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THE POWERS OF LOCAL COUNCILS IN THE FIELD OF TAXES

ПОВНОВАЖЕННЯ МІСЦЕВИХ РАД У СФЕРІ ПОДАТКІВ

The article deals with the powers of local councils in the field of taxes. Their powers in the field of tax imposition and introduction, informational and analytical relations are considered. Some city councils are vested with certain powers on national taxes; they act as tax collectors and subjects under control of tax authorities. The ways of law improvement in the field mentioned are suggested.

Key words: *local councils, tax imposition, tax introduction, national and local taxes, optional taxes.*

Стаття присвячена дослідженню повноважень місцевих рад у сфері податків. Розкрито їх повноваження у сфері встановлення та введення місцевих податків і зборів, інформаційно-аналітичних відносин. Деякі місцеві ради наділені окремими повноваженнями щодо загальнодержавних податків; виступають збирачами податків та підконтрольними суб'єктами з боку податкових органів. Запропоновано шляхи удосконалення законодавства у зазначеній сфері.

Ключові слова: *місцеві ради, встановлення податків, введення податків, державні та місцеві податки, факультативні податки.*

Статья посвящена исследованию полномочию местных советов в области налогов. Раскрыты их полномочия в области установления и введения налогов, информационно-аналитических отношений. Некоторые местные советы наделены отдельными полномочиями в области общегосударственных налогов; выступают собирателями налогов и подконтрольными субъектами со стороны налоговых органов. Разработаны предложения усовершенствования законодательства в указанной сфере.

Ключевые слова: *местные советы, установление налогов, введение налогов, государственные и местные налоги, факультативные налоги.*

Public subjects of tax law are local councils. In scientific literature and tutorials the attention was drawn to clarification of powers of the Verkhovna Rada of the Autonomous Republic of Crimea and local self-government bodies in relation to imposition and introduction of taxes and fees. At the same time, the Tax Code of Ukraine contains legal norms establishing the rights and obligations of regional councils in the field of taxes [1, paragraph 256.10, Article 256]. In addition, today the composition of local self-government bodies is at the stage of reformation, which is due to implementation of the reform in the field of power decentralization [2; 3]. New subjects appear, namely, united local communities established in compliance with the law and a long-term plan for the formation of community territories (hereinafter referred to as the united local community). Continuous improvement of Ukrainian tax legislation in the field of determining the powers of local councils leads to new gaps in legislation and conflict norms creating the need for new scientific research in this field.

The work of financial law science representatives such as: L.K. Voronova, M.P. Kucheriavenko, O.P. Orliuk, M.O. Perepylytsia, N.Y. Pryshva, V.I. Teremetskyi, N.I. Khimicheva and others was a scientific basis of the research. The legal status of united local communities as the subjects of financial law was a subject of O.V. Sudarenko research.

The aim of the article is to study the powers of local councils in the field of taxes, identify groups of tax legal relations, participants of which are relevant local councils, and develop suggestions on how to improve legislation in this field.

Relations in the field of taxes arise between the state, local self-government bodies expressing public financial interest, and payers of taxes, fees, and other responsible persons having a duty to contribute monetary funds to centralized funds – budgets. So, in tax, as well as in financial relations, the organizational role of the state and local self-government is displayed, therefore, by their nature, they are power and property relations. This is the main feature distinguishing tax relations from other monetary relations, in particular in civil and administrative law [4, p. 35; 5, p. 34–35, 216; 6, p. 75–76; 7, p. 75].

At the constitutional level in Ukraine, one of the features being common for taxes is defined – the imposition of taxes and fees exclusively by law [8, Part 1, Art. 67; Paragraph 1, Part 2, Article 92]. Constitutional requirement for the imposition of taxes and fees, according to N.Y. Prishva, is a principle of a legal democratic state and aims at guaranteeing the rights and legitimate interests of payers, protecting them from unauthorized deprivation of property by executive bodies [7, p. 25]. Local communities of villages, settlements, cities, directly or through the local self-government bodies established by them, impose local taxes and fees in compliance with the law [8, Part 1, Article 143]. This constitutional provision is specified by the legal norms of the Tax Code of Ukraine. In Ukraine, taxes and fees, as well as benefits to their payers, are established by the Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, village, settlement, city councils and councils of the united local communities within their powers [1, Paragraph 4.4., Art. 4, Paragraph 8.3, Article 8]. Imposing the taxes, the competent authorities must

