

REFORMING THE MECHANISM OF LEGAL REGULATION OF THE VALUE ADDED TAX IN THE CONTEXT OF EUROPEAN INTEGRATION

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Summary. Theoretical study of reforming the mechanism of legal regulation of the value added tax in the context of European integration is conducted in the article. The types of mechanisms of legal regulation of the value added tax, the main approaches to understanding the elements of the mechanism of legal regulation and their features in the modern period are analyzed. Tax liabilities for the value added tax have been researched. Problematic and contradictory issues of legal regulation of the category of tax liabilities are considered, approaches to determining the content, components, structural construction are outlined, the correlations with other related categories are established. Modern scientific researches are analyzed and as a conclusion we offer unified scientific and theoretical approach to defining the concept of the mechanism of legal regulation of the value added tax. We analyzed the influence of the mechanism of legal regulation of the value added tax on the formation of other legal relations that reveal the essence of the derivative social relations.

Key words: legal regulation mechanism, European integration, value added tax, tax elements, tax liabilities

INTRODUCTION

Legislative regulation of the formation and attraction of the value added taxes to the budget is carried out in the countries of the European Union. All the taxes are established in the developed legislation. The requirements for the tax, its content, parameters and functions are determined by the legislation. The place and significance, practical methods and methods of calculation, the procedure for payment of the value added tax to the budget must be determined within the norms and rules established by law. The Association Agreement among Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, provides for the reform of the tax system, including value added tax.

1. THE ESSENCE OF THE VALUE ADDED TAX

The national tax system model has the potential to improve and effectively use each tax. Therefore, there is a need to strengthen the theoretical side of the study of the value added tax¹ on the basis of clarifying the economic nature, essential characteristics, reasons of formation, the mechanism of calculation and payment. In the theory of taxation there is a lack of understanding of the economic nature of the value added tax, the functions it performs, which contribute to the development of methods of application that do not take into account the optimization basis.

This specificity presupposes the consideration of the basic legal grounds of the value added taxation in connection with the concept of the mechanism of legal regulation, which is not presented in the legislation, but is used in the scientific legal literature and researches.

The mechanism of legal regulation is a normatively organized, consistent and complex process aimed at the effective implementation of legal norms in life, streamlining, consolidation, development and improvement of public relations through adequate legal means to implement the interests of society and the state [Kurakin 2016, 28].

This allows to apply the mechanism of legal regulation for the analysis of the value added tax, disclose the legal nature of value added taxation in the aspect of proposing the concept of improving legal regulation in the tax sphere defined by the Law of Ukraine “On Amendments to Separate Laws of Ukraine On Improving of Tax Administration, Eliminating Technical and Logical Inconsistencies in Tax Legislation”²: 1) normative uncertainty of the concept of the mechanism of legal regulation gives possibilities of application in descriptions of branch problems; 2) in the theory of law the basic potential of understanding of the mechanism of legal regulation, its elements having general and universal character is saved up; 3) the mechanism of legal regulation of the tax operates in the field of forming of added valuability, where the law acts as a re-regulator of a compound complex of social relations, and the mechanism of legal regulation acquires the quality of the technological scheme of legal regulation.

In this form, the mechanism of legal regulation of VAT is presented as a consistently organized system of the value added tax, covering a set of legal measures involved in regulating the economy, identifies specific functions and regulatory opportunities in relations with other legal phenomena and processes in social economic sphere of the country due to European integration processes, adaptation of national legislation to the requirements of the European Union.

Analysis of the positions of lawyers allows us to identify two models of the mechanism of legal regulation: general-permitting and special-permitting [ibid.,

¹ Henceforth cited as: VAT.

² Act of 16.01.2020, No. 465-IX, <https://zakon.rada.gov.ua/laws/show/465-20> [accessed: 12.07.2020].

17]. The general permitting option is based on the classical understanding of the model of the mechanism of legal regulation, which is determined (law, legal relations, acts of application of law) by means of legal regulation, which are the basis for the administration of the value added tax. Accordingly, the main legal content of the general permitting model is formed by the rules of law that authorize, bind and prohibit.

The special permit model is based on the mechanism of legal regulation in the form of an algorithm of legally significant actions, subjected to the prohibition of all other, not provided by the current legislation, which allow to positively stimulate actions to obtain a certain socio-economic effect. The fundamental difference between the considered models is the complication of the special-permit model with two new elements: the setting of a socially useful goal and the introduction of social control.

