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FEATURES OF PUBLIC ADMINISTRATION AND LEGAL REGULATION OF ADMINISTRATIVE PROCEDURES IN THE FIELD OF TAXES AND FEES

ОСОБЛИВОСТІ ПУБЛІЧНОГО АДМІНІСТРУВАННЯ ТА ПРАВОВОГО РЕГУЛЮВАННЯ АДМІНІСТРАТИВНИХ ПРОЦЕДУР У ГАЛУЗІ ПОДАТКІВ І ЗБОРІВ

The article analyses the peculiarities of public administration and the legal regulation of administrative procedures in the field of taxes and fees. It is concluded that the key features of the pit that characterise the essence and content of tax administration in modern conditions are: tax administration is a part of the management of the tax system, which ensures the completeness and timeliness of tax revenues to the state budget and finds expression in the aggregate of functions and tasks of authorised bodies aimed at achieving this goal, technologies for their implementation, bringing to tax responsibility persons who violate tax legislation; tax administration is the management of relations with taxpayers carried out by representatives of state executive structures, which consists in monitoring compliance with the norms and rules governing tax relations and their technology; an integral part of tax administration is tax control, designed to combat violations of tax legislation; tax administration should be aimed at ensuring the maximum possible collection of taxes at minimum cost, based on the use of a set of control measures, actions and tools established by law, maximum automation of all work processes; tax administration should take into account the requirements of taxpayers to optimise the process of fulfilment of tax obligations, while maintaining the principles of partnership and balancing the interests of all participants in tax relations.

It is noted that in modern conditions, the most pressing issues involve the implementation of constitutional rights of individuals and citizen and the concept of legal legality enshrined in the Constitution of Ukraine. In the field of tax control, this problem can only be solved through adequate regulation of administrative procedures. This can be ensured, for example, by optimal: digitalisation of legal regulation of the administrative procedure, tax control, and related administrative procedures.

Key words: public interest, public administration, taxes and fees, administrative procedure, tax legal relations.

У статті проаналізовано особливості публічного адміністрування та правового регулювання адміністративних процедур у галузі податків і зборів. Зроблено висновок, що ключовими особливостями, що характеризують сутність і зміст податкового адміністрування у сучасних умовах є: податкове адміністрування це частина управління податковою системою, що забезпечує повноту та своєчасність надходження податкових доходів до бюджету держави та знаходить вираження в сукупності спрямованих на досягнення цієї мети функцій і завдань уповноважених органів, технології їх реалізації, залучення до податкової відповідальності осіб, які порушують податкове законодавство; податкове адміністрування це здійснюване представниками державних структур виконавчої влади управління взаємовідносинами з платниками податків, що полягає у контролі за дотриманням норм і правил, що регулюють податкові відносини і їх технологію; невід'ємною частиною податкового адміністрування є податковий контроль, покликаний боротися з порушеннями податкового законодавства; податкове адміністрування має бути націлене на забезпечення максимально можливого збору податків при мінімальних витратах, на основі використання встановлених законодавством комплексу контрольних заходів, дій та інструментів, максимальної автоматизації всіх робочих процесів; податкове адміністрування має враховувати вимоги платників податків щодо оптимізації процесу виконання податкових зобов'язань, ґрунтуватися на принципах партнерства та дотримання балансу інтересів учасників податкових відносин.

Зазначено, що у сучасних умовах найбільш гостро стоять проблеми реалізації конституційних прав людини і громадянина та закріпленої в Конституції України концепції правової законності. У сфері податкового контролю дана проблема може бути вирішена тільки за допомогою адекватної регламентації адміністративних процедур. Це може бути забезпечено наприклад шляхом оптимальної цифровізації правового регулювання адміністративної процедури податкового контролю та пов'язаних з нею адміністративних процедур.

Ключові слова: публічний інтерес, публічне адміністрування, податки і збори, адміністративна процедура, податкові правовідносини.

A necessary condition for the existence of a state that provides opportunities for performing socio-economic and other tasks is the sufficiency of financial resources. The most significant source of formation are taxes, which make up most of the total revenues of the country's budget system. Ensuring the sustainability of tax revenues to the budget is of particular importance in modern conditions.

In the context of integration into the European Union, Ukraine faces the task of strengthening the national economy, the solution of which is possible only by improving the efficiency of tax system management. The tax system is the main means of regulating the country's economy, affecting the structure of the state, development and living conditions, which is rapidly changing due to changing economic, political, and social requirements.

The tax system is represented by the unity of three elements, its management will be considered as the activity of the state (legislative, executive, administrative) to manage each of them.

