

General Theoretical Analysis of the Mechanism of Legal Tax Regulation

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Suggested Citation:

Plotnikova, K.O. *et al.* 2019. General Theoretical Analysis of the Mechanism of Legal Tax Regulation, *Journal of Advanced Research in Law and Economics*, Volume X, Winter, 7(45): 2077 – 2081. DOI: [10.14505/jarle.v10.7\(45\).19](https://doi.org/10.14505/jarle.v10.7(45).19). Available from: <http://journals.aserspublishing.eu/jarle/index>.

Article's History:

Received 4th of September, 2019; Received in revised form 10th of October, 2019; Accepted 24th of November, 2019; Published 31st of December, 2019.
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Abstract:

The article is devoted to the detailed analysis of the mechanism of legal tax regulation. The study has found that the mechanism of legal tax regulation is primarily related to the legal regulation of tax debt to ensure its proper execution. Full and timely payment of taxes or fees is meant by proper execution.

The implementation of tax debt is defined both in the Basic Law of the state, where the emphasis is placed on the imperative requirement for timely payment of taxes and fees in full, and in the Tax code of Ukraine, which establishes the definition of tax debt as the taxpayer's obligation to calculate, declare and / or pay the amount of tax and fee in the manner and terms determined by the Tax code of Ukraine, customs laws.

The analysis of the legislation and the scientific literature has revealed that the most important issue on taxes and fees payment regulation is the establishment of the moment from which the obligation for tax payment arises. Having rights and obligations for a person is another important factor if he becomes a participant in tax relations. The mechanism of legal tax regulation is a set of elements, which are defined in the Tax Code of Ukraine and in accordance with it are divided into basic, additional and optional. The mechanism of legal tax regulation is possible only as a set of basic and additional elements. The absence of at least one of the elements will not allow to legislate a separate tax or levy. The study provides a comprehensive analysis of each element of the tax mechanism.

Keywords: legal tax mechanism; taxes and fees; basic elements of legal tax mechanism; additional elements of legal tax mechanism; optional elements of legal tax mechanism; Tax Code of Ukraine.

JEL Classification: K34; E62; E63.

Introduction

A tax is a central category in Tax Law. When determining the specifics of tax or fee implementation, it is important not only to assign it to a particular type of tax, but also to clearly the structure and to formulate each tax element.

That is why, it is important to identify the subjects and carriers of taxes and fees; the co-relation of tax debt with various legal cases that cause the object of taxation; the peculiarities of tax payment in general price formation, since it is a stable and coordinated tax mechanism that ensures effective tax and budget policy of the state.

Research analysis and problem statement. A comprehensive study of the mechanism of legal tax regulation is of great theoretical and practical importance. Such scientists as A.D. Vasilik, Y. G. Krokhina, S.G. Pepeliaev, G.V. Rossikhina and some others have already paid attention to the above question. Despite a large number of various opinions and scientific works, this issue is subject to further improvement.

The results of the study. A mechanism of legal tax and fee regulation, together with the system of its elements, is directly related to the legal regulation of tax debt to ensure its proper (firstly, full and timely) execution.

Without going into a detailed consideration of the content of the tax debt itself and various approaches to its understanding, Part 1 of The Article 67 of the Constitution of Ukraine claims that 'everyone is obliged to pay taxes and fees in the manner and amounts established by law' (The Constitution of Ukraine 2016). It should be taken into account that the constitutional provision obliges you to pay taxes and fees. In other words, the tax legislation specifies the mandatory requirement to pay taxes and fees in full on time in accordance with the tax obligation. The content of this rule provides with the implementation of unilateral orders by the state, when their implementation cannot have any signs of a transaction, no features of the implementation of counter obligations (Petrishin, Pogorilko 2003, 331-333).

