

The Current State of Tax Administration in Ukraine: an Analytical Review of Terminology

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Suggested Citation:

Kolomiets, Pavlo V.. 2017. The Current State of Tax Administration in Ukraine: An Analytical Review of Terminology, *Journal of Advanced Research in Law and Economics*, Volume VIII, Winter, 8(30): 2448 – 2453. DOI: [10.14505/jarle.v8.8\(30\).15](https://doi.org/10.14505/jarle.v8.8(30).15). Available from: <http://journals.aserspublishing.eu/jarle/index>

Article's History:

Received September, 2017; Revised October, 2017; Published December, 2017.
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Abstract:

The article includes the study of contemporary legal problems of regulation of the collection of taxes and fees and submit proposals for their improvement.

Analysis of current tax legislation Ukraine, departmental regulations and practices for their implementation, theoretical understanding of scientific works, publications and recent research shows that today urgently needs further reformatting the Tax Code of Ukraine. Recently, discussions around the Tax Code of Ukraine tend to increase. Particularly sharp criticism is about the quality of writing legal text of the Code, its shape and structure.

The current topic of contemporary tax debates in Ukraine is the imperfection of the current norms of the Tax Code. The generally acknowledged problem in the field of tax legislation is recognized by the language and technical quality of tax law-making.

Consequently, the study of legal problems in the regulation of relations in the field of collecting taxes and fees shows that one of the principles on which the tax legislation of Ukraine should be based on the principle of uniqueness and stability of the meanings of concepts. In accordance with them, the legal rules of the tax legislation should be formulated clearly. Legal terms should be used in the texts of tax legislation in a logical and consistent manner. That is, the formation of tax terms, their consolidation in modern tax legislation should take place on their own tax base.

Imperative provisions of the Tax Code of Ukraine, which are based on positive obligations must provide clarity, intelligibility of tax regulations. Another problem, in our opinion, is the question of efficient use in existing Ukrainian tax legislation concepts of 'special tax regime', 'generic tax regime', 'tax regime', 'special regime'.

Keywords: judicial language; language of law; professional language; legal acts; law-enforcement acts; technique; terminology; definition; systematization; language-legal culture.

JEL Classification: K3; K34.

Introduction

The current topic of contemporary tax debates in Ukraine is the imperfection of the current norms of the Tax Code. The generally acknowledged problem in the field of tax legislation is recognized by the language and technical quality of tax law-making.

On February 1, 2017, at the Institute of Legislation of the Verkhovna Rada of Ukraine, a round table was held on topical issues of lawmaking. The Institute focuses its efforts on finding ways to improve the quality and effectiveness of rulemaking and legislative activity of the Verkhovna Rada of Ukraine.

Representative of the Lviv Law School, Doctor of Law, Professor Miroslav Kosovich in his report paid attention to the problem of training specialists-norm-designers. He noted that such a special course in the educational process was introduced at the Faculty of Law of the Ivan Franko National University of Lviv. However,

for today the state does not make orders for the training of such specialists and does not create jobs for them. Representative of the World Congress of Ukrainian Lawyers Inna Yemelyanova highlighted the issue of implementing the idea of centralization and unification of draft laws in Ukraine in the same way as the Polish model. The speaker noted that such attempts in our state took place in the 90's, but did not succeed. This problem is still relevant (Holos Ukrainy 2017).

The problem of professional imperfection of the current text of the Tax Code of Ukraine is due to the lack of unified definitions of tax concepts, categories, definitions and terms. The Tax Code of Ukraine (effective from January 1, 2011) has weaknesses in the legal regulation of relations in the field of collection of taxes and fees. That is, the problem of improving tax legislation in Ukraine continues to be relevant.

1. Materials of the Research

Analysis of current tax legislation Ukraine, departmental regulations and practices for their implementation, theoretical understanding of scientific works, publications and recent research shows that today urgently needs further reformatting the Tax Code of Ukraine. Recently, discussions around the Tax Code of Ukraine tend to increase. Particularly sharp criticism is about the quality of writing legal text of the Code, its shape and structure.

2. Results

The state policy of Ukraine on adaptation of legislation (On the Concept of State Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union) is formed as an integral part of the legal reform in Ukraine and is aimed at ensuring unified approaches to normative design, mandatory consideration of the requirements of EU legislation in standard design, training of qualified specialists, creation of appropriate conditions for institutional, scientific and educational, normative design, technical, financial support of the process of adaptation of Ukrainian legislation.