Using information and communication technologies and systems, the state power penetrates into all spheres of human life, forming it as a social entity, defining identity, needs and interests. This allows us to formulate a definition of the mechanism of legal regulation of value added taxation in the form of a comprehensive set of legal means of regulation, structured for the purpose of tax exclusion and redistribution of added valuability in society in accordance with the budgetary policy of the state. In the conditions of realization of a number of reforms and amendments to the legislation there is a necessity in the directed and accurately thought-out actions of the state power which are an indicator of their efficiency and effectiveness [Fomenko 2019, 10].

The mechanism of legal regulation in the scientific literature is considered in a broad and narrow sense. Accordingly, the mechanism of legal regulation of value added taxation should be interpreted in the narrow and broad sense of this definition. The difference lies in the amount of tax – legal relations, which in the first case are directly related to the legal regulation of the value added tax, and in the second – relate to the complexity of tax redistribution.

A broad approach to understanding the added valuability, formed in the modern mode of production, opens opportunities for a qualitatively new economic and legal understanding of relations in the field of social redistribution and the use of reserves of integration of scientific knowledge to solve socio-economic problems.

It is advisable to distinguish two components that indicate the essence of the mechanism of legal regulation: organizational and legal module, which defines a single structure of the mechanism of legal regulation of the value added tax; regulatory and legal module, which sets the main vector of influences based on political, legal and socio-economic goals implemented by the state in the field of socio-economic policy.

The scientific literature and materials of case law focus on the organizational and legal module, which is presented in terms of descriptions of sets of legal pro-

visions and their different interpretations of general and particular problems of fiscal impact of the mechanism of legal regulation of the value added tax.

Due to the complexity of the system of legal regulation of the value added tax it is necessary to take into account not only the state of the chief elements of the mechanism of legal regulation, but also secondary elements represented by the level of public legal awareness, legal culture, political, economic and social life, the level of law and order, the success of state systems and other environmental factors that do not belong to the mechanism of legal regulation. Ignoring them can not only reduce efficiency, but return the mechanism of legal regulation to the detriment of social development. As additional elements, in particular, the legislation on the value added tax foresees the preferential procedures of tax deductions, peculiarities of definition of a tax base for separate categories of operations and subjects of the taxation.

The legal basis of the mechanism of legal regulation of the value added tax is a set of rules that form a single structure of the value added tax, which include basic, additional and optional elements. The complex, intersectoral nature of this system is due to the influence of the provisions of constitutional, administrative, tax, budget, financial, civil law.

Analysis of the content of public relations in the field of legal regulation of the value added tax shows that the current basis of the mechanism of legal regulation is a special group of public law liabilities. To determine the completeness of the legal nature of tax liabilities for value added tax, it is necessary to conduct a study of the legal status of the institution of liabilities in the logic of tax relations.

The obligatory nature of tax relations is determined by the specifics of tax law, which is based on the constitutional obligation of the state to ensure equal tax burden and protect the rights, freedoms, legitimate interests of individuals and legal entities – taxpayers.

The application of the imperative method of legal regulation in the tax sphere determines the predominance of the permissive type of relations, where the actions of participants are built according to the formula: “you are allowed to do everything if that is prescribed by law;” which corresponds to the general permissive model of the legal regulation mechanism.

This allows to extend the legal limits of the tax liabilities to the government entity, limiting the level of state interference in property rights, ensuring the balance of public and private interests, which is reflected in the amendments to the Tax Code of Ukraine.³

Instead of processualization of control powers, development of administrative and organizational measures that do not correspond to the real processes that accompany the control activities of tax authorities, we need legal measures to effectively and adequately adapt regulations to the requirements of life that offer par-

³ Act of 02.12.2010, No. 2755-VI, “Vidomosti Verkhovnoyi Rady Ukrainy” 2010, No. 13–14, 15–16, 17, p. 112.

ticipants socially justified standards of lawful conduct in the situations of legal uncertainty.

The concept of tax liabilities in the Tax Code of Ukraine is formulated in two definitions. These concepts are introduced by the national judicial system into doctrinal practice.

The Supreme Commercial Court of Ukraine in the Decision reveals the concept of tax liabilities in the form of the taxpayer's obligation to pay a certain tax established by law⁴.

The Constitutional Court of Ukraine in the Decision No. 3-r (I)/2019 in the case by the constitutional complaint of "METRO Cash & Carry Ukraine Limited Liability Company" regarding the constitutionality of the provisions of para. 24, 25, 26 of Section I of the Law of Ukraine "On Amendments to the Tax Code of Ukraine to Clarify Some Provisions and Eliminate Inconsistencies That Arose During the Adoption of the Law of Ukraine On Amendments to the Tax Code of Ukraine to Improve the Investment Climate in Ukraine" notes that tax relations are due to public law, arising from the law as an obligation to pay a certain tax.⁵

Certain types of special tax liabilities are distinguished in accounting and tax accounting. Determining the specific forms of such liabilities the Ministry of Finance of Ukraine in the Orders establishes tax liabilities that are used to correct and fix the primary tax liabilities in tax accounting and accounting.