The Article 36 of the Tax code of Ukraine defines the concept of 'tax debt'. Thus, a tax debt is the duty of a taxpayer to calculate, declare and / or pay the amount of tax and fee in accordance with the procedure and terms defined by the Tax code of Ukraine and customs laws (Tax code of Ukraine 2010). The legislator includes not only the payment of taxes and fees, which are fixed in the Tax code of Ukraine, but also calculations and declarations. The concept of 'tax debt' is one of the central categories of tax law. Public administration in the field of finance requires the subject to submit to the request of the authorized person, or more precisely, to the request of the bodies that carry out financial activities of the state. That is why the legal regulation of relations on the state financial activities is focused on unilateral power prescriptions of state bodies in relation to entities involved in the state financial activities. A characteristic feature of tax and legal regulation is the legal inequality of subjects. The state or its authorized body implements its competence through power regulations, while the other party implements the competence stipulated by the powers of the power side of tax relations (Rossikhin, Burdin, Mykhalskyi 2018, 254). The specifics of such relations are determined by state unlawful force and specific sanctions. Thus, in case of violation of the tax debt by the payer, the tax authority has the right to apply certain sanctions (Scientific-practical commentary to the Tax code of Ukraine 2010, 86 – 87).

The legislator also emphasizes that the duty of the payer arises on each tax and levy. This indicates that the payment of any tax is due to those features that are inherent in that tax.

As it has already been mentioned, the basis for the taxpayer's obligation is the moment of occurrence of circumstances that are associated with the payment of tax, that is, a certain legal fact.

Thus, the Tax Code of Ukraine defines the grounds for termination of tax liability, not related to its implementation (Tax code of Ukraine 2010, Art. 37). It includes liquidation of a legal entity; death of an individual, recognition of him / her as incapable or missing; loss of taxpayer's features; cancellation of tax debt in the manner prescribed by law. In compliance with the tax debt, the onset of the legal fact with which the legislator associates the termination of the duty with the payer is also important. Thus, the fulfillment of a tax debt recognizes payment in full by the payer of the relevant amounts of tax liabilities within the time limit set by the tax legislation (Tax code of Ukraine 2010, Art. 38). The termination of the tax obligations of the payer also occurs when a certain point, a legal fact, occurs when the amount of the tax liability is paid in full. The fulfillment of a tax obligation in a broad sense implies the realization of the entire system of taxpayer duties related to the payment of taxes and fees (accounting, payment and reporting duties). In a narrow sense, fulfillment of a tax obligation means timely and complete payment of taxes (Scientific-practical commentary to the Tax code of Ukraine 2010, 130-133). The legislator emphasizes that the fulfillment of the tax debt can be carried out by the payer as well as by other people, for example, the tax agent or the payer's representative.

The most important issue in regulating the co-relations between paying taxes and fees is establishing the moment from which the obligation to pay tax arises.

S.D. Tsipkin concluded that for the emergence of some tax relations requires the presence of both material conditions and special acts of financial bodies (Tsipkin 1973, 68). Developing this provision, it should be noted that the occurrence of tax debt is associated with a complex legal fact, only the presence of which can give rise to the obligation to pay. Firstly, there is a legal requirement to pay the tax. Payment of taxes and fees is the main responsibility of legal entities and individuals. The legislator clarifies the order for timely tax and fees payment in full in accordance with the tax obligation.

The tax code of Ukraine establishes the definition of taxes and fees. Thus, a tax is a mandatory, unconditional payment to the relevant budget, levied from taxpayers. A fee is defined as a mandatory payment to the relevant budget levied from fee payers, subject to their receiving a special benefit, including as a result of legally significant actions performed by state bodies, local self-government bodies, other authorized bodies and persons in favor of such persons. The legislator determines that the totality of taxes and fees constitute the tax system of Ukraine. The emphasis is on the fact that the tax system is a combination of national and local taxes and fees. The tax code of Ukraine contains a list of taxes and fees received by the state budget and local budgets (Tax code of Ukraine 2010, 6. 1, 6. 2 of the Article 6]. Thus, national taxes include corporate income tax; personal income tax; value added tax; excise tax; environmental tax; rent; customs duty. Local taxes and fees include property tax; unified tax; vehicle Parking fee; and tourist tax. The legislator notes that the Budget code of Ukraine regulates the transfer of state and local taxes and fees to the budgets. This is done based on the Article 29 of the Budget code of Ukraine, which determines the composition of state budget revenues of Ukraine and based on the Articles 63-69 of the Budget code of Ukraine (Budget code of Ukraine 2010. No. 50, 572).

