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SIMPLIFIED TAXATION SYSTEM: A RETROSPECTIVE OF CAUSAL RELATIONS OF THREATS TO UKRAINE'S TAX SECURITY

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Abstract. The Constitution of Ukraine regulates only one, single taxation system. The Constitution of Ukraine does not mention the plurality of taxation systems. However, by the Decree of the President of Ukraine dated 03.07.1998 No. 727/98, another taxation system was introduced – a simplified one, which was intended to facilitate business, in particular for small and medium-sized businesses. At the same time, in modern conditions, the simplified taxation system raises concerns about its impact on the tax security of the state. Tax security is a component of the country's economic security and provides for timely, full and stable receipt of tax payments to budgets of all levels. However, there is an opinion that the current mechanisms for the functioning of the simplified taxation system create certain gaps in the taxation system, which may contribute to tax evasion, reduce fiscal efficiency and threaten the stability of the budget system. In this regard, the need for a systematic review of the principles of the functioning of the simplified taxation system is becoming more urgent in order to ensure its compliance with the principles of tax security, which may include reforming or even eliminating this system.

Key words: taxation system, taxes and fees, tax security of the state, economic security of the state, national security, budget system of Ukraine, small and medium-sized enterprises.

Introduction. Among the key elements of Ukraine's economic security, tax security occupies an important place, acting as a guarantee of stable functioning of public finances. The main task of tax security is to ensure timely, full and uninterrupted receipt of tax payments to budgets of all levels, which, in turn, allows for the implementation of social, economic and defense programs. The level of tax revenues is largely influenced by the peculiarities of the functioning of the simplified taxation system. This system, which since its introduction has been aimed at supporting small and medium-sized businesses, is often used in practice as a legal tool for minimizing tax liabilities or even tax evasion. This situation creates serious challenges for the state's tax security, because the lack of funds in the budget undermines the country's financial stability. Therefore, an analysis of the impact of the simplified taxation system on tax security is extremely relevant in modern conditions.

The history of the formation and development of legislation in the field of legal regulation of the simplified taxation system in Ukraine today is a relevant aspect of the study of existing, in particular previously listed, problems of tax legislation in the context of tax security of Ukraine. The evolution of the legal support of the simplified taxation system in independent Ukraine was studied in their works by: Anistratenko Yu. (Anistratenko, 2013); Calinescu T. (Calinescu, 2020); Ponomareva T. & Hrynevich K. (Ponomareva & Hrynevich, 2020); Riadinska V., Protsenko T. & Kuznietsova O. (Riadinska, Protsenko & Kuznietsova, 2021); Synchak V. (Synchak, 2020); Zakrevska O. (Zakrevska, 2022).

The objective of this article will be to study the cause-and-effect relationships of the emergence and formation of a simplified system of taxation, accounting and reporting in Ukraine. This will be done with the aim of more in-depth clarification of the inconsistency of the grounds for introducing a simplified system of taxation, accounting and reporting into the taxation system under the Constitution

of Ukraine (Konstytutsiia Ukrainy, 1996) and the Law of Ukraine «On the Taxation System» (Pro systemu opodatkuvannia, 1991) in force at that time.

Main part. Let us begin our study with the following: The Commission of the European Communities issued Recommendation 96/280/EC on 3 April 1996 on four criteria for defining small and medium-sized enterprises: 1) number of persons employed, 2) turnover, 3) balance sheet total and 4) independence. The Commission also recommended that the provisions on programmes aimed at «small and medium-sized enterprises», «medium-sized enterprises», «small enterprises» or «micro-enterprises» be observed. At the same time, the Commission proposed thresholds of 50 and 250 employees respectively for small and medium-sized enterprises. For micro-enterprises – less than 10 employees (96/280/EC, 1996).

The right of everyone to engage in entrepreneurial activity that is not prohibited by law was legally enshrined in Ukraine on June 28, 1996 in the norms of Article 42 of the Constitution. Since then, in accordance with this article, the state ensures the protection of competition in entrepreneurial activity. It was also regulated that abuse of monopoly position in the market, unlawful restriction of competition and unfair competition are not allowed (Konstytutsiia Ukrainy, 1996). That is, we consider this legal fact to be the beginning of the formation of legal regulation of social relations in the sphere of small and medium-sized businesses in Ukraine.

