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PROBLEMS OF FORMULATING BASIC CONCEPTS IN TAX ADMINISTRATION BY THE STATE TAX SERVICE OF UKRAINE

Abstract. Purpose. The purpose of the article is to solve the problem of formulating the basic concepts in tax administration by the State Tax Service of Ukraine. **Results.** The relevance of the article is due to the fact that one of the central ways to build Ukraine as a democratic, legal and social state with a developed civil society is to improve the administrative system of the State, the level of development of which determines the state of protection of rights, freedoms and legitimate interests of individuals and legal entities. Ukraine's public administration system remains ineffective in general, due to the combination of new institutions formed during the period of independence and those inherited from the Soviet era. Ukraine's governance system is characterised by internal contradictions, incompleteness and disconnection from people, which has resulted in the existing public administration becoming a hindrance to socio-economic and political reforms and requires constructive qualitative changes. Reforms in the field of public administration require perfect legal support, an important part of which belongs to administrative law, which is a fundamental branch of Ukrainian public law, organically linked to the executive branch and represents the legal basis and instrument for its exercise. **Conclusions.** Tax procedures are a legally regulated and established conduct that combines, first of all, regulatory framework and, in cases not regulated by legal provisions, organisational framework. Moreover, the taxation process, which is manifested in the implementation of tax procedures, the performance of legally significant actions based on the requirements of tax procedural rules, is a regulated sequence of actions to implement tax procedures. It is concluded that the process of tax administration is implemented through the functioning of a special mechanism, which in practice involves the implementation of certain procedures regulated by law. Tax administration procedures are based on the implementation of tax legislation. Furthermore, it should be emphasised that the activities of tax administration entities require continuous improvement by defining clear procedures and building a clear mechanism of the tax process, which should not be influenced by the planned tax collection targets, as this will help to ensure the legitimacy and create a simple and effective tax system.

Key words: process, procedure, order, legal phenomenon, content, activity.

1. Introduction

One of the central ways to build Ukraine as a democratic, legal and social state with a developed civil society is to improve the administrative system of the State, the level of development of which determines the state of protection of rights, freedoms and legitimate interests of individuals and legal entities.

Ukraine's public administration system remains ineffective as a whole due to the combination of new institutions established during the independence period and those inherited from the Soviet era. Ukraine's governance system is characterised by internal contradictions, incompleteness and disconnection from people,

which has resulted in the existing public administration becoming a hindrance to socio-economic and political reforms and requires constructive qualitative changes (Demenko, 2014).

2. Definition of the concept of "procedure" in tax administration

The need to develop a new administrative ideology aimed at renewing the administrative culture, increasing personal responsibility with a focus on serving citizens and developing the readiness of management personnel to make decisions in the context of growing freedom of action is emphasised in "The Concept of administrative reform in Ukraine" (The concept of administrative reform in Ukraine, 1998),

which defines the main guidelines for the comprehensive restructuring of Ukraine's existing system of public administration in all sectors of public life, including the collection of taxes and fees. It is important that "The Concept of administrative reform in Ukraine" focuses on both changes in the material basis of management and improvement of the procedural aspects of management activities.

Reforms in the field of public administration require perfect legal support, an important part of which belongs to administrative law, which is a fundamental branch of Ukrainian public law, organically linked to the executive branch and represents the legal basis and instrument for its exercise (Teremetskyi, 2012).

The regulatory framework for tax administration procedures is governed by the provisions of Section II of the Tax Code of Ukraine, which detail the actions of taxpayers and controlling authorities in the collection of taxes and fees. This includes tax reporting, determination of the amount of tax and/or monetary liabilities of a taxpayer, tax control, repayment of tax debt of taxpayers, liability for violation of tax legislation, and appealing against decisions of controlling authorities (Azarov, 2010). Therefore, the viewpoint of M. P. Kucheriavenko that the provisions of Section II of the Tax Code of Ukraine do not regulate the administration of taxes and fees, but actually regulate tax procedures, is consistent with the approach to understanding the tax administration system from the perspective of the controlling entity (Kotenko, 2013).

For the purpose of further studying the issue of tax administration procedures, let us first clarify the essence of administrative procedure as a legal category.

According to N.V. Halitsyna, in the general sense, a procedure is a certain set of actions or operations that implement a process or phase, stage that expresses the content of the relevant technology (Halitsyna, 2010). A procedure acquires legal (juridical) status only when it enters the coverage of regulatory framework. Being regulated by law, it becomes a order (sequence) of legally significant actions in a particular sector of public life (Teremetskyi, 2012).

