

NONEXPERT SYSTEM OF TAXATION: MODERN TRENDS OF LEGAL REGULATION

Paper deals with the legal aspects of the domestic simplified system of taxation (basic provisions). The differences in application of the simplified taxation system in Ukraine and foreign states are distinguished on the basis of comparatively-legal analysis of tax legislation acts and several positions, formulated in scientific literature.

Keywords: *simplified system of taxation, single tax payer, small and medium enterprises, Tax Code of Ukraine.*

The simplified system of the taxation the Tax Code of Ukraine (hereinafter – TCU) defines as a special mechanism for collecting the taxes and fees that establishes replacement of certain taxes and fees set forth in paragraph 297.1 article 297 of the Code [1], a single tax payment in the manner and on the conditions specified in Chapter 1, section XIV of the TCU, with the simultaneous running of simplified accounting and reporting. Actually the simplified taxation system is a special tax regime that preserves validity on all the territory of Ukraine. According to Rahmatullia, a special tax regime is a legal Institute, which involves reducing the tax burden of specific categories of taxpayers by using the replacement of a single tax payment of taxes, which stipulates a special procedure for legal regulation, which is expressed in a specific combination of legal remedy in the particular field of activities [2, 9].

Now, especially in terms of recessionary trends, inherent in the domestic economy, there was a need for the detecting hidden defects of the legal regulation of simplified system of taxation, because it depends upon the further development of small business in Ukraine. The solution of this problem can positively affect the activities of legal entities and physical persons-subjects of business activity, as well as the help with the revenue part of the budget. Theoretical basis of the research are the works of scholars who are engaged in the problems of financial and tax law, in

particular, of Vinnytsky, L. Voronov, L. Kasjyanenko, M. Kucheryavenko, G. Petrov, A. Rahmatullina, G. Tolstopyatenko, D. Shchokin.

However, despite the large number of research publications dealing with the issues of the simplified system of taxation, problems are still not solved. Today there is plenty of the issues regarding its place in the system of the taxation, as well as the way of its application. The purpose of this article is an analysis of recent changes in legislation concerning simplified taxation system, a legal assessment of innovations and provide conclusions about the prospects for the development of the special tax regime. Simplified system of taxation, accounting and reporting of the small business was introduced in 1998 by the President of Ukraine "About the Simplified System of the Taxation, Accounting and Reporting of the Small Business" (hereinafter – Decree) [3, p. 1], which operated until the end of 2011. Today, simplified tax system regulates the Chapter 1 "Simplified System of the Taxation, Accounting and Reporting Section XIV of the TCU Special Tax Regimes" [1], which takes an effect on the 01.01.2012, as well as other normative-legal acts, among which:

Bill of Ukraine "About the Application Registrars Settlement Operations in the Sphere of Trade, Catering and Services [4]; Bill of Ukraine "About Mandatory State Pension Insurance" [5] ; Bill of Ukraine "About the Collection and Accounting of the Single Contributions to the Compulsory State Social Insurance" [6, p. 13] (p. 4 of part 1 of Art. 4 to the circle of taxpayers unified contribution are included natural persons-entrepreneurs, including those who have chosen the simplified system of taxation, as well as the members of the families of these persons involved in carrying out their business activities); □ Order Certificate Payer [7, p. 334]; the order of keeping the ledger of income and expenses single tax payers of the third group, who are the payers of value added tax [8].

The subjects of small entrepreneurship, applying the defined in the law under the simplified system, have certain advantages compared with other taxpayers who use the general taxation system. In particular, according to the subparagraph 1, clause 1, subsection 8 of section 19 "Final Dispositions" TCU [1], the simplified taxation system involves the replacement of the single tax payment established by law of certain taxes, fees (compulsory payments), namely: income tax; income tax (for

individuals-entrepreneurs); VAT in operations with the supply of goods and services, the support of which is located in the customs territory of Ukraine, except for value added tax payable by legal entities who have chosen tax rate 6%; land tax, land tax on land that isn't used for entrepreneurial activity; fee for subsurface use; charge for special water use; charge for special use forest resources; fee for certain types of business activities. In article 293 of the TCU [1] are provided single tax rates, which are set as a percentage (fixed rate) to the size of the minimum wage established by Bill from January, 1, tax (fiscal) year, and the percentage of income (interest rates). Fixed single tax rates are set by the village, town and city councils for the first and second groups of taxpayers depending on the type of economic activity (individual entrepreneurs) per calendar month. Interest rates are set for the third and fourth groups of single tax payers.