2. TAX LIABILITIES IN THE MECHANISM OF LEGAL REGULATION OF THE VALUE ADDED TAX

An important feature of tax liabilities is shown by the analysis of the current legislation, which contains examples of the possibility of changing tax liabilities, rights and obligations of participants. The state, represented by the tax authority, grants the right to reduce the tax payment. The taxpayer undertakes to carry out activities approved by the state by investing the exempt tax funds. The secondary obligation in this case becomes a contractual one. Its terms testify to the expression in the corresponding rights and obligations of the mutually agreed will of the contracting parties. In some cases, tax liabilities compete with civil law obligations. In the Bankruptcy Code of Ukraine, the legislator comes to the actual equalization of tax and civil obligations.⁶

In the context of the concept of tax liabilities it is important that transformations can be based not only on the law, but also on a contractual basis, which determines the variety of legal remedies used.

⁴ Judgement of 13.07.2005, No. 13/382-04, <https://zakon.rada.gov.ua/laws/show/ru/vb382600-05/ed20050713/find/sp:java> [accessed: 12.07.2020].

⁵ <http://www.ccu.gov.ua/novyna/konstytucynyy-sud-ukrayiny-zahystyv-prava-platnykiv-podatkiv> [accessed: 12.07.2020].

⁶ Act of 18.10.2018, No. 2597–VIII, "Vidomosti Verkhovnoyi Rady Ukrayiny" 2019, No. 19, p. 74.

The dynamics of tax development is expressed in the emergence of new types of tax and related relations, which by their nature are obligations that arise in the property sector in the course of economic turnover in the redistribution of tangible assets.

With regard to tax liabilities in the field of the value added tax, it should be noted that the basis for the liabilities is the regulatory basis in the field of public law, legal facts in the form of actions. The content of the obligation consists of mutual rights, obligations, responsibilities in the field of legal regulation of the value added tax; the parties to the obligation are the state, the authorized body and taxpayers, tax agents, banks.

Within the fulfillment of the value added tax liabilities there are four types of tax relations. Three are typical for a significant number of tax liabilities: the taxpayer – the budget; taxpayer – tax agent – budget; bank – budget. The fourth is determined by the specifics of relations in the field of value added taxation (tax, the burden of which is felt not only by taxpayers to the budget, but buyers of material goods that were created in the process of production and circulation of goods) taxpayer – taxpayer – budget [Oksenyuk 2016, 17]. The fourth type, mediated by imperfect legal regulation, causes uncertainty in the field of value added taxation, lack of clear delineation of tax liabilities.

These defects of the mechanism of legal regulation of the value added tax have a negative impact on the legal and socio-economic situation of the subjects of tax relations. In our opinion, there are no opportunities to develop the current mechanism of legal regulation of value added taxation.

Strengthening of the control over some ways of tax evasion causes other opportunities and leads to a reduction in tax payments. This requires doctrinal changes in the mechanism of legal regulation of the value added tax.

To ensure the systemic effect of tax reform and reforms in related areas to increase the effectiveness of redistributive processes in the country, it is important to coordinate tax and fiscal policies, as well as other, no less important, reforms (anti-corruption, budget decentralization, etc.), most of which are provided in the Association Agreement between Ukraine and the EU. At the same time, the quality of tax legislation and, consequently, the effectiveness of the implementation of state tax policy depend on how reasonably and wisely the ideas of European integration are introduced into the national legal system. Achieving these goals will, on the one hand, contribute to the identification of the above positive trends in the development of tax legislation in the context of Ukraine's European integration and their stimulation. On the other hand – detection and elimination of negative trends, in particular such as the introduction into national tax legislation of legal regulations that do not meet the economic interests of Ukraine and to some extent threaten the financial security of the state [Chayka 2018, 414–15].

The ideal tax liabilities in the form described above are an abstract theoretical construction that can be used as a target for legislative activity.

Theoretical developments and European experience in the application of tax

liabilities make it possible to eliminate the shortcomings of the mechanism of legal regulation of the value added tax, provided effective legal regulation of the value added tax. This concerns the improvement of the mechanism of legal regulation related to the adjustment of structural elements of the tax in line with the principles of tax law of the European Union.