Following P.S. Tikhii, legal procedure is a regulatory framework for legal activities related to the exercise of rights and duties by participants in social relations, as well as the resolution of legal cases (Tikhii, 2006, p. 23). According to V.V. Medvedchuk and O.D. Sviatotskyi, legal procedure as a sequence and coherence of actions of authorised actors established by law and aimed at obtaining certain personal or social values by a person, as well as the content, scope, forms, ways, methods and terms of such actions (Sviatotskyi, Medvedchuk,

1997, p. 77). I.V. Panova states that a legal procedure is a manner provided by law for performing legal actions aimed at achieving a legal result (Panova, 1998, p. 28).

R.S. Alimov argues that legal procedure is a system of legal relations formed in a certain sequence and aimed at achieving a legal result, which may be expressed in the formation of legal provisions or termination of certain legal relations (the main ones for the procedure), prevention of offences (Alimov, 2002, p. 19). The scholar proceeds from the fact that the procedure is certain legal relations, but it is, first of all, a form that mediates the process of implementation of certain legal relations. Therefore, the definition of the concept of "legal procedure" given by the scholar does not correspond to its essence. A legal procedure is not legal relations, but a system of norms, requirements and rules according to which certain legal relations should be carried out and due to which they acquire an orderly and purposeful appearance (Teremetskyi, 2012).

The procedure is a tool that should assist the parties to the relevant legal relations in fulfilling their tasks and goals by establishing an effective procedure for the exercise of their rights, duties and powers in a particular sector of public life (Teremetskyi, 2012).

The procedural peculiarities of the implementation of certain legal relations are determined by the provisions of the branch of law that regulates them. The relations arising in the field of tax and fee administration have a clearly expressed public law administrative character, and administrative and legal procedure plays a special role, since it is administrative law that regulates legal relations in public administration (Kolpakov, Kuzmenko, 2003, p. 34).

Unfortunately, the legislator does not provide a legal definition of the categories of "procedure", "administrative procedure", or "tax administration procedure". This issue should be clarified by the Administrative Procedure Code of Ukraine, the need for which has been long overdue, but no further steps have been taken, except for the development of one draft, which was withdrawn from the Verkhovna Rada of Ukraine on 12 December 2012. The provisions of the draft Code of Administrative Procedure of Ukraine enshrined the concept of administrative procedure as a procedure for administrative proceedings defined by law. Administrative proceedings have been understood as a set of procedural actions and procedural decisions taken by an administrative body to consider and resolve an administrative case, which ends with the adoption of an administrative act and its performance (Draft Administrative Procedure Code of Ukraine, 2008).

According to V.P. Tymoshchuk, administrative procedure is the procedure established by law for consideration and resolution of individual administrative cases by administrative bodies (Tymoshchuk, 2003, p. 24). P.S. Tikhii proposes to consider administrative procedures as a regulatory framework for the activities of executive authorities, which ensures the procedure for making administrative decisions by officials, including consideration and resolution of specific administrative cases (Tikhii, 2005, p. 74).

Thus, administrative procedures can act as legal guarantees of achieving legitimacy of the activities of the STS of Ukraine, which ensure making public policy on taxation.

It is important to note that the legal literature reveals no consensus on the correlation between legal categories of “procedure” and “process”, and often the former is considered only in the context of the latter. For example, B.M. Lazariiev argues that the concept of process is broader than the concept of procedure, which is a procedural form that determines the stages of legal process, their goals, sequence, specific actions at each stage, the grounds for committing and interconnection of these actions, as well as the methods of their registration and recording (Bachilo, Vasiliev, Vorobiev, Davitnidze, 1988, p. 5).

In D.M. Bakhrakh’s opinion, legal process is a type of procedure, and the procedure of state power activities becomes its most perfect form – legal process, when it is regulated by general rules and legal provisions. The existence of individual procedural provisions and even a number of them does not transform an official procedure into a legal process. This requires the regulatory framework for power activities by a system of procedural rules (Bakhrakh, 2002, p. 219).

I.P. Holosnichenko studies the procedure within the administrative process, which, as the scholar notes, is the procedure regulated by administrative procedural rules for the exercise of executive power by participants in administrative legal relation and resolution of individual administrative cases by the relevant bodies and their officials, as well as disputes arising between executive authorities and other participants in administrative and legal relations. This process, according to the scientist, has two areas of state activities: administrative-procedural and administrative-jurisdictional (Holosnichenko, 2005, pp. 48–49).

