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State tax policy as an object of administrative and legal regulation

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Abstract

The purpose of the research is devoted to studying the legal nature of legal relations in the process of implementing state tax policy. The main content. Considered is the normative framework which forms the basis for regulation of tax policy. Noted is close connection of this branch with all spheres of legal reality of the society. Analyzed are the concepts of “legal relations” and “legal regulation”. The content of legal regulation of the tax sector is characterized through the study of public service, law enforcement and jurisdictional activities of the state in the tax sphere. Methodology. Review of materials and methods is performed on the basis of analyzing documentary materials on regulation of the state tax policy. Conclusions. It is determined that legal regulation in the sphere of tax policy includes public service, law enforcement and jurisdictional activity of the state, which is aimed at satisfaction of human rights and legitimate interests. Such activity is aimed at ensuring a high quality of life for people throughout the territory of Ukraine, and also at achieving an optimal balance between filling the budget and maintaining

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conditions for economic growth and improving social welfare. The sphere of taxes affects provision of national interests.

Keywords: the state tax policy; legal relations; legal regulation; public service relations; administrative and legal relations.

La política fiscal estatal como objeto de regulación administrativa y legal

Resumen

La investigación está dedicada a estudiar la naturaleza de las relaciones jurídicas en el proceso de implementación de la política tributaria estatal. Se considera el marco normativo que forma la base para la regulación de la política tributaria. También se analizan los conceptos de “relaciones jurídicas” y “regulación jurídica”. El contenido de la regulación legal del sector tributario se caracteriza por el estudio de las actividades de servicio público, aplicación de la ley y jurisdiccionales del Estado en el ámbito tributario. La revisión de materiales y métodos se realiza sobre la base del análisis de fuentes documentales sobre la regulación de la política fiscal estatal. Como conclusión se determina que la regulación legal en el ámbito de la política tributaria incluye el servicio público, la aplicación de la ley y la actividad jurisdiccional del Estado, la cual está orientada a la satisfacción de los derechos humanos e intereses legítimos de la ciudadanía. Dicha actividad tiene como objetivo garantizar una alta calidad de vida para las personas en todo el territorio de Ucrania e, igualmente, lograr un equilibrio óptimo entre llenar el presupuesto y mantener las condiciones para el crecimiento económico y mejorar el bienestar social.

Palabras clave: política tributaria estatal; relaciones legales; regulación legal; relaciones de servicio público; relaciones administrativas y legales.

Introduction

Domestic experience and foreign practices demonstrate the impact of taxation on all spheres of public life, on the social aspect and the economic aspect. Through implementation of tax policy, the state can effectively stimulate economic activity, create favorable conditions for development of priority sectors of the economy, regulate budget filling.

Payment of taxes to a greater or lesser extent is a concern of every person. The need to pay taxes does not depend on specific circumstances, i.e., it is an absolute obligation. Thus, in accordance with Art.67 of the Constitution of Ukraine “Everyone is obliged to pay taxes and fees in manner and amounts prescribed by the law. All citizens annually submit their property and income declarations for the past year to the tax inspections at place of residence in manner prescribed by the law” (Law of Ukraine, 1996).

At the present stage of Ukraine’s development, which, on the one hand, is characterized with European integration processes and, on the other hand, with the state of external military aggression, qualitative legal regulation of tax legal relations becomes especially relevant and important.

Art. 10 the of the Commercial Code of Ukraine stipulates that tax policy should be aimed at ensuring economically justified tax burden on business entities, stimulating socially necessary economic activities of entities, as well as compliance with the principle of social justice and constitutional guarantees of citizens’ rights in conditions of taxing their incomes (Law of Ukraine, 2003).

Highlighting the administrative and legal aspect in the regulation of legal relations arising during implementation of tax policy and disclosing its essence will help to ensure priority of taxpayers’ rights, balance interests of taxpayers, find effective mechanisms for timely formation of public monetary funds and protect national interests.

1. Literature review

V. Teremetskyi (2012) notes that international and domestic practice shows that tax relations in most countries of the world are regulated by coded acts (and Ukraine is not an exception in this regard). The Tax Code of Ukraine, just like the Belarusian one, defines the scope of the Tax Code itself, not the area of tax relations in general. Thus, Art.1 of the Tax Code of Ukraine defines the range of public relations that arise in the sphere of collection of taxes and fees and fall within the scope of its action (regulation). However, the analysis of the provisions of this article gives us an opportunity to conclude that some aspects of tax relations are not covered (in particular, the establishment (introduction) of taxes, appeals against decisions and actions of tax authorities and their officials, etc.). Instead, such term as “administrative procedure” is introduced, although its content is not disclosed in the code.

In addition to that V. Teremetskyi (2012) emphasizes that not all available tax legal structures completely fall into the sphere of tax and legal regulation. Some of them are the subject of other branches of financial law

and even other legal entities. Thus, within the group of legal relations on the collection of taxes and fees, relations that provide for the collection of taxes, fees and penalties from individuals and organizations, which are carried out in court, are governed by civil procedural or commercial procedural law (Teremetskyi, 2012).