Regarding the first element of the tax system – a set of taxes levied by the state, this is the legislative establishment of a list of taxes, their classification and taxation procedure for each of them [1].

Regarding the second – the rights and obligations of authorised state bodies in the field of taxes and taxation, this is the legislative establishment of the competence, principles, forms and methods of organisation and activities of authorised bodies of power and management in the field of tax relations.

According to the third element – the activities of authorised controlling bodies for the collection of taxes and other mandatory payments is the definition of tasks and functions of tax authorities that ensure the completeness and timeliness of tax revenues to the budget system of the country, the procedure for bringing to justice persons who violate tax legislation.

Management of the tax system is the process of formation of the regulatory framework and its corresponding executive and administrative activities carried out by public authorities and public administration with power in the field of taxation, during which coherence and unity of actions to bring the tax system in line with the priority goals, models, and methods of tax policy of the state are ensured [2].

All elements of the tax system are closely related, which follows from the versatility of tax relations (relations for the establishment, introduction, collection of taxes, etc.) underlying them.

For example, when carrying out control activities, tax authorities may reveal facts of imperfection in the procedure for calculating taxes, allowing taxpayers to minimise tax payments to the country's budget system.

The activities of authorised controlling bodies for tax collection are carried out through tax administration, which makes it possible to consider it as part of the management of the tax system.

The basis of the statement that tax administration is part of the management of the tax system is the exclusion of legislative powers from the sphere of activity of bodies controlling the completeness and timeliness of tax revenues to the budget [1].

Regulations fixing the system of taxes and fees, principles, forms, and methods of organising tax relations are established by the legislature. Tax administration is carried out by state management bodies through the implementation of established legislative norms.

At the same time, the regulatory aspect of tax administration, aimed at improving tax legislation by developing proposals for amendments and additions, is not excluded.

If the purpose and objectives of managing the tax system are determined by the tax policy of the state in the relevant socio-economic and political conditions, then tax administration as part of the management of the tax system sets independent tasks that specify the general direction of development of tax relations in national conditions [3].

Tax administration can: be equated to the management of the tax system, tax relations, taxation; consider as a process of levying taxes and regulating emerging relations and relations; identify with tax control; recognise the organisational and administrative activities of state executive bodies; consider as an indicator of the effectiveness of tax relations management, ensuring the highest possible tax collection while minimising costs.

In terms of content, tax administration represents the legal regulation of relations between taxpayers and tax authorities, and it is a legal concept that entails certain consequences, which may manifest themselves in tax disputes.

Relations between tax authorities and taxpayers are subject to legal regulation, since taxes are mandatory payments, taxpayers are legally responsible for their payment. In this regard, the rights, and obligations of all participants in tax legal relations, procedural norms that provide them, are subject to mandatory legal consolidation [4].

The concept of tax administration goes beyond tax law, including elements not regulated by law. In particular, the development and application of methods for determining taxpayers subject to tax audit; identification of facts of underestimation of the tax base, provision of information services to taxpayers, etc.

The discussion about the substantive side of tax administration, the ambiguity of scientific approaches testifies to the unresolved fundamentals of the theory and methodology of tax administration, which require further research.

The state, represented by authorised bodies, controls the legality, correctness, and completeness of tax obligations, but the scope of responsibility of tax administrations to society is significantly expanding.

There is a need to assess the qualitative characteristics of tax administration and develop specific recommendations for simplifying procedures for law-abiding taxpayers. The implementation of these tasks is largely facilitated by the rapid development of information technology.

In recent years, fiscal authorities have been reformed into a service-oriented structure. This reform entails a more complete automation of the activities of tax authorities, thorough preparation of the information base, and the use of various methods that consider numerous factors that affect the process of tax administration.

With the advent of information processing automation in tax inspections, it became possible to use more widely statistical methods for analysing and forecasting tax audits, tax revenues, tax offenses, tax risks.

The directions of development in relations between tax authorities and taxpayers have significantly expanded. As a result of such transformations was a change in the functional tasks of tax administration, which was reflected in the performed functions [1].

Tax administration, which encompasses the activities of authorised state bodies for managing tax relations, is characterised by functions: planning (forecasting), accounting, analysis, control, and regulation.

An integral part of these functions is working with taxpayers. At the same time, the qualitative change in the relationship between taxpayers and the tax authorities in modern conditions requires further study.

The implemented client-oriented approach in the work of tax authorities with legal entities and individuals, based on mutual trust, partnership cooperation and interactive service, leads to an expansion of interaction between the subjects of tax relations, elevating it to a qualitatively new level.

