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## LEGAL INSTRUMENTS OF THE UKRAINIAN TAX LAW AIMED TO PROTECT TAXPAYERS

The paper is designed to present features of the taxpayers' rights protection. The legal regulation of administrative and judicial appeal of Ukrainian tax authorities' decisions is investigated. The analysis of the Constitution of Ukraine, the Tax Code of Ukraine, the Code of Administrative Procedure, decisions of the Constitutional Court, as well as reports of the Business Ombudsman's Council were carried out. The article analyzes the institute of tax mediation and considers the legal regulation of mediation in Ukraine. The author comes to the conclusion that it is necessary to implement alternative methods of resolving conflicts in tax relations.

**Keywords:** tax, tax relations, appeal decisions, tax authorities, administrative and judicial appeal procedure, protection, mediation.

**Introduction.** According to article 67 of the Constitution of Ukraine everyone is obliged to pay taxes and levies in accordance with the procedure and in the extent established by law. All citizens annually file declarations with the tax inspection at their place of residence, on their property status and income for the previous year, by the procedure established by law.

The state must guarantee proper protection of taxpayers' rights for maintaining of stability in economic relations. The Tax Code of Ukraine stipulates that taxpayers are provided with the right to appeal against decisions of the fiscal agency and, also, taxpayers have rights for judicial protection. In most broad terms, one of the most peculiar characteristics of tax relations is the propensity towards conflict, considering that each party pursue its own aims. Specifically, the State is seeking to accumulate funds to the certain budgets, whereas taxpayer endeavors to keep more income. Therefore, disputes between taxpayers and the State are not a rare phenomenon, considering the fact that tax legislation is very changeable in Ukraine.

The article focuses on the legal regulation of the taxpayers' rights protection. Along with that, reports of the Business Ombudsman's Council regarding the taxpayer's rights protect are analyzed profoundly.

**The aim of the article** is to analyze the way of protecting the taxpayer's right in Ukraine, as well as their effectiveness. It is also suggested to implement tax mediation institute to the tax regulations in order to decrease the burden on judicial system.

**Presentation of the main material.** The fundamental legal act that regulates social relations encountering in the field of taxes and levies imposition is the Tax Code of Ukraine. Particularly, it defines an exhaustive list of taxes and fiscal charges collected in Ukraine as well as the procedure for their administration, legal status of taxpayers, their rights and obligations, the competence of certain supervisory bodies, authority and responsibilities of their officials, and certainly – the liability for violation of tax laws (Tax Code of Ukraine, 2010)<sup>1</sup>.

Tax relations as public are the integral part of financial legal relations. Any State has the ability to fill funds for the implementation of its vital functions only by entering into tax relationships. Without taxes, the State is considered to be weak and cannot function in a proper way. According to the authors of the profound research "Moral and Ethical Imperatives of Taxes and Taxation (Western Tradition)", with whom the author agrees, a high level of taxes is an indispensable price for democratic State governed by the rule of law, as well as a reflection of generous social sphere financing and ensuring comfortable living conditions for the citizens of particular State (Andrushchenko, V. L., Tuchak, T. V., 2013)<sup>2</sup>.

<sup>1</sup> Податковий кодекс України 2010 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<https://zakon.rada.gov.ua/laws/show/2755-17>>.

<sup>2</sup> Андрущенко, В.Л., Тучак, Т.В. (2013). *Морально-етичні імперативи податків та оподаткування (західна традиція)*: монографія. Київ: Алерта, 237-238.

With the development of the welfare state, the system of taxation is substantially improving, thus the relationship between the State and taxpayers also assumes a new dimension. Currently, the Tax Code of Ukraine defines tax liability as a duty of the taxpayer to calculate, declare and / or pay tax and levy.

Tax relations have distinctive features, namely, among which are: express the State's public interest; have a governmental property character; the parties have subjective rights and legal obligations; the fulfillment of taxpayers' obligations is ensured by coercive force.

Among participants of tax relations are the State (represented by the authorities whose competence includes the adoption of regulatory legal acts in the field of taxation), tax authorities – the State Fiscal Service of Ukraine (hereinafter – SFS), local self-government bodies, tax payers (natural and legal persons), tax agents and financial institutions, acting as intermediaries in the transfer of taxes and fees to the budgets.