On March 18, 2004, the Law of Ukraine No. 1629-IV 'On the National Program for the Adaptation of Ukrainian Legislation to the Law of the European Union', our state, in the provisions of Section V of this Law, regulated the purpose and tasks of the first phase of the Program implementation, including in the field of taxation. But as the results of the current realities in the domestic sphere of tax payments, progress in this area today, the Ukrainian community has made much less than expected. Domestic tax legislation is still in a state of crisis. Let us turn to the provisions of Section V of the Law of Ukraine dated March 18, 2004, No. 1629-IV, and we will consider whether some of the norms of this section declared by the Verkhovna Rada of Ukraine in relation to the tasks of the first stage of the Program implementation, in particular in the field of taxation, have been implemented? And after thinking, we must state that in spite of some successes, most problems were not solved, while new problems arose that hindered their implementation. And is there a fair fact of the existence of a discrepancy between the national tax policy declared in the legislation and its actual state? In particular, at the first stage of the implementation of the Program, it was necessary: (1) ensure the development of a glossary of *acquis communautaire* terms for the adequacy of their understanding and unified application in the process of adaptation; (2) to develop and introduce uniform requirements for the translation of acts of the *acquis communautaire* into the Ukrainian language; (3) create a centralized translation system. It's been over 12 years now! And was this task accomplished today?.

The next task of the first stage of the Program's implementation was: (1) conducting a comparative legal study of compliance of the legislation of Ukraine (including taxation) with the *acquis* of the European Union in the priority areas; (2) the translation into Ukrainian of acts of the *acquis communautaire* in these areas, including in taxation. And again the question arises about the results of the work in this direction.

Another issue in the light of the implementation of the tasks at the first stage of the program's implementation was to study and synthesize relevant experience of the states of Central and Eastern Europe to create an effective national mechanism of legislative approximation, including the verification of draft laws of Ukraine and other legal acts for their subject Accordance with the *acquis* of the European Union. As you know, since January 1, 2011, the Tax Code of Ukraine came into force. Has the project been verified for EU compliance? Probably not, since there is no doubt that the main source-standard for the introduction of the Tax Code of Ukraine was the Model Tax Code for the CIS member states.

Regarding the problems of professional imperfection of the current text of the Tax Code of Ukraine, consider the following.

First, we will investigate tax terminology. In particular, the presence in the Tax Code of Ukraine of a wide range of the use of phrases using the terms 'system of taxation' (for example, subparagraph 70.4.6 paragraph 70.4 of Article 70), 'general system of taxation' (for example, subparagraph 177.5.2 of paragraph 177.5 of article 177),

'simplified system of taxation' (for example, article 122) and 'other system of taxation' (for example, paragraph 177.9 of article 177), in the absence of the definition of these concepts in the Tax Code of Ukraine, is one of the current problems of legal regulation of relations that arise in the sphere of Examination of taxes and duties.

The fact is that before the Tax Code of Ukraine entered into force, the law 'On the system of taxation' was the legislative act defining the principles of the system of taxation in Ukraine. Article 2 of this Law provided the definition of 'system of taxation'. However, due to the expiration of this Law and the entry into force of the Tax Code of Ukraine, the definition of this concept has become obsolete. Paragraph 6.3 of Article 6 of the Tax Code of Ukraine provided the definition of 'tax system'.

The Scientific and Practical Comments to the Tax Code of Ukraine state that, unlike the wording of the Law of Ukraine 'On the system of taxation', the legislator refused to use the concept of 'system of taxation'. The current Tax Code of Ukraine uses the category of 'tax system' (M.Ya. Azarov 2010).

However, it is impossible to keep aside the provisions of the Basic Law – the Constitution of Ukraine, in accordance with the provisions of Article 92, the 'system of taxation', taxes and fees are established exclusively by the laws of Ukraine. In addition, Article 17 of the Commercial Code of Ukraine still provides that the 'system of taxation' in Ukraine, taxes and fees are determined exclusively by the laws of Ukraine.

The analysis of scientific works of domestic scientists on legal terminology issues also shows the relevance of the unification and standardization of tax terminology.

In the thesis 'Judicial language of law-enforcement acts' P.M. Baltadzy researches a legal language as an integral part of legal system. The language is being presented not only as a linguistic or judicial term, but as an imprint of language consciousness of communication participants in juridical sphere.