Yu. I. Melnikova argues that the concepts of “process” and “procedure” determine the arrangement of applying substantive law, and “process” is equivalent to “procedure”, which is practically a similar legal phenomenon.

Therefore, it is not an isolated understanding of the process and procedure that is important, but the content that is put into these concepts. It is the arrangement of applying substantive law that is the circumstance that links the concepts of “legal process” and “legal procedure”. As a result, any procedure for performing actions relevant to law should be recognised as a legal process primarily on the grounds that it is a legal form of mediation of social relations for the implementation of material rights and relations (Melnikov, 1979, p. 14).

Therefore, each of the above scientific perspectives deserves attention and has its advantages and disadvantages. However, it is worth supporting the scholars who consider the categories of “legal process” and “legal procedure” as independent legal phenomena that are closely related. According to V.A. Tarasov, the difference between the concepts of “process” and “procedure” is both terminology and the form in which a particular case should be resolved. According to the scientist, a procedure is a form to regulate the activities of relevant bodies, which, for certain reasons, may take the form of a process (Tarasova, 1973, p. 112). However, S. S. Alekseev argues that not every procedure, regulated by law, for performing legal actions can be called a legal process that has historically developed in legislation, practice and science. Moreover, the scholar notes that the unification of legal procedures for the activities of all state bodies under the rubric of “process” exsanguinates and dilutes this rich and meaningful concept (Alekseev, 1971, p. 122).

3. Particularities of distinguishing between the concepts of “tax procedure” and “tax process”

According to M.P. Kucheriavenko, tax procedure and tax process are autonomous mechanisms, since tax procedures fix the arrangement of implementing the provisions of substantive tax law in the behaviour of participants in tax relations and are directly related, mediated by substantive tax and legal norms, and the tax process is real activities of implementing the order of behaviour enshrined in the provisions of tax procedures (Kucheriavenko, 2011, p. 29). Tax procedures are a legally regulated and established conduct that combines, first of all, regulatory framework and, in cases not regulated by legal provisions, organisational framework. Moreover, the taxation process, which is manifested in the implementation of tax procedures, the performance of legally significant actions based on the requirements of tax procedural rules, is a regulated sequence of actions to implement tax procedures (Kucheriavenko, 2011, p. 29).

The main features of tax procedural law, according to V.V. Chernetchenko, are: 1) derivative nature from substantive tax and legal provisions; 2) regulatory procedural mechanisms of active behaviour of actors in the course of implementation of tax liability, as opposed to procedural mechanisms arising in disputed legal relations; 3) relative autonomy in the system of tax law provisions; 4) implementation of substantive tax law provisions; 5) regulation of substantive procedure in tax legal relations by tax procedural law (Chernetchenko, 2012, p. 138).

As for the correlation of procedures and process inherent in tax law with administrative procedures and process, there is no consensus in science either. Some scholars (e.g., F.H. Bankhaeva) consider the tax process as a part of the financial process (Bankhaeva, 2001, p. 16), other researchers (e.g., H.V. Petrov) – as public administration in all its diversity and a set of actions carried out by tax authorities (their officials) to implement their tasks and functions (Petrova, 1999, p. 11).

We advocate the perspective of V.I. Teremetskyi that tax and administrative legal procedures are independent legal phenomena that should be neither identified nor distinguished from each other. Moreover, the scientist notes that the tax process and procedures are fully implemented within the administrative process and procedures, respectively (Teremetskyi, 2012). It is also worth noting the perspective of M.P. Kucheriavenko, who believes that there are procedures that do not express exclusively tax nature and those that are inherent only in tax law. The former include law-making, regulatory and security procedures, and the latter include accounting tax procedures, procedures for payment of taxes and fees, tax reporting procedures, tax control procedures and tax administrative approval procedures (Kucheriavenko, 2011, p. 29).

Therefore, given the fact that tax procedures are imperative and are implemented by the executive authorities, it can be concluded that these procedures are managerial and, therefore, are administrative and legal. However, the economic nature of the relations mediated exclusively by tax procedures does not allow them to be fully considered as administrative.

Procedural issues of tax administration are regulated by the Tax Code of Ukraine. The analysis of the provisions of this codified act enables to group all procedures that mediate the realisation (practical implementation) of its provisions into non-jurisdictional and jurisdictional (security) procedures (Teremetskyi, 2012).