In his turn L. Dolia notes that tax relations are a form of expression of economic, political and other relations (Dolia, 2003).

When analyzing his issue N. Khatnyuk concludes that taxation is closely connected with all spheres of legal reality of the Ukrainian society, so it is quite logical that the legal regulation of tax relations is reflected in a large number of regulatory acts. At the same time, a large number of legal sources make it difficult to understand certain tax laws and can lead to ambiguous interpretation of them by both tax payers and officials of the controlling body (Khatnyuk, 2017).

Thus, taking into account a rather wide range of issues the sphere of taxation intersects with, we believe that for further research it will be expedient to consider the content of a more general concept, i.e. the concept of “legal relations”.

However, it should be noted that it is difficult to distinguish between administrative law and complex branches of law. For example, the mechanism of the ratio of the administrative law and the tax law is such that most of the relations that form the subject of the latter are regulated by the rules of the administrative law and with the help of its inherent legal means. In view of this, the essence of the administrative and legal aspect in regulation of legal relations in implementation of the state tax policy needs further disclosure, and the chosen research topic acquires its relevance.

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of the state tax policy. The formal-dogmatic method contributed to development of the author’s explanation of the current state, problems, and practical role of legal technologies for further development and improvement of the state tax policy. The official legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of the state tax policy. The dialectical method of cognition of the facts of social reality is the foundation where formal-legal and, rather, legal approaches are based in many respects.

3. Results and discussion

Considering legal relations that exist in the sphere of the state tax policy, we should note that it is advisable to pay attention to the legal norms that make up the tax legislation of our state. Article 3 of the Tax Code of Ukraine contains the following list: The Constitution of Ukraine; the Tax Code of Ukraine; the Customs Code of Ukraine, other laws on customs affairs in the area of regulating legal relations, arising in connection with taxation of transactions on goods movement through the customs border of Ukraine; effective international agreements which have been confirmed to be obligatory by the Verkhovna Rada of Ukraine and which regulate the issues of taxation; Legislative acts adopted on the basis of and in compliance with the (Tax) Code and the laws on customs affairs; decisions made by the Verkhovna Rada of the Autonomous Republic of Crimea, local self-government bodies on local taxes and fees, adopted according to the rules established by the Tax Code (Law of Ukraine, 2010).

According to M. Zwick, legal relations are relations between people which are the legal expression of economic, political, family, procedural and other social relations, where one party based on legal norms requires the other party to perform certain actions or refrain from performing such actions, and the other the party is obliged to comply with these requirements.

A. Skakun believes that the rules of law and legal relations are interrelated, because the law can be applied only when certain events or actions are given the nature of legally significant facts (acts) that put people in the position of parties of legal relations that have interdependent subjective rights and legal obligations. Thus, legal relations are an objective form of realization of rights and obligations. In view of this, legal relations are considered as voluntary public relations provided by the state and regulated by law, they are expressed in a specific relationship between eligible subjects (bearers of subjective rights) and obligated subjects (bearers of responsibilities) (Skakun, 2010).

Summing up the words of the above-mentioned scientists, we come to the conclusion that legal relations in the sphere of regulation of tax policy are a variety of social relations regulated by the norms of the public law. At the same time, direction of legal regulation in the sphere of tax policy includes public service activity, law enforcement activity and jurisdictional activity of the state.

As noted by V. Averyanov, public service activity is the activity of relevant state and non-state bodies aimed at ensuring certain conditions determined in the course of their relations with the population, specific individuals and legal entities; under these conditions the latter are able to effectively exercise and protect their rights, freedoms and legal interests (Averyanov, 2011).

B. Guk writes that introduction of such a concept as “public service activity” into legal circulation has long been a cause of discussion in scientific circles, since such activity is based on constitutional position of social orientation of the state and it is a content of state’s activity, state’s duty to ensure human rights and freedoms (Guk, 2011).

O. Dzhafarova’s scientific position is noteworthy in this regard. She proposes to focus on the analysis of more general categories, such as “state”, “rights and freedoms of citizens” and “mechanism for ensuring rights and freedoms of citizens”, as far as interconnection of the latter is central for the juridical science. Organization and functioning of the modern Ukrainian state is based on a social agreement, which provides that the state is formed by the will of free and independent persons and that it is obliged to promote in every way realization of human rights, and in case of their violation the state must protect the latter.

The other party to the social agreement also has certain obligations, including payment of taxes, compliance with established rules of conduct, duty to protect integrity of the state, etc. It should be noted that this gives individuals priority and opportunities to exercise their rights, in particular in relations with the public administration. It is in this way that the modern idea of the state is revealed: the state is an institution that provides certain services to persons who, so to say, order these services. The range of these services directly follows from the public functions of the state, which are the content, grounds for identification and consolidation of specific rights and duties of subjects of the respective relations (Dzhafarova, 2016). Public-service activity of the state in the sphere of tax policy includes, for example, administration of taxes, issuance of permits, etc.