In order to form and implement state policy on the development and support of small business, and to effectively use its opportunities in the development of the national economy, by Decree of the President of Ukraine dated May 12, 1998 No. 456/98, it was decided to consider the support of small business as one of the most important tasks of state policy, which had to be implemented, in particular in such a direction as the introduction of a simplified system of taxation, accounting and reporting. The simplified system of taxation, accounting and reporting provided for: replacing the payment of taxes and mandatory payments established by law with the payment of a single tax; payment by individual entrepreneurs instead of taxes and mandatory payments of the cost of a patent for engaging in a certain type of activity; application of a simplified form of maintaining accounting and reporting documents. The simplified system of taxation, accounting and reporting could be applied alongside the existing system of taxation, accounting and reporting provided for by the legislation, at the choice of the small business entity (Pro derzhavnu pidtrymku maloho pidpriemnytstva, 1998). Implementing this Presidential Decree (Pro derzhavnu pidtrymku maloho pidpriemnytstva, 1998), from January 1, 1999, another Presidential Decree (Pro sproshchenu systemu opodatkuvannia, obliku ta zvitnosti subiektiv maloho pidpriemnytstva, 1998) introduced a simplified system of taxation, accounting and reporting for small business entities in Ukraine and established a new tax – a single tax. This Decree was terminated in accordance with the Law of Ukraine dated 04.11.2011 No. 4014-VI (Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta deiakykh inshykh zakonodavchykh aktiv Ukrainy shchodo sproshchanoi systemy opodatkuvannia, obliku ta zvitnosti, 2011), which included Chapter 1 «Chapter 1. Simplified System of Taxation, Accounting and Reporting» in Section XIV of the Tax Code of Ukraine (Podatkovi kodeks Ukrainy, 2010). This chapter established the legal principles for the application of the simplified system of taxation, accounting and reporting, as well as the collection of a single tax. As stated in this chapter, the simplified system of taxation, accounting and reporting is a special mechanism for the collection of taxes and fees, which establishes the replacement of the payment of individual taxes and fees with the payment of a single tax in the manner and on the terms specified in this chapter, with simultaneous maintenance of simplified accounting and reporting.

The simplified system of taxation, accounting and reporting has become firmly established in Ukrainian legislation, as evidenced, in particular, by the provisions of the Law of Ukraine No. 4618-VI of March 22, 2012 (Pro rozvytok ta derzhavnu pidtrymku maloho i serednoho pidpriemnytstva v Ukraini, 2012), which defines the legal and economic principles of state policy in the field of support and development of small and medium-sized enterprises.

We should not ignore the following fact: by issuing Decree No. 727 of July 3, 1998, the President of Ukraine submitted to the Verkhovna Rada of Ukraine a draft Law «On a Simplified System of Taxation, Accounting and Reporting for Small Business Entities». The Verkhovna Rada of Ukraine did not reject the said draft law and did not adopt a law on this issue, but began the legislative process of considering the draft Law «On a Simplified System of Taxation, Accounting and Reporting for Small Business Entities». Since the Verkhovna Rada of Ukraine did not exercise its legislative powers in the manner provided for by Part Two, Clause 4, Section XV «Transitional Provisions» of the Constitution of Ukraine, Decree of the President of Ukraine of July 3, 1998 No. 727 entered into force and was in force as amended by Decree of the President of Ukraine of June 28, 1999 No. 746 (Ukhvala Konstytutsiinoho Sudu Ukrainy pro vidmovu u vidkrytti konstytutsiinoho provadzhennia u spravi za konstytutsiinym podanniam 50 narodnykh deputativ Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) Ukazu Prezydenta Ukrainy «Pro sproshchenu systemu opodatkuvannia, obliku ta zvitnosti subiektiv maloho pidpryemnytstva», 2004).

The European Charter for Small Enterprises, signed by the Member States of the European Union on 19.06.2000, stipulates that tax systems should be adapted so that they are conducive to success, promote the start-up of new businesses, the expansion of small business activity and the creation of jobs, and facilitate the creation and continuation of small businesses. Member States should apply the most effective methods of work in the field of taxation and personal motivation. Entrepreneurs need funds to turn their ambitious plans into reality. In order to improve access to financial services for small enterprises, it was planned to:

- identify and eliminate obstacles to the creation of a pan-European capital market and to the implementation of the Financial Services Action Plan and the Action Plan on the Prevention of Investment Risks;
- improve relations between the banking system and small enterprises by creating appropriate conditions for access to credit and venture capital;
- improve access to structural funds and support the initiatives of the European Investment Bank to increase financing for new and high-tech enterprises, in particular fund instruments (European charter for small enterprises, 2000).