According to p. 296.1. 296 of the Tax Code of Ukraine [1] single tax payers conduct accounting in accordance to PE 296.1.1-296.1.3 p. 296.1. 296 TCU. According to the pp. 296.1.1 p. 296.1. 296 single tax payers the TCU, the first and second groups and single tax payers of the third group, who are not VAT payers, the leading book accounting gains, reflecting daily income you receive. The form book accounting gains, its conduct should be approved by the Ministry of Finance of Ukraine. Clause 296.1.2 clause of Article 296.1. 296 TCU provides that a single tax payers of the third group, who are the payers of value added tax, keep records of income and expenses form and in the manner established by the Ministry of Finance of Ukraine. Therefore, starting from January 1, 2006, single tax payers must carry the book in a new form. Old book has to be stored according to the norms of the current legislation.

However, in the Art. 154.6 TCU [1] it is defined the list of activities, in the cases when the company has no rights to the simplified procedure for accounting and financial reporting, for example, if it carries out the activities in the field of entertainment; production, wholesale, export/import of excisable goods; manufacturing, wholesale and retail sale of fuels and lubricants; financial activity; the activity of the Exchange; security activity; foreign economic activities (except for the activities in the field of informatization) etc. The greatest criticism, according to

experts in the field of accounting [9, p. 90], despite the undeniable positive nature possible simplification of accounting deserves Norma p (s) 25 of the "Financial Report of the subject of small business» [10, p. 296], which was adopted because of the action of the Tax Code of Ukraine.

According to this norm, subjects of small entrepreneurship, entitled to use the simplified accounting of income and expenses, recognize costs and revenues to meet the requirements of the tax code of Ukraine and include amounts that are not recognized tax code costs or revenues, directly on the financial result after tax. This means that in Ukraine with the purpose of forming financial reporting metrics simultaneously applied norms of national accounting standards, developed on the basis of international standards and norms of the tax code. This situation increases the level of the incomparability of the financial statements. If still it was impossible to compare the performance of the financial statements of small enterprises and medium and large mismatches in content, now it becomes impossible even with the Group of "small businesses" [9, p. 91]. It is necessary to note that according to p. 291.4 TCU [1] entity that apply the simplified system of taxation, divided into six groups of single tax payers (the fifth and the sixth groups were added to the, the Bill of Ukraine from 05.07.2012 "About the Amendments to the Tax Code of Ukraine on the State Tax Service and in Connection with the Administrative Reform in Ukraine» [11]).

However, it is clear that a comprehensive analysis of the legal foundations of the simplified taxation system is impossible without study of foreign experience in the field of support of small business. Such studies have a valuable character, because they give the possibility to carry out a comprehensive analyzis of the achievements of other countries in this field and to implement them in domestic legislation, providing the additional cash flows to the budget. Russian lawyer O. Rahmatullina in her thesis describes the mechanism of the support of small businesses in foreign countries, dividing them in 3 groups depending on the methods used by the State for the support of small business in the field of taxation:

- – countries of the Anglo-Saxon system (United States, United Kingdom).

In the legislation of these countries generally do not perform certain special tax regimes for private entrepreneurs, but there is a mechanism for lowering the tax

burden, by setting the tax holidays, low tax rates, etc.; □ – countries of the continental system (France, Finland), – traditional systems (Japan). Traditional system of borrowed many elements from the continental system of law, therefore, rationally consider them in one group – in the legislation of these countries provides for special tax regimes. CIS countries participants of the former Slavic system (Kazakhstan) – in the legislation of these countries is so-called "simplified taxation system" [2, 24]. Special attention when studying the issues of adaptation of foreign experience to the Ukrainian economic and legal realities in our view, should be given to the European Union in connection with elected our State course on European integration and the high achievements of Member States of the Union in the field of support of business entities and the progressive development of the law in this area. Basic principles of the State support of small and medium-sized enterprises are defined by the European Commission in the following recommendations: the taxation of small and medium entrepreneurship [12, p. 1]; □ about the transformation of subjects of small and medium-sized enterprises [13, 14]; about the definition of the subject of small and medium entrepreneurship [14, pp. 36–41].