determine all mandatory elements of the tax at the legislative level [1, Sub-paragraph 4.1.11, Paragraph 4.1., Article 4, Paragraph 7.4, Article 7]. In accordance with Paragraph 10.5, Art. 10 of the Tax Code of Ukraine it is prohibited to impose local taxes and fees that are not the part of the tax system of Ukraine. National and local taxes collection of which is not stipulated by the Tax Code of Ukraine must not be paid [1, Paragraph 4.2., Article 4]. Therefore, any issues related to taxation are regulated by the Tax Code of Ukraine as well as by decisions of local self-government bodies and can not be imposed or changed by other laws of Ukraine, as well as other acts of state authorities and administration. Imposition of taxes in the state, as M.P. Kucheriavenko notes, is carried out by adopting the relevant law, and local taxes and fees are imposed and remain valid at the territory of the respective local community in accordance with the decisions of local self-government bodies within the limits of their competence stipulated by law [9, p. 137]. Making decisions on issues of local importance attributed by the Constitution of Ukraine and the laws of Ukraine to their competence, local self-government bodies are the subjects of powers that perform the governmental administrative functions, in particular, rulemaking, coordination, permissive, registration and administrative functions [10].

Taking into account the requirements of Ukrainian law mentioned above, we do not agree with the conclusions of V. I. Teremetskyi that “<...> after the approval of the Tax Code of Ukraine in 2010, the imposition of local taxes and fees has ceased to be an independent right of local communities” [11, p. 113]. Establishment of the taxation system is the exclusive competence of the Verkhovna Rada of Ukraine [8, Paragraph 1, Part 2, Article 92]. Therefore, the Parliament of Ukraine defines a list of local taxes and fees, the imposition of which is within the competence of local self-government bodies, and determines the list of mandatory and optional local taxes and fees and the competence of the relevant subjects in the field mentioned. Local self-government bodies within the powers provided by law impose local mandatory taxes by all means, and also have the right to impose and introduce optional local taxes and fees by making appropriate decisions. In order to ensure the timely fulfillment of the obligation of local self-government bodies to impose mandatory taxes, the legislation defines the negative consequences that should influence the relevant local self-government body in case of violations of tax legislation provisions. In accordance with Sub-paragraph 12.3.5, Paragraph 12.3, Article 12 of the Tax Code of Ukraine, if the village, settlement, city council or council of the united local communities have not made a decision on the imposition of local taxes and fees mandatory in accordance with the legal norms of the Tax Code, such taxes, before making the decision, is collected on the basis of the norms of the Tax Code with the application of their minimum rates, and land fees are collected with the application of rates that were in force until December 31 of the year preceding the budget period in which land fees are to be applied. The above mentioned norm is also one of the means to exclude vio-

lations of local governments in determining the amount of intergovernmental transfers to them.

Exclusive competence of local self-government bodies includes the right to establish a single tax fixed rate within the marginal rates stipulated in Paragraph 293.2, Article 293 of the Tax Code of Ukraine. In turn, the rate on single tax payment for third-group payers is set by the Verkhovna Rada of Ukraine.

As for the optional local taxes and fees specified in Paragraph 10.3, Article 10 of the Tax Code of Ukraine, then the local self-government body makes a decision independently on the reasonability of imposing and introducing them at the territory of the respective local community. In resolving the issue mentioned, local self-government bodies take into account the availability of the relevant tax object, as well as the costs of administration of these taxes and fees. At the same time, it should be noted that today the Tax Code of Ukraine provides for negative consequences for the non-imposition of optional local taxes as well. So, in accordance with Clause 3, Paragraph 5, Section XIX of the Tax Code, in case of non-imposition of local taxes and fees stipulated in Paragraph 10.3, Article 10 of the Tax Code of Ukraine (highlighted by us), by the decisions of local self-government, such taxes and fees are paid by taxpayers in accordance with the procedure established by the Tax Code at minimum rates and without applying the relevant coefficients. Such conflict appeared in the Tax Code of Ukraine during the change of the tax system of Ukraine [12]. Therefore, today, Art. 10 of the Tax Code of Ukraine contains two paragraphs 10.2, the first one defines a list of local fees, the second one – responsibility of local self-government bodies to impose mandatory local taxes and fees. We consider it necessary to make appropriate changes to Article 10 of the Tax Code of Ukraine in terms of change in the paragraph numbering.