The author examines history of establishment, traditions, functions and features of judicial language in Ukraine, special features of language of law-enforcement acts and its dependence from level of professionalism, language grounding, general and legal culture of law-enforcement subjects. Author formulates a definition of term 'judicial language'. The author focused on composition particularizes of law-enforcement acts of the highest governmental authorities and acts of law-enforcement agencies. Dual nature of law-enforcement acts have been grounded: state and power-holding nature brings it closer to the normative and regulating of certain situation indicates its individual character. It determines the specific character of text of the act and demands certain skills and abilities from the subject (Baltadzy 2008).

The dissertation of Bilya 'The theoretical basis of the norm making technique' is devoted to the research of the theoretical basis of the norm making technique usage. In this dissertation author formulates the conceptual principles and the new proposals and conclusions in connection with the investigated problems (Bilya 2004).

Werbeniec investigates the theme 'Legal Terminology of Ukrainian Language: History of Formation and Functioning'. In this work the terminology of legal sublanguage is analyzed as a specialized highest-level system. The thesis represents analysis of methods of creation of Ukrainian legal terminology, its complex parameters, particular qualities and potential of word-formation, its interaction with legal term processes of modern languages of European legal area. The thesis illustrates contemporary techniques of terms-formation in the field of legal terminology and active processes in the above mentioned terms system. The paper also describes principles and methods of compiling philological-type translation Legal Terminology Dictionary, which would meet contemporary communicative requirements (Werbeniec 2004).

Gratsianov in his scientific work 'Legislation systematization and unification process and evolution of Ukrainian justice' investigates the process of juridical terms unification, necessity for existing legislation unity and co-ordination and special juridical terminology and law language influence on standard act style as well (Gratsianov 2004).

Kryskiv in his article 'The level of speech culture of juridical editions' deals with rough violation of language norms in juridical sphere. The samples of underestimation of language aspect in professional activity have been taken from various sources – normative state documents, textbooks, business papers composed by the workers of the juridical institutions. Among language mistakes are misuse of terminology, polysemantic definitions which often imply different meanings. The idea of necessity of raising the lever of speech culture of legislative branch workers has been substantiated (Kryskiv 2010).

Nyzhnyk and Muza in their article 'The Segment Legal Monitoring in the Theory of Law-Making: Statement of a Question' claim that providing of effective legislative activity of Verkhovna Rada of Ukraine is one of important tasks of public legal policy. On this way, forming of perspective plan of law-making activity of parliament which except for the general questions of volume of law-making work must foresee the aggregate of measures from the carrying out of monitoring of bills and legislative acts from the actual spheres of social development is considered expedient. The realization of the legal monitoring depends on the correct selection of types of such monitoring, as

an analysis of quality of legislative acts can be conducted with different aims and group of the proper subjects. Thus it should be noted that within the framework of consideration of pressing questions of perspective legislation, attention is accented on realization of monitoring legal acts of Verkhovna Rada of Ukraine. If to take into account the selection of the particular branch legal monitoring and monitoring of legislation after the spheres of the legislative adjusting of social relations, by a next step at the level of theoretical ground of realization such scientifically expert there must be introduction of the segment legal monitoring activity. A word 'segment' means: part of circle, limited by arc and two radiuses; area, limited radial lines; part of certain area; area, district. That, going out from such interpretation of word 'segment', it follows to come to the idea that the question is about certain part in unique whole.

Therefore the segment legal monitoring is:

- (1) as an *independent type of the legal monitoring*, under which it follows to understand realization of professional scientifically expert activity, related to the estimation and analysis of effective of legal norms, which regulate the separate group of social relations, grouped on a general sign. It will enable to find out the state of the legislative providing of certain sphere of social relations and forecast it subsequent development with bringing in of specialists exactly from that or other sphere of legal knowledge;
- (2) as a *component part of monitoring of legislative acts*, by which it is possible to find out blanks and collisions in the legal adjusting of separate types of social relations next to realization of other types of monitoring of legislative acts. It will enable, taking into account the specific of segment approach, to carry out the estimation of legal norms and generalize the state of the legislative providing of certain type of public relations;
- (3) as a *subsidiary constituent of the particular of type of the legal monitoring*, this will enable to conduct research of efficiency of application of legal norms in the separate spheres of social relations related to general thematic direction of basic type of the legal monitoring.

To their opinion, the segment approach in realization of monitoring of legislative acts will be instrumental in the improvement of law-making process in the state, because it carrying out must provide for:

- (1) a systematization of collisions and blanks of the legal adjusting of particular sphere of social relations;
- (2) a forming of plan of law-making works of parliament for the segment sign;
- (3) an optimization of the system of parliamentary committees and other structural subdivisions of Legislative establishment of Verkhovna Rada of Ukraine;
- (4) an update of requirements is to the participants of law-making activity (Nyzhnyk and Muza 2015).