– On the basis of a legal analysis of these acts of the tax legislation in the European Union we can conclude that the basic and most commonly used tax preferences the subjects of small entrepreneurship in the Member States of the EU are: reduction rates of income tax, VAT, tax on the income of individuals; the accelerated amortization; investment tax credits; □ imputative tax (fixed tax, imputative tax income tax assets, tax on turnover, or gross revenue, etc.).

– And now we'll consider European Commission Recommendation 2003/361/EC of May, 6, 2003, concerning the definition of the subject of small and medium entrepreneurship [14, pp. 36–41]. In this document the European Commission established the main criteria determining the subjects of small and medium-sized enterprises, which should be guided by EU Member States in bringing their national legislation into conformity with the legislation of the European Union.

– in accordance with ch. 1 of Art. 2 of the Application in this Recommendations medium proprietorships are entities that: have less than 250

employed workers; have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro [14, p. 39].

– according to part 2 of art. 2 the Commission Recommendation 2003/361/EC small business entrepreneurship are businesses that: have fewer than 50 workers; have annual turnover and/or annual balance sheet total that does not exceed 10 million euro [14, p. 39].

Part 3 of art. 2 of Commission Recommendation 2003/361/EC to microenterprise includes those economic entities, which have less than 10 hired workers and annual turnover and/or annual balance sheet total does not exceed 2 million euros [14, p. 39].

It should be noted that prior to the adoption of a new Bill of Ukraine on the State Support and Development of the Small and Medium Business in Ukraine [15] is the classification of enterprises agreed in the Economic code of Ukraine [16, p. 144]. So, in accordance with the already deleted paragraph 7 of art. 63 of the Commercial Code of Ukraine, the enterprise, depending on the number of the employees and the amount of gross income from the sales of products for the year could be referred to small enterprises, medium-sized or large enterprises. Small (regardless of form of ownership) recognized enterprise in which the number of the employees by reporting (financial) year is no more than fifty persons, and the amount of gross income from realization of goods (works, services) for this period does not exceed seventy million hryvnias. Large admitted enterprise, in which the number of employees for reporting (financial) year exceeds two hundred and fifty persons, and the amount of gross income from realization of goods (works, services) for the year exceeds one hundred million hryvnias. All other businesses are recognized average.

you can see, classification, which was given in the Commercial Code of Ukraine did not meet the classification established in mentioned above recommendations of the European Commission as a part of the annual income of all the three types of enterprises.

However, the situation drastically changed with the adoption of the Bill of Ukraine on the State Support and Development of Small and Medium Business in

Ukraine on March, 22, 2012 [15]. Legislator took into account the disadvantages of withdrawn standards (p. 7 p. 63) of the Commercial Code of Ukraine [16, p. 144] and with the purpose of bringing legislation into conformity with the legislation of the EU a new officer classification subjects of entrepreneurship in the Art. 3 “Final Dispositions” of this Bill. Today the parts 2, 3, 4 paragraph 3 “Final Dispositions” fully comply with the Art. 2 of the Annex to Commission Recommendation 2003/361/EC [14, p. 39], which in General can be noted as a positive step in the direction of the improvement of the tax legislation by its adaptation to EU standards in the field of taxation.

It is also necessary to note that Chapter 1 "Simplified System of Taxation, Accounting and Reporting Section of XIV TCU" [1] in general corresponds to the dispositions of the European Charter for the small enterprises (adopted by the Firska European Council of June, 19–20, 2000) [17] Thus, the European Charter for the small enterprises recommends to organize tax systems in such a way as to maintain the establishment and successful entrepreneurial activity, to encourage small business expansion and the creation of new jobs, to simplify the creation and inheritance of small enterprises. In our opinion, the domestic system of the State support for small entrepreneurship should envisage gradual deregulation, financial support to the subjects of the State, as well as a tax adjustment that needs further improvement in order to achieve a common goal-to improve the business climate in Ukraine.

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