The next component is the presence of tax legal personality in the participants of tax relations. When regulating it is necessary to take into account that the rights fix the boundaries of possible behavior of the subject, while the duties fix the boundaries of proper behavior. It should be taken into account that certain obligations of the payer arise in the following circumstances: the presence of the object of taxation; the presence of legal facts giving rise to the obligation to pay the tax. Also, it is important to take into account the moment, the legal fact, in the presence of which the duty of the payer to pay tax arises or with which the duty of the taxpayer is lost.

D.A. Kobilnik points out that the state uses a direct means of determining the tax debt, supplementing its derivatives, by fixing the duties and rights to fulfill the tax debt on the payers or the competence of the bodies controlling this payment. This is accomplished by fixing elements of the mechanism of legal tax regulation (Kobilnik 2002, 58). Indeed, in this way the tax debt, being a certain slogan, defined by a norm-principle, acquires detail, opportunities for application when the tax is defined as a set of constituent elements of its legal mechanism. It is through the definition of the payer that it becomes clear to whom the responsibility for accounting, payment and reporting in relation to specific taxes applies. Restriction of objects of taxation defines precisely those objects with which the legislator associates the existence of a tax debt with the payer. Fixing a certain tax rate detects the size of the tax debt, which details the amount of tax or levy paid.

However, it does not seem quite appropriate to use the division into 'direct' and 'derivative' approaches by D.A. Kobilnik in the legislative definition of tax debt (Kobilnik 2002, 58). It would be more correct to explain this phenomenon by constructing separate levels of legal regulation of tax debt. Thus, the constitutional norm established by part one of the Article 67 of the Basic Law of Ukraine will be the first such level. And the corresponding legislative consolidation of the elements of the legal mechanism of tax and collection will be the second level of legal regulation of tax debt.

The latter is embodied in clause 7.1 of the Article 7 of the Tax Code of Ukraine, the content of which 'when establishing a tax, the following elements are necessarily determined: (1) tax payers; (2) the object of taxation; (3) the tax base; (4) the tax rate; (5) the order of calculation tax; (6) tax period; (7) term and procedure for payment of tax; (8) term and procedure for submission of statements on tax calculation and payment' (Tax code of Ukraine 2010). It is important to bear in mind that the legislator does not differentiate these elements in any way, depending on their value into basic, additional, optional. It focuses on securing their exhaustive list, where no preference is given to any block. Among the elements of the legal mechanism of tax are the main and additional elements. Only in the presence of basic and additional mandatory elements can we talk about a stable and full tax mechanism.

Taking the importance of the main elements of tax for the existence and functioning of the tax mechanism and taxation into account, their definition was paid attention to by specialists in the field of financial law of the last century. Thus, I. I. Yanzhul pointed out that three main components become immediately noticeable by analyzing the content of any type of taxation: 'the subject of the tax, the object or source of the tax, and, finally, the degree of tax; thus, we must find out: (a) who under the correct taxation system should bear taxes; (b) from what part of the people's property taxes should come; and (c) in what amount the payer should pay taxes' (Yanzhul 1890, 247). So, we conclude that the main mandatory elements of the mechanism of legal tax regulation include firstly, the taxpayer;