Law enforcement activity is a type of state activity carried out in order to protect the law by specially authorized bodies by means of applying legal measures of influence strictly in accordance with the law and in strict compliance with the procedure established by the law (Leheza *et al.*, 2018). In the sphere of the state tax policy, law enforcement activities include, for example, inspections of compliance with laws and other regulations. Administrative means of law enforcement nature include various forms and methods of control and supervision over the observance of law and discipline in the sphere of public administration, as well as the use of statutory means of educational and coercive influence.

They are used to protect the social order of Ukraine, property, socio-economic, political and personal rights and freedoms of citizens, rights and legitimate interests of enterprises, institutions and organizations, the established order of governance, state and public order, strengthening the rule of law, preventing and combating crimes, education of citizens in the spirit of strict observance of the Constitution and laws of Ukraine (Leheza *et al.*, 2021).

S. Komissarov argues that administrative and jurisdictional activities should be understood as regulated by law activities of authorized state bodies, local governments and their officials, aimed at: conducting proceedings in cases of administrative offenses, enforcement of administrative sanctions, and prevention and cessation of such offenses in order to protect the respective rights and freedoms of citizens, property, constitutional order of Ukraine, rights and legitimate interests of enterprises, institutions and organizations, established law and order, reinforcement of the rule of law, preventing offenses, educating citizens in the spirit of strict observance of the Constitution and laws of Ukraine, respect for human rights, honor and dignity as well as for rules of coexistence, conscientious performance of one's duties, responsibility to society (Komissarov, 2015).

L. Anokhina considers the concept of "administrative jurisdiction" in two aspects: static one (as a combination of powers of a subject of administrative jurisdiction) and functional-dynamic one (as a special type of law-enforcement activity) (Anokhina, 2001). The role of administrative responsibility in the fight against offenses is constantly growing, the number of administrative offenses is increasing, and penalties for misconduct become more severe. Liability is established for actions that did not previously belong to the category of offenses, for example violations of tax law, etc. (Leheza *et al.*, 2020).

When analyzing the concepts of legal regulation and legal relations we can see that they belong to the fundamental categories of science of administrative law, since it is in legal relations that such law exists, acts, and lives. Legal relations most clearly reflect the specifics of the method of administrative and legal regulation of public relations. In view of this, it is correct and necessary to establish a circle of those public relations regulated by the rules of administrative law, as this will give an opportunity to accurately identify the purpose of methods in this branch of law, study the full potential of their regulatory influence and determine the level of their effectiveness (Yurovskaya, 2016).

Y. Bityak notes that administrative-legal relations are public relations in the sphere of public administration, and participants of these public relations act as carriers of rights and obligations, regulated by the norms of administrative law. We can note the following features of administrative and legal relations:

1. in administrative and legal relations, rights and obligations require appropriate actions of an executive and administrative nature in order to be fulfilled.
2. a necessary condition for the emergence of administrative and legal relations is that there is an obligatory subject (the state) which must take part in them.

3. administrative and legal relations may arise at the initiative of each party, regardless of the will of the other party.
4. disputes between the parties of administrative and legal relations, as a rule, are resolved administratively.
5. Administrative and legal relations arising between executive authorities and other participants of the administrative law are not always relations carried out by the method of power and subordination.
6. Violation of the administrative-legal norm requirements by one of the parties of administrative and legal relations entails legal liability (Bytyak, 2010).

In view of the above, it can be argued that the relations in the sphere of the state tax policy in Ukraine are quite clearly defined and regulated at the legislative level (Leheza *et al.*, 2021).

However, the tax sphere has too close relations with other sectors of public life and has an influence on these sectors. To effectively ensure the priority of taxpayers' rights and find effective mechanisms for well-timed formation of public funds, it is necessary to clarify and disclose the essence of legal relations arising in the sphere of realization of the state tax policy (Leheza *et al.*, 2021).

Legal regulation in the sphere of tax policy includes public service, law enforcement and jurisdictional activity of the state, which is aimed at satisfaction of human rights and legitimate interests. Such activity is aimed at ensuring a high quality of life for people throughout the territory of Ukraine, and at achieving an optimal balance between filling the budget and maintaining conditions for economic growth and improving social welfare. In general, the sphere of taxes affects the national interests of Ukraine. Thus, relations that arise in the sphere of taxation are of great importance.

Conclusion

Thus, relations in the sphere of regulating the state tax policy have the following features: these relations presuppose an obligatory participation of the state; they require corresponding actions of executive and administrative nature in order to be fulfilled; they may arise on the initiative of each of the parties, regardless of the will of the other party; disputes between the parties of legal relations, as a rule, are resolved administratively; and violation of the administrative-legal norm requirements by one of the parties of legal relations entails legal liability; relations arising between the executive authorities and other participants in legal relations in the sphere

of the state tax policy are not always relations carried out by the method of power and subordination.

Given the analysis of relations arising in the sphere of regulation of the state tax policy one can confidently assert that in their essence they are similar to the characteristics of administrative and legal relations. Thus, administrative, and legal norms form the basis for regulation of the state tax policy.

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