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**ФІНАНСОВЕ ПРАВО ТА ПОДАТКОВІ ВІДНОСИНИ**

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**LEGAL PROBLEMS OF THE TAXATION OF NATURAL PERSONS INCOMES FROM FEES FOR THE USE OF FUNDS, INVOLVED IN THE DEPOSIT**

*Paper discusses the prospects of the introduction in Ukraine of the tax on the income from fees for the use of funds involved in the deposit; several legal problems of this tax introduction at the present stage are defined. The directions of the reforming of legislation to improve the mechanism of the tax on the income from fees for the use of funds involved in the deposit are defined.*

**Keywords:** *tax on income of individuals; payments for the use of funds, involved in the deposit.*

The statement of the Prime Minister of Ukraine A. Yatsenyuk about the need to tax the incomes from the deposits exceeding 50 thousands UAH aroused heated debates in the society [1]. Researchers and practitioners have split into two polar camps, whose representatives either support this initiative, or deny it, emphasizing the adventurism and populism of this statement. The main argument of the supporters of the taxation of income from deposits (B. Timonkin, V. Khlyvniuk, T. Yefimenko, S. Lekar) is the need to enforce social justice in taxation, which, in their opinion, lies in the fact that the individuals who have the ability to put on deposit an account of the amount exceeding 50 thousands UAH, are the rich, and thus in the power of social justice that lies in the implementation of the axiom “the rich should pay more taxes than the poor”, must pay taxes on incomes. According to the Prime Minister, in 2013 he got 614 thousands UAH of an interest income, from which he didn't pay any penny to the budget. He feels it to be wrong. But not all of the individuals share such a high public position. Opponents of the introduction of the tax from the deposit income (V. Pushkariov, O. Zarubinsky, O. Bondar) insist on this and emphasize that under the conditions of an instability in the country, which intensified the increasing of the bank deposit withdrawals, the introduction of “the tax on deposits” will provoke panic and lead to the banking system collapse because the individuals, for not to pay taxes, will draw out the deposits [2].

However, the Government insists on the immediate development of the law, which would have introduced the levy of this kind of income, since, according to the expert estimation, the taxation of interest from deposits can bring to the budget nearly 10 billion hrn a year [3].

Therefore, the study of the issue of legal regulation and problems of the taxation of the deposit income nowadays becomes especially actual.

First of all, it should be emphasized that the Tax Code of Ukraine (hereinafter – the TCU) [4] provides the legal mechanism of the taxation of incomes of physical persons from getting the interest from deposits. According to p. 170.4. 170 TCU an object of the tax on the personal income is the income got by an individual in the form of interest, which according to the subpar. 14.1.206 par. 14 of the art. 14

TCU includes the payments for the use of funds involved in the deposit. Thus, true name of the taxation of the income of individuals, which is called “tax on deposit, tax deposits” etc., is the taxation of income from fees for the use of funds involved in the deposit.

Legal mechanism of the tax on the income from fees for the use of funds involved in the deposit, is fixed in the art. 170.4. 170, p. 164.2. 164, p. 165.1. 165, p. 167.2, art. 167 of the TCU. So, the object of taxation is the income got by an individual in the form of interest (p. 170.4.170 TCU) [5, p. 194]. Tax base of the tax is an income in the form of payments for the use of the funds involved in the deposit which, in accordance with p. 164.2.8 par. 164.2. art. 164 TCU, is defined as an interest, excluding proceeds from the interest that accrued on the securities issued by the Ministry of Finance of Ukraine (p. 165.1.2 par. 165.1 art. 165 TCU) and revenue from the interest on current bank accounts, according to which the individuals are carried out exclusively by salary, stipends, pensions, social assistance and other social payments envisaged by law (p. 165.1.41 par. 165.1. art. 165, TCU). Tax on income is paid from fees for the use of funds involved in the deposit, tax agent, which is the entity that performs the calculation (payment) for the benefit of individual income from such payments (p. 170.4.1 par. 170.4. art. 170 TCU), i.e., the banks that issued the certificates, and established bank accounts, and issuers that issued securities. Bets on interest rates are set in the amount of 5% of the tax base (par. 167.2. art. 167 TCU). Tax on income from fees for the use of funds involved in the deposit, is calculated by a tax agent while calculating the payments for their account (i.e. the sum of fees for the use of funds involved in the deposit, reduced by the amount of the calculated tax and is payable to the budget within the term specified for the monthly fiscal period (subpar. 170.4.1, par. 170.4 art. 170 TCU). The tax agent that counts revenues in the form of payments for the use of the funds involved in the deposit must show in the tax calculation the total amount of such interest (paid) income and the total amount of withholding tax.