Artykutsa claims that from the study of ancient law terms that represent key concepts of Slavic legal culture must begin frontal historical reconstruction of Ukrainian terminological law. Observations on etymological, semantic and functional parameters of such terms gives the ability to reveal typical for law terms formation phenomena and processes, allows to deepen understanding of historical content and the evolution of legal concepts (Artykutsa 2013).

In view of the systematization of tax legislation in Ukraine and the adoption of the Tax Code, we believe that it is not necessary to stop only on improving tax rules, but also to unify the terms used in these norms. Sufficient in this case is the thought of Alekseev who believes that the necessary conditions for the rational use of terminology are: (a) the unity of terminology; (b) general definition of terminology; (c) stability of terminology (Alekseev 1981).

It is difficult not to agree with the views of scholars on the fact that modern domestic tax terminology synthesized knowledge of various sciences and uses the achievements of many branches of knowledge in the field of finance, economics, civil, customs and commercial law. Chorna points out that modern Ukrainian tax terminology is separated into an independent system of terms in the process of long-term searches using the achievements of many branches of disciplines (Chorna 2009).

Modern Ukrainian tax terminology should be able to provide tax legislation with a conceptual basis of tax terms.

The next problem of legal regulation of relations in the field of collection of taxes and fees, in our opinion, concerns the style of modern tax legislation in Ukraine. Exploring the provisions of Article 11 of the Tax Code of Ukraine, it is necessary to point out the ambiguity of the wording of paragraph 11.3 of this article, which regulated that the special tax regime may provide a special procedure for determining the elements taxes and fees, exemption from certain taxes and fees. The ambiguity of the interpretation of the provisions of this paragraph is due to the use of the word 'may' in its design. S.S. Alekseev noted the inadmissibility of this kind in his writings. He wrote that the most important requirements of the style of legal acts - a strict definition of phrases, expressions, terms. Every

phrase, every expression, every term needs to be understood only in one sense. Unacceptable any ambiguity of the wording, allowing to interpret the essence of normative acts in different ways (Alekseev 1981).

The imperative provisions of the Tax Code of Ukraine, based on positive commitments, should provide for clarity of the tax law.

Conclusions

Consequently, the study of legal problems in the regulation of relations in the field of collecting taxes and fees shows that one of the principles on which the tax legislation of Ukraine should be based on the principle of uniqueness and stability of the meanings of concepts. In accordance with them, the legal rules of the tax legislation should be formulated clearly. Legal terms should be used in the texts of tax legislation in a logical and consistent manner. That is, the formation of tax terms, their consolidation in modern tax legislation should take place on their own tax base.

Imperative provisions of the Tax Code of Ukraine, which are based on positive obligations must provide clarity, intelligibility of tax regulations. Another problem, in our opinion, is the question of efficient use in existing Ukrainian tax legislation concepts of 'special tax regime', 'generic tax regime', 'tax regime', 'special regime'.

Given the systematization of tax legislation in Ukraine and the adoption of the Tax Code of Ukraine, it is not necessary to stop only on the improvement of tax rules, but it is necessary to carry out the unification of the terms used in these norms. For example, the study of the structure of the Tax Code of Ukraine shows that in its provisions there is no definition of the concept of 'taxation', which in turn is used in the norms of this Code in large numbers and in various phrases: 'system of taxation'; 'the general system of taxation'; 'simplified system of taxation'; 'another system of taxation'. Lack of definition of these concepts in the Tax Code of Ukraine, is one of the modern problems of legal regulation of relations arising in the field of collection of taxes and fees. By the way, the current Tax Code of Ukraine also does not contain the definition of the concepts: 'special tax procedure'; 'the procedure of taxation'; 'peculiarities of taxation'; 'taxation on general grounds'; 'taxation in the general order'; 'simplified taxation'; 'the way of taxation'; 'tax rules'; 'other rules of taxation'; 'general rules of taxation'.

We propose to mutually agree the above concepts, to choose the most rational from their list for cross-cutting use in the text of the Tax Code of Ukraine. Along with the definition provided by the concept of 'tax system' to define the concept of 'system of taxation'.

The clarity of the legislative language implies, in particular, that the legal terms should be used in the texts of the legislative acts logically and consistently. Although, it should be borne in mind that in the law there are concepts, the definition of which is inappropriate or even dangerous.

A tax code is most effective if it is as comprehensive as possible. It facilitates administration if both administrators and taxpayers need look only to one document (the code) as the source of all tax law (Hussey and Lubick 1992).

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