionally charges) the amount of VAT and/or corporate income tax liability. The ground for determining the tax liability is that, in the opinion of the controlling authority, the taxpayer has entered into transactions with counterparties that do not carry out business activities (the so-called "platforms" or "tax holes"). In this regard, the supervisory authority believes that no business transactions were performed under these agreements, and therefore the taxpayer unreasonably formed a tax credit and gross expenses (Iasiunetskyi, 2014).

This position of the controlling authorities is reflected in the audit report, which results in tax assessment notices. Such actions of the controlling authority are systematic. In addition, a significant number of these tax assessment notices are recognised as unlawful in court. However, the number of court decisions in favour of taxpayers does not affect the inspectors of the territorial bodies of the State Tax Service of Ukraine and they continue to charge additional tax liabilities on the above grounds.

In this case, the problem arises due to the biased subjective opinion of the inspector of the supervisory authority. The conclusion about the non-commodity nature of business

transactions is based on formal grounds, such as deficiencies in the preparation of shipping documents, lack of material and technical basis for such transactions by the taxpayer or its counterparty, and lack of appropriate personnel. The counterparty's fault, such as absence at the place of registration, illegal activities of officials, etc., may also be the ground for determining the tax liability.

Unfortunately, the tax authorities do not take any actions aimed at invalidating disputed transactions (fictitious or sham) in court. A situation arises when transactions are recognised as non-commodity transactions, while the agreements under which these transactions were performed are valid. Moreover, the supervisory authority ignores the presumption of legality of a transaction established by Article 204 of the Civil Code of Ukraine, that is, a transaction is legitimate unless its invalidity is expressly established by law or unless it is declared invalid by a court.

It is not uncommon for regulatory authorities to conduct an inspection in the absence of appropriate legal grounds or when the order to conduct an inspection is clearly unlawful. In this case, a court appeal against such an order does not stop the audit. This creates a situation in which a taxpayer is deprived of effective protection against arbitrariness of the tax authorities.

In this regard, it is proposed to supplement the Tax Code of Ukraine with a provision according to which the effect of the order of the fiscal service on conducting an audit is suspended from the moment the taxpayer files a claim to the court to revoke the order on conducting an audit.

In turn, the Code of Administrative Procedure of Ukraine (hereinafter – the CAP of Ukraine) should establish shorter time limits for consideration of such disputes. The timeframe for consideration of cases related to the electoral process (two days from the date of filing a lawsuit) can be taken as an example.

The state-power characteristic of control in the field of taxation stems from the particularities of tax relations and is based on the fact that taxes perform a fiscal function, as well as on the assumption that a certain part of their payers may not want to pay taxes. The use of public authorities' powers of tax control becomes especially relevant in the conditions of imperfect tax legislation and insufficiently developed organisation of the work of controlling bodies (Karminska-Belobrova, 2010).

The process of reforming Ukraine's tax system is not yet complete, and it is the tax control system that is most actively affected. Some aspects of tax control organisation related to its legal support, improvement of the system

of interaction between tax authorities and taxpayers, ensuring effective feedback between them, improvement of mechanisms and methods of tax control, certain procedures and rules of tax audits and the corresponding further implementation of their results remain unresolved and quite relevant (Teremetskyi, 2012).

The efficiency and effectiveness of tax control will be facilitated by a perfect legal regulation of the tax control procedure, powers of the state authorities exercising it, and objects of control, free from gaps and conflicts, primarily related to the conceptual and categorical apparatus. For example, by leaving to the discretion of tax administration entities the uncertainty of "legislation, control of compliance with which is entrusted to the controlling authorities" and "the relevant field of legal relations", the legislator has created gaps in the legal support for the controlling authorities' activities that may lead to violations of the law (Holovach, 2011).

Furthermore, the legislative definition of the concept of "tax control" needs to be improved, which should be defined not as a system of measures taken by controlling authorities, but as the activities of controlling authorities aimed at ensuring compliance with tax legislation by taxpayers, tax agents and other entities that ensure the implementation of tax liability, detection and prevention of tax offences, as well as perpetrators' legal liability.

4. Conclusions

Therefore, we can conclude that tax control in Ukraine develops in difficult conditions, primarily due to the instability of tax legislation, problems in the organisation of work of tax authorities, negative attitude of taxpayers to the tax system, etc. This has a certain impact on the organisation and effectiveness of tax control. Tax control activities should be performed in accordance with the principle of tax saving, in particular, the costs of control activities should not exceed the revenues from these activities. Therefore, it is important to reduce the state's costs on tax collection by improving the methods and techniques of the controlling authorities. Moreover, the initial costs of the state to create the material basis for tax control, which are usually high, should be recouped as soon as possible by reducing the costs of the ongoing maintenance of tax authorities.

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РОЛЬ ДЕРЖАВНОЇ ПОДАТКОВОЇ СЛУЖБИ УКРАЇНИ У ЗДІЙСНЕННІ КОНТРОЛЮ ЗА ДОТРИМАННЯМ ВИМОГ ПОДАТКОВОГО ТА ІНШОГО ЗАКОНОДАВСТВА

Анотація. Мета. Метою статті є визначення ролі Державної податкової служби України у здійсненні контролю за дотриманням вимог податкового й іншого законодавства. **Результати.** Актуальність статті полягає в тому, що успішне проведення податкової реформи в Україні пов'язане з потребою в реформуванні адміністрування податків як одного з основних елементів ефективного функціонування податкової системи й економіки держави загалом. Насамперед йдеться про забезпечення повноти, своєчасності та добровільності сплати податків і зборів, необхідність мінімізації адміністративних витрат на утримання органів Державної податкової служби України, а також створення належних умов для платників податків щодо виконання ними податкових зобов'язань. Існуюча в Україні недосконала система адміністрування податків призводить до непродуктивного навантаження на суб'єктів господарювання та значних витрат часу й ресурсів для складання ними податкової звітності, що зумовлює розширення масштабів ухилення від сплати податків, розбалансованість дій уповноважених державних органів, збільшення податкових правопорушень тощо. Указане підтверджується Угодою про асоціацію між Україною та Європейським Союзом, за якою сторони зобов'язалися співробітничати заради вдосконалення управління у сфері оподаткування з метою подальшого розвитку фінансово-економічних відносин, торгівлі, інвестицій і добросовісної конкуренції. **Висновки.** Зроблено висновок, що становлення податкового контролю в Україні проходить у складних умовах, зумовлених насамперед нестабільністю податкового законодавства, проблемами в організації роботи податкових органів, негативним ставленням платників податків до податкової системи тощо. Це накладає певний відбиток на організацію та дієвість податкового контролю. Заходи щодо податкового контролю повинні здійснюватися відповідно до принципу економії оподаткування, зокрема витрати на проведення контрольних заходів не повинні перевищувати доходи від цієї діяльності. Тому важливо зменшувати витрати держави на стягування податків через удосконалення методів і прийомів роботи контролюючих органів. При цьому первинні витрати держави на створення матеріальної бази податкового контролю, котрі здебільшого є високими, повинні в якомога короткий час окупилися завдяки зниженню витрат на поточне утримання податкових органів.

Ключові слова: контролюючий орган, безтоварність, господарські операції, платник податків, персонал.

The article was submitted 17.10.2023

The article was revised 08.11.2023

The article was accepted 28.11.2023