As it was noted in previous publications [6, p. 136], the developing of the mechanism of tax incomes listed above, the legislator chose the model of the Tax Deductad at the Source, characteristic to the common law, according to which the credit institution which pays interest, keeps the amount of tax by reducing tax revenue. Therefore, credit institutions, which pay fees for the use of funds involved in the deposit, determine the tax base, the amount of tax payments, pay taxes and reflect in the tax calculation the total amount of accrued (paid) income and the total amount of withholding tax. Actually, for depositors deposits liabilities don't increase but the amount of accrued charges for the use of funds involved in the deposit, decrease in the amount of 5%.

At the same time the proposed mechanism for these taxes on income had a significant lack that whittled all the attempts of the Government with the specified type, namely the lack of a mechanism of the control after the tax agent with calculating the amount of tax withheld from income in the form of payments for the use of the funds involved in the deposit. An amount of recovery tax on the income of the individuals in the form of payments for the use of the funds involved in the deposit come in the State budget, controlled by the bodies of the State Tax Administration of Ukraine. Therefore, the control over the loyalty of the accrual and the fullness of the payment to the State budget the amounts of tax incomes from fees for the use of funds involved in the deposit, is carried out by bodies of the State Tax Service of Ukraine.

According to the art. 20 of the Tax Code of Ukraine the organs of the State Tax Service of Ukraine have a right to get free of charge from the institutions of the

National Bank of Ukraine, the banks and get other financial institutions to help in the manner prescribed by the Bill of Ukraine “About Banks and Banking Activities” and this Code, certificates and/or copies of documents about the existence of bank accounts, and on the basis of the decision of the Court – information about the volume and turnover on the accounts (par. 20.1.5.12.5 art. 20 TCU); to ask and learn audits the primary documents used in accounting, registers, financial, statistical and other reports relating to the calculation and payment of taxes, fees, payments, fulfilment of the requirements of the law, the observance of which is the controlling bodies (pp. 20.1.6 p. 12.5 c. 20 TCU). At the same time, according to art. 60 of the Bill of Ukraine “About Banks and Banking Activity” dated December 7, 2000 No. 2121-III [7], the banking secret is: 1) the information about the bank accounts of clients, including banks correspondent accounts in the National Bank of Ukraine; 2) operations that were carried out for the benefit of or on behalf of a client, contracts drawn up by him; 3) financial and economic status of clients; 4) information about reporting on a separate bank, except for the one that is liable to publishing. Therefore, the introduction of tax control over the activities of banks and other credit institutions concerning the taxation of payments for the use of the funds involved in the deposit violates banking secrecy in three directions – requires you to provide information about bank accounts, financial and economic status of the clients and financial statements.

Today, the inconsistency in the above mentioned regulations is not regulated, that causes the numerous disputes between bank employees (other financial institutions) and employees of the Tax Service. To eliminate contradictions in legislation and the development of an effective mechanism of the control over the payment of charges for the use of funds involved in the deposit, the Government had introduced the “reprieve” – in accordance with par. 1 of the section XIX TCU norms PE. 164.2.8 p. 164.2. 164 TCU, which provides the inclusion of the General monthly (annual) taxable income of the individuals in the form of interest on current or deposit bank account to non-bank financial institutions, will take an effect only from January 1, 2015. Meanwhile, the Government dialoged with banks, trying to reach a consensus in that regard, to create such a mechanism of tax payments for the use of the funds involved in the deposit, which would take into account the public financial interests with the filling of the State budget and private interests of the banks and their depositors [2].

However, political and financial crisis in Ukraine at the present stage requires a decisive action from the Government as a political and economic nature. The introduction of tax payments for the use of the funds involved in the deposit is such an action that meets both directions – on the one hand, the proclamation of a new “taxing of the rich” is a step that raises the ratings on the eve of presidential elections, and possibly offers an opportunity to replenish the State budget. But it should be emphasised that no steps to resolve the problems in the legal regulation of tax payments for the use of funds raised in the budget, were done – not resolved the contradictions in legislation, a control mechanism for the payment of specified payments is not developed, while the taxation of income of individuals from receiving payments for the use of the funds involved in the deposit, remains an attribute institution, which you can enter, but none of it will be kept.

Thus, in order to make the taxation of an income of individuals from receiving payments for the use of the funds involved in the deposit, an effective mechanism for filling the State budget, you need to make changes in the legislation concerning banking secrecy and to develop an effective control mechanism for the payment of

these fees, which would combine public interests with the content of the budget and the private interests of the banks and their depositors. Development of the mechanism could be the subject of further research.

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