secondly, the object of taxation; and thirdly, the tax rate. A similar point of view on determining the composition of this group of legal mechanisms of the tax is taken by modern domestic scientists. And it is interesting to note that according to D.A. Kobilnik, the criterion of detail of the main elements of the tax should be not only the establishment of their basic, fundamental, substantial and essential features of the tax and the tax mechanism, and participation in the formulation and implementation of tax obligations: the basic elements of the tax mechanism 'to determine the size of the tax debt in the narrow sense' (Kobilnik 2002, 61), 'key elements of the legal mechanism to determine the contents and size of the tax debt'. The latter allows the scientist to add tax benefits to the three above-mentioned main mandatory elements of the legal mechanism of the tax, arguing that 'it is impossible to imagine almost any tax in which the amount determined in this way would not necessarily be adjusted in accordance with certain preferential regimes, and only after that the amount to be paid to budgets and trust funds is finally determined. That is why it seems necessary to refer tax benefits to the main elements of the mechanism of legal tax regulation' (Kobilnik 2002, 62). It is unlikely that such a position should be final. We believe that the universality of taxation also makes it possible to imagine a tax system in which no preferences are granted to subjects at all. State incentives can be provided not by exemption from taxes or fees, but by additional funding through the mechanisms of grants or subventions (Rossikhina, Rossikhin, Kaganovska 2019).

Taking this into account, without objecting to the criterion chosen by the scientist for participation in the formation and implementation of tax duties, it is necessary to keep in mind that tax benefits in their content become in a certain confrontation with the essence of tax in general, first of all - its main function - fiscal, that is, filling the revenue channels of budgets. Therefore, we would not consider tax incentives to be the main elements of the tax mechanism, and we would add the criterion used by D.A. Kobilnik for the formation and implementation of tax obligations to the part that indicates the direction of actively fulfilling the main functional purpose of any mandatory tax payment.

The group of additional mandatory elements of the legal tax mechanism includes almost all other elements of the tax payment. Additional elements of the tax mechanism that detail the specifics of determining the amount of tax to be paid, determining the procedure and features of calculation, the timing of tax payment, do not significantly affect the amount of tax debt (Rossikhina, Svitlychna, Brusakova 2018, 294). A set of additional elements of the legal mechanism of the tax will be: first, the elements of the tax mechanism detailing the main (subject, base, taxation, etc.); second, the means of calculating and determining the amount of tax debt; third, the means and timing of tax accounting; fourth, the payment of tax (means, timing and channels of income) and fifth, tax reporting (Kobilnik 2002, 61, 63-64). Moreover, it should be noted that the absence of a significant impact on the amount of tax debt as one of the defining features of additional tax elements acquires a separate meaning in the aspect of determining the place of tax benefits in the tax mechanism, allowing (taking into account the above-mentioned features of selecting a criterion for detailing the main mandatory elements of the tax) to remove any doubts on this issue, coordinating it with the position of the domestic Ukrainian legislator, in the Article 7 of the Tax code of Ukraine (2010) and accurately exclude tax benefits from the mandatory elements of the legal mechanism of the tax.

On the opposite side of the mandatory elements of the mechanism of legal tax regulation is the category of optional elements. The latter may be present or absent in the tax mechanism, but this will not affect either the essential and substantive characteristics of fixing a tax mandatory payment (that is, there will be no doubt about clarifying the type of this payment and determining the fact of establishing a tax mandatory payment), or the completeness and completeness of determining the components of the tax debt (that is, both obligated and authorized subjects of tax legal regulation will understand their duties and rights when maintaining tax accounting, payment of taxes or fees, preparation of tax reports).

Conclusions

It can be concluded that the determination of the structure and construction of each element of the mechanism of legal tax regulation is very important. The tax and legal mechanism is a subordinate system and includes mandatory and optional elements. The main elements define the fundamental characteristics of the tax, which form the basic idea of the tax mechanism content. This issue has become relevant because the absence of any of the main elements of the mechanism of legal tax regulation does not allow to determine the type of payment and makes the tax mechanism uncertain. The mechanism of legal tax regulation is fully implemented with the combination of basic and additional elements, and the absence of at least one of the additional elements does not allow to legislate a separate tax or fee.

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