No less important issues is the determination of the moment from which acts of representative bodies regarding taxes become mandatory. Since 01.01.2018 the amendments have come into force to Sub-paragraph 12.3.3, Paragraph 12.3, Article 12 of the Tax Code of Ukraine changed the time limits for which local self-government bodies should not only make a decision on the imposition of local taxes or amendments to them, but also inform the controlling authority of the decision made [13]. Thus, the respective decision should be notified to the tax authority, where relevant payers of taxes and fees are registered, no later than July 1 of the year preceding the budget period in which the local taxes and fees or changes to them are to be applied. The local self-government body within ten days from the date of approval of the technical documentation on the normative monetary assessment of land shall send in electronic form information on the normative monetary assessment of land to the tax authority. Tax authorities, in their turn, make a total summary of the normative monetary assessment of land not later than July 10 of the current year. At the same time, the State Fiscal Service of Ukraine, not later than July 15 of the current year, publishes a summary of the amount and date of the imposition of rates of local taxes and fees in the respective territories

on its official website, as well as summary information on the land normative monetary assessment held.

However, the law requirement regarding the delivering of relevant information to the tax authorities not later than July 1 of the year preceding the budget period in which the relevant changes are to be applied, contradicts other norms of the Tax Code, which, firstly, determine the rules for notifying the tax authorities of the officially announced decision by the local self-government body [1, Sub-paragraph 73.2.3., Paragraph 73.2, Article 73, Paragraph 271.2, Article 271]. The duty of official publication of local self-government bodies' relevant decisions must be implemented not later than July 15 of the year preceding the budget period in which the relevant changes will be introduced [1, Sub-paragraph 12.3.4, Paragraph 12.3, Article 12, Paragraph 271.2, Article 271]. Secondly, special norms of the Tax Code determining the procedure for collecting local taxes, provide another procedure and time limits for notifying tax authorities about the decisions made [1, Clause 4, Sub-paragraph 266.4.2, Paragraph 266.4, Article 266; Sub-paragraph 271.1.1, Paragraph 271.1, Article 271; Clause 2, Paragraph 284.1, Article 284]. In addition, there is a direct legal norm determining that the normative monetary assessment of land plots, taking into account the coefficient of indexation, is carried out in accordance with the procedure established by Section XII, and not by Art. 12 of the Tax Code [1, Sub-paragraph 271.1.1, Paragraph 271.1, Article 271]. Therefore, there are conflicts between general norms of the Tax Code of Ukraine and special norms defining the powers of local self-government bodies in the field of information-analytical relations between tax authorities and local self-government bodies in order to collect specific local taxes and fees.

In addition, local authorities, have other powers related to the collection of taxes and fees. Thus, in order to ensure the possibility of collecting the income tax of individuals obtaining income from provision of real estate for lease (sublease), housing lease (sub-rent), village, settlement, city councils and councils of the united local communities at the territory of which such real estate is allocated have the right to determine the monthly rent minimum cost on one square meter of real estate total area, taking into account its location, other functional and qualitative indicators. The relevant decision must be made public mandatory in the manner most available to the residents of such local community [1, Clause 2, Sub-paragraph 170.1.2, Paragraph 170.1, Article 170]. Both executive power bodies and local self-government bodies concluding land lease agreements, must, by February 1, submit to the tax authority, at the location of the land plot, the lists of tenants with whom land lease agreements have been concluded for the current year, and inform the relevant tax authority on the conclusion of new ones, amendments to existing land lease agreements and their cancellation by 1st day of the month following the month in which the said changes have occurred [1, Paragraph 288.1, Article 288].

Local self-government bodies, as M. P. Kucherenko mentions, cannot be taxpayers “<...>within

the performance of the functions assigned to them” [6, p. 161]. At the same time, they are subjects, which are obliged to repay the tax debt arose in utility enterprises, in accordance with Art. 96 of the Tax Code of Ukraine.