The technical capabilities of information and communication technologies and systems ensure the elimination of inequality of tax entities through the improvement of monitoring, which reveals information about the financial and economic activities of legal entities, through the introduction of the value added tax in the financial sector. In this case, the element of cooperation to some extent depends on the results of public agreement in the relationship of power and freedom, expressed in the current legal regulation of the value added tax.

The study of the development of international tax law shows that general legal and sectoral trends appear in the implementation of new legal forms based on the principles of equality, proportionality, fiscal openness, mutual trust, dispositiveness.

A. Andreev considering some aspects of defining the concept and features of the mechanism of legal regulation of social relations, emphasizes the possibility of revising the essence of the mechanism of legal regulation not as a “mechanism” directly, but as a consistent interaction (algorithm) of constituent elements combined. In the modern period, the main feature of the mechanism of legal regulation is the landmark of development – the direction of European integration of Ukraine, where the basic principle should be the rule of law – a key principle of democratic Member States of the European Union [Andreyev 2019, 127].

The mechanism of tax relations in the field of legal regulation of the value added tax has an impact on the range of legal relations that ensure the completeness and timeliness of taxes and fees, and the proper legal nature of the activities of authorized bodies and officials related to taxation.

The mechanism of legal regulation of the value added tax creates an influence on the formation of other legal relations that reveal the essence of the special characteristics of derivative social relations: 1) the element of regulatory-legal influence includes legal incentives and restrictions that are introduced in the form of separate tax regimes for certain categories of subjects of taxation; 2) the element of budget allocation serves as a legal instrument for a balanced redistribution of funds received by the state from the value added tax; 3) the administrative element determines the main characteristics and methods of value added tax management; 4) law enforcement element provides comprehensive counteraction against violations of the legislation on value added taxation; 5) the element of international coordination and cooperation is aimed at solving the problems of harmonization and unification of the mechanism of legal regulation of the value added tax in accordance with EU standards; 6) the information element is manifested in the administrative control and organizational relations in the field of value added tax, in the relations on the formation and provision of access to data on

tax liabilities, financial condition, economic activity of subjects of taxation; 7) social and legal element has a veiled normatively indeterminate nature, which is manifested in the process of influencing work, causing social distortions in the employment market.

CONCLUSIONS

The essence of the category of the mechanism of legal regulation of the value added tax is seen through the prism of dynamics, not statics, in the designation of complex, integral in its functional manifestations object, which is in a state of continuous motion, as a normatively organized, consistently implemented complex process aimed in implementation of legal norms with the help of adequate legal measures that are closely related to the category of legal influence, which covers public relations that indirectly arise outside the direct effect of tax regulations and are revealed in relations with civil society. The European integration idea enshrined in the Constitutions of Ukraine acts as a social and legal basis for the fair redistribution of property and the basic element of the mechanism for regulating value added taxation. Reforming the mechanism of legal regulation of the value added tax on the basis of European Union standards will overcome the main contradictions that arise in the situation of conflict of interests among the legislator, tax authorities and taxpayers.

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REFORMA REGULACJI PRAWNEJ PODATKU OD TOWARÓW I USŁUG W KONTEKŚCIE INTEGRACJI EUROPEJSKIEJ

Streszczenie. W artykule przeprowadzono teoretyczne studium reformy mechanizmu regulacji prawnej podatku od wartości dodanej w kontekście integracji europejskiej. Przeanalizowano rodzaje mechanizmów regulacji prawnej podatku od towarów i usług, główne podejścia do zrozumienia elementów mechanizmu regulacji prawnej i ich cechy we współczesnym okresie. Zbadano zobowiązania podatkowe z tytułu podatku od towarów i usług. Scharakteryzowano problematyczne i sprzeczne kwestie regulacji prawnej kategorii zobowiązań podatkowych, zarysowano podejście do określania treści, komponentów, konstrukcji strukturalnej, ustalono korelacje z innymi powią-

zanymi kategoriami. Przeanalizowano współczesne badania naukowe i zaproponowano ujednolicone naukowo i teoretycznie podejście do zdefiniowania koncepcji mechanizmu prawnej regulacji podatku od towarów i usług. Charakterystyce poddano wpływ mechanizmu regulacji prawnej podatku od towarów i usług na tworzenie innych stosunków prawnych ujawniających istotę pochodnych relacji społecznych.

Słowa kluczowe: mechanizm regulacji prawnej, integracja europejska, podatek od towarów i usług, elementy podatkowe, zobowiązania podatkowe

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