It is noteworthy that, as a rule, in tax relations the taxpayer is the weaker party in comparison with the State. Therefore, the protection of the taxpayers' rights is a necessity that is ensured by law. In accordance with Article 17 of the Tax Code of Ukraine, the taxpayer has the right to appeal against decisions, actions (inactions) of the regulatory agencies, including individual tax counseling as well as a general tax consultation.

Article 56 of the Tax Code of Ukraine stipulates that decisions taken by the supervisory bodies may be appealed in administrative or judicial proceedings.

The administrative appeal procedure is considered to be a pre-trial procedure for resolving a certain dispute. In the context of such proceeding, the taxpayer has the right to appeal to a higher-level supervisory authority with a review of complaint. The complaint is filed within 10 calendar days following the day when the taxpayer receives the contested decision. During the administrative appeal procedure, the obligation to prove that any decision of the regulatory agency is lawful is imposed on such agency. The time-limit for the appellate review is 20 calendar days (may be extended, but no more than 60 calendar days).

In the decision of the Constitutional Court of Ukraine in the case of pre-trial settlement of disputes of July 9, 2002 N 15-rp / 2002, the Court has recognized the possibility for legal relation subjects to use the instruments of the dispute pre-trial settlement. In this context, they are applied as an additional means of legal protection which are provided by the State to participants of certain legal relations. Consequently, such legal instruments are recognized by the State as they do not contravene the principle of the administration of justice exclusively by a court. Based on the need to increase the level of legal protection, the State can stimulate the resolution of legal disputes within the framework of pre-trial procedures, but their use is the right, and not the duty of the person who needs such protection (The Decision of the Constitutional Court of Ukraine in the case of pre-trial settlement of disputes, July 9, 2002 N 15-rp / 2002)<sup>1</sup>.

More importantly, Article 125 of the Ukrainian Constitution stipulates a provision according to which administrative courts operate in order to protect the rights, freedoms and interests of a person in the field of public-law relations. The judicial protection of the taxpayers' rights is provided in accordance with the procedure provided by the Administrative Justice Code of Ukraine. In accordance with clause 1 of Article 2 of the Administrative Justice Code of Ukraine, the task of administrative justice is fair, impartial and timely resolution of disputes by the court in the field of public-legal relations with an aim to protect effectively the rights, freedoms and interests of individuals, the rights and interests of legal entities from violations by the governmental authorities (Administrative Justice Code of Ukraine, 2005)<sup>2</sup>.

In comparison with the judiciary appeal procedure, the advantages of the administrative legal method of protecting taxpayers' rights is the speed with which cases are heard and reviewed as well as the absence of the need to pay court fees. Conversely, it should be noted that the judicial way of taxpayers' rights protection reflects a greater degree of objectivity, as consideration of the case takes place outside the tax authority, by an independent judge. Therefore, as practice has shown, the courts are more often aligned with the taxpayer as compared within fiscal authorities. Unfortunately, today the administrative means

<sup>1</sup> Рішення Конституційного Суду України у справі за конституційним зверненням ТОВ «Торговий Дім «Кампус Коттон клуб» щодо офіційного тлумачення положення частини другої ст. 124 Конституції України (справа про досудове врегулювання спорів) 2002 (Конституційний Суд України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/v015p710-02>>.

<sup>2</sup> Кодекс адміністративного судочинства України 2005 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon.rada.gov.ua/laws/show/2747-15>>.

of protecting the taxpayer's rights is not always effective. Nevertheless, in our personal opinion, out-of-court protection of the taxpayer's rights should become a reliable mechanism for protecting the rights of the latter.

Alongside with this, it is fair to say that the Council of the Business Ombudsman, whose main task is to contribute to the fight against corruption and increase Ukraine's investment attractiveness, as well as to ensure more transparent business conduct, is an efficient mean for protecting the rights of taxpayers in Ukraine. The report of the Council of the Business Ombudsman (hereinafter – the Council) for October – December 2018<sup>1</sup> states that the number of complaints received in the IV quarter of 2018 on tax issues were 263.