Village and settlement councils or councils of the united local communities, according to Clause 2, Paragraph 57.5, Article 57, Clause 2, Sub-paragraph 266.9.1, Paragraph 266.9, Article 266, Clause 2, Paragraph 287.5, Article 287 of the Tax Code, have the right to receive directly to the cash registers payments from individuals for land and the tax on immovable property, different from the land plot from individuals. The actual obligation to pay the amount of tax to the budget paid by the individual payer is carried out by the village and settlement council [14]. Taking into account these powers of the village, settlement councils and councils of the united local communities, some representatives of the science of financial law call them “collectors of taxes” [6, p. 39, 480–481; 7, p. 79; 15, p. 121; 16, 331–332, 341–342]. Peculiarities of the legal status of tax collectors reveal the following features: 1) the absence of a duty to accrue tax liability in a tax collector and a taxpayer. The duty to accrue tax liability on property tax is vested on tax authorities; 2) the absence of a duty to submit a tax declaration (calculation) in the tax collector and taxpayer; 3) the presence of a duty to transfer funds to the budget, after the receipt of funds to cash registers of collectors of taxes [14]. The control over performance of the duty to accept and record taxes and fees from taxpayers by tax collectors, the timely and complete transfer of these amounts of funds to the budget is carried out by the tax authorities. Thus, tax collectors are controlled entities in the field of property tax payment obtained in their cash registers.

Some local councils have certain powers over the national tax – rent payment for special use of forest resources. This way, the Verkhovna Rada of the Autonomous Republic of Crimea, the regional council, Kyiv and Sevastopol city councils has the right, in accordance with Paragraph 256.10, Art. 256 of the Tax Code, to establish rent payment rates for the harvesting of secondary forest materials, carrying out secondary forest use and the use of useful properties of forests. It should be noted that this is the only power of the regional council in the field of taxes stipulated by the Tax Code of Ukraine. At the same time, regional councils are the subjects of relations in the field of informational and analytical support of activity of tax authorities in accordance with Paragraph 289.3, Art. 289 of the Tax Code of Ukraine. As the tax on forest lands is collected as a component of rent payment, then the Verkhovna Rada of the Autonomous Republic of Crimea and regional councils should inform the State Fiscal Service of Ukraine, land owners and land users about the annual indexation of normative monetary assessment of land.

The Verkhovna Rada of the Autonomous Republic of Crimea as a subject of tax relations within the powers specified has also the right to: 1) impose and introduce the following national taxes at the territory of the Autonomous Republic of Crimea: rent payment for the use of

subsurface area for the extraction of mineral resources of local value, rent for use of subsurface area for purposes not related to the extraction of mineral resources; as well as make decisions on changing the rates of these national taxes, within their marginal rates; 2) determine the amount and grant additional benefits within the amounts received to the budget of the Autonomous Republic of Crimea, namely: income tax on enterprises and financial institutions of communal ownership, the founder of which is the Verkhovna Rada of the Autonomous Republic of Crimea, environmental tax, etc. It should be noted at the same time, that the blanket norm number has been determined by the Tax Code incorrectly, since the income composition of the budget general fund of the Autonomous Republic of Crimea is determined by Article 66 of the Budget Code of Ukraine [17]. Taking into account the above mentioned, we consider that the corresponding changes should be made to Sub-paragraphs 12.2.3, Paragraph 12.2., Article 12 of the Tax Code of Ukraine.

In addition, it should be noted that the decisions of local councils on national taxes made within their powers, determined by the Tax Code of Ukraine, do not belong to the tax legislation in the sense of Paragraph 3.1, Article 3 of the Tax Code of Ukraine, since the tax legislation includes the decisions of the Verkhovna Rada of the Autonomous Republic of Crimea, local self-government bodies only on issues of local taxes and fees. We consider that Paragraph 3.1, Article 3 of the Tax Code after the words “on issues of local taxes and fees” should be supplemented with the words “the decision of the Verkhovna Rada of the Autonomous Republic of Crimea, regional councils, Kyiv and Sevastopol city councils on national taxes”.

The local councils having powers in the field of taxes include the Verkhovna Rada of the Autonomous Republic of Crimea, regional, village, settlement, city councils and councils of the united local communities. Taking into account social relations that belong to the subject of tax law, we can make a conclusion that local authorities are subjects of relations between the state and local authorities in relation to imposition of taxes; relations between local authorities and taxpayers in relation to determination of elements of tax legal composition; relations between local self-government bodies and controlling bodies in providing timely, reliable and full accrual and payment of taxes.

