

LAW SCIENCES

SPECIAL PROCESSING TAX MODES: NECESSITY OF DISSOCIATION

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Contemporary tax law and tax legislation have been proceeded from the fact distinguishing two parts – general and special ones, the latter of which is represented by some particular tax payments (corporate income tax, personal income tax, value added tax, etc.). At the same time special approaches to taxation system are distinguished mainly in the form of special regimes and modes, and procedure for taxation of individual tax payments is to be properly formalized in the processional plan.

If scientific basis is taken up as the ground for the study of procedural nature of legal phenomena, modern scholars are increasingly justifying the independence of different types of legal process, and as a consequence the formalization goes there on for new procedural branches of law [1, p.139]. There is also an exception to the tax process, which is inextricably connected to the tax law and serves to implementation it through the appropriate tax process procedures.

Authors of the monograph «Legal Procedural Form. Theory and Practice» righteously note that «the procedural form takes place not only in the jurisdictional (law enforcement) sphere of application of the law regulations, but in some other spheres... Any branch of substantive law brings to life relevant procedural rules... specific procedural rules are needed, for example, in financial, labor, land and other branches of law» [2, p. 44]. In this case any integral part of a process is the procedure for the implementation of procedural legal relations.

Concerning the latter, there is a controversy in the scientific environment regarding the distinction between definitions of «process» and «procedure». Thus, in particular, according to A. P. Hetman «process» and «procedure» are equivalent phenomena not only because of etymological origin of categories like «process» and «procedure» are being identical, but also because the content of these legal concepts are settled by processing (and not procedural or procedurally-processing) norms of activity that have its own sequence and are aimed at achieving any kind of result [3, p. 125-126]. On the contrary, L. M. Kasyanenko believes that the process is being implemented through specific legal procedures and it is advisable to establish for them a special legal value that is to express their essence [4, p. 57].

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Thus, the procedure itself is a sequence of certain actions that has regulatory model of its development and is aimed at achieving certain goals [5, p. 100]. A procedural form (process) is a set of rules for tax procedures defined by the procedural rules of tax legislation, which guarantee clear and timely fulfillment of tax obligations as the main purpose of tax regulation [6, p. 110]. In this regard, M. P. Kucheriavenko notes that tax procedures are a fixed order of tax relations participants' behavior. At the same time, in his opinion, the tax process is a regulated sequence of actions to implement tax procedures. It is expressed through implementation of tax procedures, and implementation of legally significant actions based on the requirements of tax and procedural rules. The tax process is a real activity for the implementation of the order of behavior, which is reinforced by the prescriptions of tax procedures [7, p. 29].

Therefore, tax procedures are the part of the tax process, which are in use depending on the needs of non-jurisdictional form of activity whilst implementation of substantive tax regulations. Tax procedures for individual tax payments quite naturally have their differences, which are related to the peculiarity of a particular payment; but at the same time they must be generally subject to the general tax procedures that determine obligatory order for payment of taxes and fees, filling tax statements, exercising tax control, bringing to justice for violation of tax legislation. At the same time, the existence of some particular tax procedures causes the occurrence of such peculiarities of the tax process as the use of only some particular kinds of procedures, which may not be included into general procedures at some specific stage of taxation, but there are particular tax and procedural complexes for specific actions of taxpayers as well as tax authorities regarding particular tax payment [8, p. 29].

The mentioned above brings us to the conclusion that tax procedures being generally a part of the tax process are in use depending on the needs of the implementation of material tax rules, taking up certain procedures for the purpose set. In this case, the procedures are implemented precisely within the process which directly points out to it as the basis for the implementation of non-jurisdictional procedural activities of taxpayers and tax authorities.

Within this general process some particular processes are distinguished, being characteristic feature both for the entire basis of tax relations as well as for individual tax payments. Thus, the tax process generally covers a number of tax procedures that determine its content in the whole, which in the greater majority of cases of tax process represents the set of general procedures and special ones applied. They are determined by their nature and content (general procedures are regarded to all processional tax relations, and special one is in concern for individual tax payments only, that can be eligible in one case or another). Special procedural tax regimes consist of regimes of some particular tax procedures [9, p. 134].

O. M. Minayeva righteously notes that there are two levels of consolidation of the relevant tax procedures in the Tax Code of Ukraine. First, according to her vision, is about Section II of «Administration of Taxes, Fees (Mandatory Payments)» which contains set of procedural norms that make up a specific denominator for the application of tax procedures in each individual tax or levy. In her opinion, this is the

kind of general part of the procedural block of tax rules. Secondly, all relevant rules for each tax or levy are the particular level for fixation of tax procedures in the Tax Code of Ukraine. The availability of generic structure of Section II does not exclude the procedural peculiarities of realization of the type obligation for the corresponding payment, which is fixed by some sections of the Tax Code of Ukraine, starting from Section III [10, p. 257].

However, each tax payment is characterized by its own peculiarities, and accordingly procedural differences, which are being features to this one only, causing the real necessity for establishing peculiarities for the procedural regulation of certain tax payments. Keeping in mind that there are general and specific procedural regimes within tax legislation, where the latter one covers the very issue of individual tax payments, using tax procedures provided for by current legislation, the necessity for approaches to determine the structure of procedural regulation of such payments is to be raised up.

The limitation for them just up to procedures only seems counterintuitive, because they may be subject to various processes, both general and specific to individual tax payment groups, or only to a single tax payment (tax credit, social security tax, etc.). Taking this into account, it seems quite logical to distinguish the sub-systems within the special tax regime that are inherent in individual tax payments and cover some procedures intended for their procedural regulation. Sub-schemes of that kind may include both separate tax payment and a number of tax payments that have common features as well as their procedural regulation which can be made on a single procedural foundation.

Therefore, there is a need to dissociate particular special processional tax regimes within the special procedural regime, which is to allow to streamline properly the tax procedures used for individual tax payments and to unite the procedural regulation of such payments in order to improve the tax process as it is.

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INTERNATIONAL CONVENTIONS AND NATIONAL LEGISLATION: USING PRIORITY

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Ukraine, like many other countries, is taking part in the international arena, concludes contracts, ratifies treaties. According to the paragraph 9 of the Constitution of Ukraine, current international treaties, which the Verkhovna Rada has recognized, are the part of national legislation of Ukraine [1].

The Law of Ukraine «About the ratification of International Labour Organization Convention № 132 (revised) of 1970 Holidays with Pay» provides the following: International Labour Organization Convention № 132 (revised) of 1970 Holidays with Pay, adopted by 54th session of General Conference of International Labour Organization on the 24th of June 1970 must be ratified with the following appeal: «Ukraine, according to the paragraph 15 of the Convention claims, that will take all the obligations towards people, who participate in employment in all spheres of economy, including agriculture» [2].

In Republic of Latvia all international agreements, which regulate legal issues, must be approved by the Sejm. While concluding the agreement Latvia can delegate part of the competence from state institutions to international institutions in order to strengthen democracy. Sejm can approve international treaties, which are the ground for delegation of part of the competence from state institutions to international institutions at the conference, where at least two thirds of deputies are present [3].

Latvia is a member country of International Labour Organization (ILO). Latvia has renewed its membership in 1991. Currently there are 42 ratified ILO Conventions in force. ILO has been created as a first specialized agency of United Nations (UN) in 1919 and nowadays it integrates 185 countries. The main target of organization – facilitation the social justice and recognition of international labour laws [4].

According to the paragraph 7 of the ILO Convention № 132 «every person taking the holiday envisaged in this Convention shall receive in respect of the full period of

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