This turns the work with taxpayers into an independent direction of tax administration, designed to promote:

- raising the level of legal and tax literacy of the population;
- formation of taxpayers' responsibility for paying taxes;

– improving the conditions for taxpayers to fulfil their obligation to pay taxes;

– increasing the quality of services provided by tax authorities to taxpayers, etc. [5].

The functions of tax administration are planning, accounting, analysis, control, regulation, organisation of interaction with taxpayers, resolution of disputes arising between tax authorities and taxpayers administratively.

Tax administration, in addition to solving an important task of forming tax revenues of the budget system, is designed to simplify the fulfilment of tax obligations to taxpayers, to make the implementation of the procedures open and understandable to all participants in tax relations due to maximum informatisation.

That is, tax administration should orient taxpayers to voluntary payment of taxes, and not be based on coercive measures.

New approaches to the organisation of tax administration and the growth of technical and information potential of authorised bodies allow us to talk about the formation of a service-oriented tax environment (as a set of conditions in which participants in tax relations operate), which provides an opportunity to consider tax authorities and taxpayers as equal partners of tax relations.

This allows us to highlight the following key features that characterise the essence and content of tax administration in modern conditions.

Firstly, tax administration is a part of the management of the tax system, which ensures the completeness and timeliness of tax revenues to the state budget. It finds an expression in the aggregate of functions and tasks of authorised bodies aimed at achieving this goal, as well as technologies for their implementation, bringing to tax responsibility those who violate tax legislation. Its development depends on the improvement of organisational forms and methods of managing tax relations that underlie tax administration.

Secondly, tax administration is the management of relations with taxpayers carried out by representatives of state executive structures. It consists of monitoring compliance with the norms and rules governing tax relations and their technology.

Thirdly, an integral part of tax administration is tax control, designed to combat violations of tax legislation. Changes in the conditions for the implementation of tax administration significantly affect the organisation of control measures. Audits that allow tax offenses to be detected only after they have been committed are replaced by preventive measures aimed at preventing and deterring tax offenses.

Fourthly, tax administration should be aimed at ensuring the maximum possible collection of taxes at minimum costs. This is based on the use of a set of control measures, actions and tools established by law, as well as maximum automation of all work processes. The indicator of the state of tax administration is the degree of identity of the values of the amounts of budget revenues to the amounts of tax liabilities determined by the relevant legislation.

Fifth, tax administration should consider the requirements of taxpayers to optimise the process of fulfilling tax obligations. It should be based on the principles of partnership and maintaining a balance of interests of participants in tax relations.

The considered features of tax administration allow us to speak of it as an effective that simultaneously meets the interests of all participants in tax relations.

Consequently, the shift of fiscal accents in tax administration towards open interaction of tax authorities with legal entities and individuals, allows to consider the interests, the state, and taxpayers, including individual citizens. Its task is to ensure the completeness and timeliness of tax revenues to the budget system, develop tools and methods to create a service-oriented tax environment based on maximum automation of tax administration workflows, and designed to help strengthen mutual trust between participants in tax relations.

Considering the peculiarities of tax administration associated with the lack of legal regulation of certain areas of tax administration, conditions arise that contribute to discrepancies in the calculation of tax amounts, leading to tax disputes.

Regarding the peculiarities of administrative procedures in the field of taxes and fees, some researchers point out that despite the need for unified legal regulation of the basics of administrative procedures in a single law, the peculiarities of the administrative procedure in the field of taxes and fees should be regulated in the Tax Code of Ukraine as a single codified legislative act on taxes and fees.

However, it should be noted that the scientific discourse and conceptual understanding of the category of "administrative procedure" simultaneously have become both important for the development of administrative law and problematic due to the long absence of a mechanism of legal regulation and a unified doctrinal approach to understanding this concept. Some scientists consider the administrative procedure through the relationship with the activities of executive bodies, local self-government, and apply functional, activity-based, and formal-logical approach, while others draw analogies with the

concepts of the administrative process and use a managerial and positive approach to its definition. This plurality of approaches generates even more discussions and creates legal uncertainty about the concept of administrative procedure. Representatives of the functional approach consider the administrative procedure in order:

- implementation by subjects of power of activities aimed at solving an administrative case or performing a managerial function;

- as in accordance with the procedure established by law for consideration and resolution of individual administrative cases by public administration bodies;

- as a procedure for the consistent implementation by an administrative body of certain actions aimed at resolving an individual legal case [6, p. 246];

- as a procedure for the activities of executive authorities for the consideration and resolution of individual cases, the result of which is the adoption of an individual administrative act aimed at ensuring the realisation of the rights and legitimate interests of individuals in the process of their interaction with executive authorities within the framework of the latter's performance of their tasks and functions [7, p. 7]. The administrative procedure is focused on the formation of a legality regime and effective resolution of an administrative case, protection, and protection of the rights of both legal and interested individuals. This approach reveals the content and focus of the administrative procedure, so it is called functional.