In the Quarterly Report of the Council for April-June 2018<sup>2</sup> was declare that the number of complaints received in the II quarter of 2018 on tax issues were 254. With the Council assistance, 39% of tax audit cases were successfully closed by the State Fiscal Service at the early stage of the administrative appeal. In this regard, it should be pointed out that such figure is much more than 14% – the average rate of cases decided in favor of the complainant, according to State Fiscal Service data for 2016-2018. Although, 58% of cases investigated by the Council did not succeed for complainants, thus they were forced to appeal to administrative courts. In these cases, the Council provided the State Fiscal Service with a substantiated legal position at the stage of the administrative appeal. However, the tax authority did not support it, and the certain tax assessment notices had become the subject of judicial review. The report<sup>3</sup> also acknowledges that in more than 90% of cases, when the Council supported the complainant but could not successfully close the case at the stage of the administrative appeal, the court made a decision in favor of the complainant. Therefore, it is obvious that the stage of administrative appeal in the SFS should be more well-organized and as a result – effective. Essentially, this will avoid the court system overloading with less controversial issues (Quarterly Report of the Business Ombudsman's Council, April-June 2018)<sup>4</sup>.

We think that alternative ways of tax dispute adjustment should be implemented to the legislation. Mediation is one of the alternative ways of dispute solution. Third party (mediator) participates at the conflict and helps the parties to reach a settlement. Mediation institute is used in many countries. This type of alternative dispute resolution is not yet under the statutory regulation in Ukraine. The draft law «About mediation»<sup>5</sup> was rejected and discontinued on February 28, 2019, by the Ukrainian Parliament. Alongside, discussing the necessity of legal regulation of mediation goes ahead. Such attention to the question is understandable and necessary because of the economic situation.

The introduction of tax mediation has several advantages, including lowering the costs of litigation, time-saving, accelerating the resolution of a dispute, reducing the risk of a corruption component in resolving tax disputes, reducing bureaucratic processes for taxpayers and establishment of a constructive dialogue between parties. The main principles for mediation should be voluntariness, mutual respect, confidentiality, equality, neutrality and impartiality of the mediator.

At the same time, it should be noted that there are also problems that may interfere with the effective functioning of tax mediation. For example, the distrust, the lack of desire of the tax authorities to resolve the conflict with the help of a third party, the problem of voluntary implementation of the agreements reached. All these problems can be solved if the state sets itself the goal of building partnerships with taxpayers. In this case, there will be a desire at the tax service to solve the conflict and the proper legal regulation of tax mediation. As we see from the data above, the problem of resolving conflicts today exists and we need to be «upgraded» system by introducing alternative dispute resolution methods.

**Conclusions.** Taking into account modern developments of economic relations, the parties to the legal relationships increasingly use the alternative forms of conflict resolution in the tax area, without

<sup>1</sup> Квартальний звіт Ради бізнес-омбудсмена (жовтень-грудень 2018 року). *Офіційний сайт Ради бізнес-омбудсмена*. <[https://boi.org.ua/media/uploads/q42018/q4\\_2018\\_ua.pdf](https://boi.org.ua/media/uploads/q42018/q4_2018_ua.pdf)>.

<sup>2</sup> Квартальний звіт Ради бізнес-омбудсмена (квітень-червень 2018 року). *Офіційний сайт Ради бізнес-омбудсмена*. <[https://boi.org.ua/media/uploads/q22018/ii\\_2018\\_ua.pdf](https://boi.org.ua/media/uploads/q22018/ii_2018_ua.pdf)>.

<sup>3</sup> Квартальний звіт Ради бізнес-омбудсмена (квітень-червень 2018 року). *Офіційний сайт Ради бізнес-омбудсмена*. <[https://boi.org.ua/media/uploads/q22018/ii\\_2018\\_ua.pdf](https://boi.org.ua/media/uploads/q22018/ii_2018_ua.pdf)>.

<sup>4</sup> Квартальний звіт Ради бізнес-омбудсмена (квітень-червень 2018 року). *Офіційний сайт Ради бізнес-омбудсмена*. <[https://boi.org.ua/media/uploads/q22018/ii\\_2018\\_ua.pdf](https://boi.org.ua/media/uploads/q22018/ii_2018_ua.pdf)>.

<sup>5</sup> *Проект Закону про mediaцію*. *Офіційний сайт Верховної Ради України*. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=3665&skl=9](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3665&skl=9)>.

involving the state authorities. For example, the institute of mediation (where a dispute is settled through the independent mediator). The extensive use of alternative methods of tax disputes resolution will significantly reduce the burden on the judiciary. Additionally, this will contribute significantly in overcoming the corruption factor in relations between the taxpayer and State. Therefore, in our view, the establishment of the mediation in tax relations is an urgent issue for Ukraine.

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