Thus, local self-government bodies are directly involved as independent entities in relations of the imposition and introduction of taxes and fees. Village, settlement, city councils and councils of the united local communities make decisions on: 1) the establishment of a list of local taxes and fees that will be collected at the territory of the respective local community; 2) determination of the rules and procedures for collecting local taxes and fees on the basis of the principle of fiscal adequacy, and therefore, reasonability of imposing and introducing the collection of such local taxes as a tax on immovable property other than land, tourist fees and parking charge vehicles at the territory of the respective local community; 3) determination of the list of tax

agents for payment of tourist fees; 4) the establishment of a single tax fixed rate within the rates established by the legislation of Ukraine; 5) granting benefits to local payers of taxes and fees. Local self-government bodies are subjects of informational and analytical relations in notifying tax authorities about their decisions within their powers specified by the law. Village, settlement councils and the councils of united local communities are tax collectors, this way, they are controlled subjects.

Some local councils have certain powers over national taxes. Thus, the Verkhovna Rada of the Autonomous Republic of Crimea, the regional council, Kyiv and Sevastopol city councils have the right to establish rental payment rates for the harvesting of secondary forest materials, carrying out secondary forest use and the use of useful properties of forests. It should be noted that this is the only power of the regional council in the field of taxes defined by the Tax Code of Ukraine. The Verkhovna Rada of the Autonomous Republic of Crimea has more powers in the field of imposition and introduction of national taxes, namely: 1) imposition and introduction of the following national taxes at the territory of the Autonomous Republic of Crimea: rent payment for the use of subsurface area for the extraction of mineral resources of local value, rent payment for the use of subsurface area for purposes not related to the extraction of mineral resources; as well as make decisions on changing the rates of these national taxes, within their marginal rates; 2) determination of the amount and granting of additional benefits within the amounts received to the budget of the Autonomous Republic of Crimea, namely: income tax of enterprises and financial institutions of communal ownership, the founder of which is the Verkhovna Rada of the Autonomous Republic of Crimea, environmental tax, etc.

On the basis of the study held, we consider it reasonable to amend the following in the Tax Code of Ukraine:

– Decisions of the local councils in the field of national taxes made within their competence belong to the tax legislation, therefore, Paragraph 3.1, Art. 3 of the Tax Code should be supplemented after the words “on issues of local taxes and fees” with the words “and the decisions of the Verkhovna Rada of the Autonomous Republic of Crimea, regional councils, Kyiv and Sevastopol city councils on national taxes”;

– The blanket norm number is defined by the Tax Code of Ukraine incorrectly, since the income composition of the budget general fund of the Autonomous Republic of Crimea is determined by Art. 66 of the Budget Code of Ukraine, we consider that appropriate amendments should be made to Sub-paragraph 12.2.3, Paragraph 12.2., Article 12 of the Tax Code of Ukraine, replacing the word and the numbers “Article 69” with the word and numbers “Article 66”;

– At present, Article 10 of the Tax Code of Ukraine contains two paragraphs 10.2, the first one defines the list of local fees, the second one – responsibility of local self-government bodies to impose mandatory local taxes and fees. We consider it necessary to make appropriate changes to Article 10 of the Tax Code of Ukraine in terms of changing the paragraph numbering;

– There are conflicts between general norms of the Tax Code and special norms defining the powers of local self-government bodies in the field of information and analytical relations between tax authorities and local self-government bodies to collect specific local taxes and fees. It is necessary to harmonize the norms of Sub-paragraphs 12.3.3, Paragraph 12.3, Article 12 of the Tax Code with Sub-paragraph 73.2.3., Paragraph 73.2, Article 73; Clause 4, Sub-paragraph 266.4.2, Paragraph 266.4, Article 266; Sub-

paragraph 271.1.1, Paragraph 271.1, Paragraph 271.2, Article 271; Clause 2, Paragraph 284.1, Article 284 of the Tax Code of Ukraine.

The further scientific studies of powers of public subjects in the field of taxes, namely, the state and local bodies, will not become irrelevant, since the reform of power decentralization has not been completed. Thus, determination of powers of local bodies in the field of collection of land payment after land transfer to the united local communities will be of current interest.

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