The concept of order in legal literature is associated with the concept of law and order. The most common definitions of the concept of law and order in the theory of law are the understanding of it as a state of orderliness by the law of social relations or the regime for establishing and implementing legal relations in accordance with the principle of legality. The level of achievement of law and order directly depends on the effectiveness of the implementation and observance of the rule of law, as well as on the quality of its legal regulation, carried out exclusively by the rules of law.

Representatives of the activity approach consider the administrative procedure as an activity: [8; 9 p. 7];

- activities of executive bodies, local self-government bodies and their officials: in particular, as regulated by the rules of law enforcement activities of executive bodies to resolve administrative cases subordinate to them;

- as regulated by administrative procedural norms law enforcement activities of executive bodies aimed at exercising their powers in relations with non-subordinate citizens and organisations and not related

to the consideration of disputes or the use of coercive measures;

– as a normatively regulated, result-oriented activity of subjects (at least one of which is an executive body, local self-government, or its official), which consists of sequential actions (stages, stages of the procedure), during which the competence of these subjects is realised, the norms of various branches of law are applied and various management acts (both intermediate and final) are adopted, not related in content either to the judicial consideration of disputes about subjective public law, nor with the use of measures of administrative coercion;

– as a form of exercising executive power. This approach reveals the form of implementation of the administrative procedure through the activities of the body, which is related to the resolution of an administrative case and is carried out within the administrative procedure, but is implemented in various administrative proceedings, which is an independent administrative and procedural form of activity of public administration bodies (proceedings in cases of state registration, granting licenses and permits, administrative offenses, etc.).

Representatives of the formal-logical approach consider the administrative procedure from the perspective of the regulator, which defines a special procedure for the implementation of procedural actions of public administration bodies (executive bodies, local self-government bodies, their officials) and their adoption of interim and final decisions in administrative cases [10]. Such an approach, according to scientists, reveals the regulatory essence of the administrative procedure, its relationship with the regulated procedure by the activities of administrative bodies and the procedure for implementing its content. Scientists note that the administrative procedure is necessary for regulating administrative and procedural relations that arise between administrative bodies and individuals to establish the proper order in ensuring and exercising their rights and interests.

Most foreign countries have adopted laws on administrative procedure to ensure a high level of law and order and efficiency of public administration, because of which the concept of "administrative procedure". This adoption of laws has made this concept normative. In Ukraine, prior to the adoption of the Law of Ukraine "On Administrative Procedure", the concept of administrative procedure remained exclusively doctrinal [11]. Scientists worked to develop the most suitable concept for the legislator of the concept of "administrative procedure".

Applying the criterion – an analogy of the concepts of the administrative process to the definition of administrative procedure, scientists propose several approaches: the managerial (broad) and the positive (narrow). According to the broad approach, an administrative procedure is a normatively established procedure for consistent implementation by authorised subjects of the right of concerted actions to exercise their competence, both positive and negative (jurisdictional) in nature. According to the broad approach, an administrative procedure covers regulatory (positive) and protective (jurisdictional) relations, and according to the narrow approach focuses on rulemaking, law enforcement, external, and internal management relations.

According to the positive approach, the administrative procedure is an indisputable non-jurisdictional activity of public administration bodies, within which only indisputable positive administrative cases that generate legal consequences for non-governmental subjects of managerial relations are resolved. The non-ministerial procedure is an institution of administrative (substantive) law, the general content and purpose of which is described in the general part of this branch of law [12]. It describes the behaviour of individuals (legal entities), public administration in indisputable legal relations of administrative and legal (public) content regarding the exercise (facilitation) by these persons of rights, freedoms, legitimate interests, or the performance of duties by the public administration.

And the non-ministerial procedure is a legal category of an exclusively extrajudicial nature. Even though in the Ukrainian legal literature there are still many different positions, managerial and positive approaches remain the most promising [13, p. 12]. The first focuses on the genetic relationship of various types of procedural activities of public administration, and the second allows you to concentrate on such an important feature as the resolution of indisputable positive administrative cases, generating legal consequences for non-power subjects of management relations.