Non-jurisdictional procedures are related to ensuring lawful behaviour by the participants

in tax legal relations and are essentially managerial and administrative in nature, as they mediate the management of social relations that exist within the requirements of administrative, tax, financial and other branches of law. For example, such procedures include those that determine the procedure for submitting information about taxpayers to the tax authorities, the procedure and deadlines for submitting tax reports, and the arrangement of tax audits, objects of taxation and objects related to taxation to ensure their accounting, calculation and collection of taxes and fees, accounting for the results of joint activities in Ukraine without establishing a legal entity, the procedure for tax audits, etc.

Jurisdictional (security) procedures are implemented in the event of a violation or threat of violation of tax legislation. For example, according to the Tax Code of Ukraine, Article 86, clause 86.7, if the taxpayer or its 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 within five business days from the date of receipt of the report (certificate). Such objections shall be considered by the state tax authority within five business days following the day of their receipt (the day of completion of the audit conducted due to the need to clarify the circumstances that were not investigated during the audit and specified in the comments), and a response shall be sent to the taxpayer for sending (delivery) of tax notices-decisions. The taxpayer (its authorised person and/or representative) has the right to participate in the consideration of objections, as such taxpayer shall indicate in the objections.

Establishment of clear procedures for the implementation of tax legislation will ensure the effective functioning of tax authorities, create comfortable conditions for their interaction with taxpayers, and ensure transparency in the process of preparation and adoption of managerial decisions, etc. (Teremetskyi, 2012).

4. Conclusions

Thus, the process of tax administration is implemented through the functioning of a special mechanism, which in practice involves the implementation of certain procedures regulated by law. Tax administration procedures are based on the implementation of tax legislation. Furthermore, it should be emphasised that the activities of tax administration entities require continuous improvement by defining clear procedures and building a clear mechanism of the tax process, which should not be influenced by the planned tax collection targets, as this will help to ensure the legitimacy and create a simple and effective tax system.

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ПРОБЛЕМИ ФОРМУЛЮВАННЯ ОСНОВНИХ ПОНЯТЬ У СФЕРІ АДМІНІСТРУВАННЯ ПОДАТКІВ ДЕРЖАВНОЮ ПОДАТКОВОЮ СЛУЖБЮЮ УКРАЇНИ

Abstract. Purpose. Метою статті є вирішення проблеми формулювання основних понять у сфері адміністрування податків Державною податковою службою України. **Results.** Актуальність статті полягає в тому, що одним із центральних шляхів у напрямі розбудови України як демократичної, правової та соціальної держави з розвиненим громадянським суспільством є вдосконалення управлінської системи держави, рівень розвитку якої зумовлює стан забезпеченості прав, свобод і законних інтересів фізичних та юридичних осіб. Система державного управління України загалом залишається неефективною, причиною чого є поєднання нових інститутів, що сформувалися в період її незалежності, з інститутами, що дісталися у спадок від радянської доби. Характерними рисами управлінської системи України є внутрішня суперечливість, незавершеність і відірваність від людей, в результаті чого наявне натеper державне управління стало гальмом у проведенні соціально-економічних, політичних реформ і потребує конструктивних якісних перетворень. Для проведення реформ у сфері державного управління необхідне досконале правове забезпечення, важливе місце в якому належить адміністративному праву, котре є фундаментальною галуззю українського публічного права, що органічно пов'язана з виконавчою владою і являє собою правові засади та інструмент її здійснення. **Conclusions.** Податкові процедури – нормативно врегульований та установлений порядок поведінки, що поєднує насамперед нормативне регулювання, а у випадках не врегульованих правовими нормами – організаційне. Водночас податковий процес, який проявляється в реалізації податкових процедур, виконанні юридично значущих дій, що ґрунтуються на вимогах податково-процедурних норм, – це врегульована послідовність дій зі здійснення податкових процедур. Зроблено висновок, що процес податкового адміністрування реалізується внаслідок функціонування особливого механізму, що на практиці передбачає виконання певних регламентованих нормами права процедур. Процедури адміністрування податків ґрунтуються на виконанні норм податкового законодавства. Також можемо наголосити на необхідності постійного вдосконалення діяльності суб'єктів адміністрування податків шляхом визначення чітких процедур та побудови зрозумілого механізму податкового процесу, який не повинен бути підданий впливу планових показників збору податків, оскільки це сприятиме забезпеченню законності і створенню простої та ефективною податкової системи.

Ключові слова: податковий процес, процедура адміністрування податків, адміністративний порядок, правове явище, діяльність податкових органів.

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