Also, another position has been formed in administrative legal science, according to which the administrative procedure is a procedural procedure for consideration of administrative cases by executive authorities. Comparing the concept of "procedural order" with the concept of "procedural form", we concluded that they are identical, since they determine the procedure for consideration of cases, establish facts in the ways provided for by law; consider and decide cases. These two concepts characterise the dynamics of the legal process, making their use as identical reasonable and logical.

With the adoption of the Law of Ukraine "On Administrative Procedure", the concept of administrative procedure has become normative and is defined in paragraph 5, part 1 of Art. 1 – as the procedure for consideration and resolution of the case. However, in the context of forming a general model of administrative procedure, within which the most common types of administrative proceedings will be accumulated, this definition needs meaningful revision. It lacks the main feature of the procedure – unification, which is implemented not only in a single order of activity, but also in the content of the provisions that will apply to various types of administrative proceedings. Also, the purpose of the procedure is not considered - to ensure the realisation of rights and the interests of individuals in relations with administrative bodies and establish a legal framework for the exercise by bodies of powers, including discretionary ones when adopting administrative acts.

It is proposed to define the administrative procedure as a normatively established and unified procedure for the implementation of activities by participants of administrative proceedings. These activities aim to resolve the case and limit administrative discretion in the exercise of discretionary powers by the body in relations with individuals and legal entities, as prescribed by law.

The Law of Ukraine "On Administrative Procedure" is a key law that defines the powers of administrative bodies of a procedural nature, and the method of exercising the powers of public administration bodies. At the same time, within the system of legal regulation, there are other "general" (also distinguish "framework") and "special" legislative acts. And the question of their correlation with these acts is extremely important and requires clarity for practical purposes.

The Law establishes the general regulations of the procedure for consideration and resolution of individual cases by administrative bodies, which constitutes a general administrative procedure. In case of conflicts arising in specific situations, their resolution should be carried out based on the principles of this Law.

Regarding the need to consider the practice of the European Court of Human Rights, the following should be noted. It should be kept in mind that a similar norm exists in part 2 of Art. 6 CAS. The country has a court regarding the application of the rule of law principle, and that there is a separate law on this issue. Therefore, there is a challenge for many bodies, especially local self-government. After all, there is a risk of ignorance of the case law of the ECHR. However, the number of such decisions that are important

for administrative practice is limited. The Ministry of Justice and other national public authorities can communicate relevant information to those administrative authorities, in accordance with applicable legislation. Central authorities, including the Government and Parliament, should respond promptly to ECHR decisions [1, 4].

It should be borne in mind that ignoring the case law of the ECtHR does not meet both the interests of citizens (and therefore violates both the purpose defined in the preamble and principles of the Law, as well as the public interest. After all, ignoring the practice of the ECHR, administrative bodies expose the state to new "lost cases" and compensation payments from the state budget, that is, at the expense of all taxpayers.

At the same time, it should be emphasised that levelling the importance of legal regulation in the field of taxes and fees of tax administration entities reduces the importance of administrative procedures in the field of taxes and fees and increases the level of discretion of officials of tax authorities.

The need for legislative limitation of administrative discretion in the field of taxes and fees with the help of the institution of administrative procedures has been repeatedly drawn to attention in the doctrine of the European Union countries tax law.

Conclusions. The carried-out analysis allows us to identify the following key features characterising the essence and content of tax administration in modern conditions:

1) Tax administration is a part of managing the tax system, which ensures the completeness and timeliness of tax revenues to the state budget and finds expression in the aggregate of functions and tasks of authorised bodies aimed at achieving this goal, technologies for their implementation, bringing to tax responsibility persons who violate tax legislation.

2) Tax administration is the management of relations with taxpayers carried out by representatives of state executive structures, which consists in monitoring compliance with the norms and rules governing tax relations and their technology;

3) an integral part of tax administration is tax control designed to combat violations of tax legislation;

4) tax administration should be aimed at ensuring the maximum possible collection of taxes at minimum costs. It should be based on the use of a set of control measures, actions and tools established by law, maximum automation of all work processes;

5) tax administration should consider the requirements of taxpayers to optimise the process of fulfilment of tax obligations. It should be based on the

principles of partnership and maintaining a balance of interests of participants in tax relations.

Additionally, it should be noted that in modern conditions, the implementation of constitutional rights of man and citizen and the concept of legal legality enshrined in the Constitution of Ukraine, present

significant challenges. In the field of tax control, this problem can be solved only through adequate regulation of administrative procedures. This can be facilitated, for example, by optimal digitalisation of the legal regulation of administrative procedures, tax control, and related processes.

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