Following up on the idea laid down in the European Charter for Small Enterprises, dated 2000, the Council of the EU, in its Council Recommendation 2002/549/EC of 21 June 2002 on the broad guidelines of the economic policies of the Member States and of the Community, also stresses the importance of encouraging entrepreneurship (Council Recommendation of 21 June 2002 on the broad guidelines of the economic policies of the Member States and the Community (2002/549/EC), 2002). An improved and more productive business environment is essential to improve productivity and increase the potential growth rate of the European economy. The creation of a competitive business environment, supported by adequate public infrastructure and modern and efficient public administration, is a key factor in stimulating business creation and expansion. This has been recognised by all Member States, as demonstrated by the various measures taken to reduce the regulatory burden on business, to stimulate business creation, and to facilitate access to finance for small and medium-sized enterprises.

The European Charter for Small Enterprises, endorsed by the Feira European Council in June 2000, was also intended to help support small businesses. At the same time, differences in the business environment in the Member States, in particular in the area of taxation, remain an important factor. This provides ample scope for learning from best practices. Member States should:

(i) create a business-friendly environment:

- improve and simplify the corporate tax system and the regulatory environment. Reduce barriers to doing business to an absolute minimum, including by reducing the average time and cost of setting up a new company and reducing the administrative burden;

– increase the efficiency of public services, inter alia, by increasing the use of open tendering and benchmarking, increasing private sector participation and competition between public service operators, while ensuring competition between service providers on a level playing field, and by ensuring online access to government services, and

– reduce obstacles to cross-border economic activity linked to, inter alia, different accounting standards, corporate governance rules, business taxation and value added tax in the Member States;

(ii) implement the commitments made under the European Charter for Small Enterprises;

(iii) encourage risk-taking by improving access to finance, especially for SMEs in their early stages. The provision of capital combined with management skills is particularly important for SMEs.

The Commission of the European Communities, on 6 May 2003, in its subsequent Recommendation 2003/361/EC, indicated that the definition of small and medium-sized enterprises it had provided in Recommendation 96/280/EC of 3 April 1996 was based on the idea that the existence of different definitions at Community and national level could create inconsistencies. Following the logic of a single market without internal frontiers, the treatment of enterprises should be based on a set of common rules. The pursuit of such an approach was all the more necessary in view of the extensive interaction between national and Community measures in favour of micro, small and medium-sized enterprises. This Recommendation, 2003/361/EC, replaced Recommendation 96/280/EC with effect from 1 January 2005. Article 2 of Annex 1 to Recommendation 2003/361/EC sets out the staffing and financial limits defining the categories of enterprises: 1. The category of micro, small and medium-sized enterprises (abbreviated as «SME») consists of enterprises which employ fewer than 250 persons and whose annual turnover does not exceed EUR 50 million and/or whose annual balance sheet total does not exceed EUR 43 million. 2. Within the category of small and medium-sized enterprises, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. 3. Within the category of small and medium-sized enterprises, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million (Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, 2003).

Article 282 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, stipulated that, mindful of the impact that the legislative framework of each of them may have on trade between them, the Parties shall create and maintain an effective and predictable regulatory environment for economic operators doing business in their territory, in particular for small ones, while taking due account of the requirements of legal certainty and proportionality (Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, 2014).

Article 378 of this Agreement also stated that the Parties shall develop and strengthen cooperation on industrial and entrepreneurship policy and thus improve the business environment for all economic operators, with particular attention to small and medium-sized enterprises (SMEs). Enhanced cooperation shall improve the administrative structure and regulatory framework for Ukrainian and European economic operators in Ukraine and the EU and shall be based on the EU policy on the development of small and medium-sized enterprises and industry, taking into account internationally recognised principles and practices in these areas.

To this end, as set out in Article 379 of the Agreement, the Parties shall cooperate to:

a) implement strategies for the development of small and medium-sized enterprises, based on the principles of the European Charter for Small Enterprises, and monitor the implementation process through annual reporting and dialogue. Such cooperation shall also pay particular attention to

micro-enterprises and craft-type enterprises, which are a crucial element of the economies of Ukraine and the EU;

c) simplify and streamline regulatory and legal acts and practices, with particular emphasis on the exchange of best practices on regulatory methods, in particular EU principles (Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, 2014).

In order to introduce an effective mechanism for controlling the circulation of goods and the volume of income of subjects of the simplified taxation system and to remove from the shadows a number of large and medium-sized trading companies that abuse the simplified taxation system, thereby discrediting both the simplified taxation system itself and honest taxpayers who are its subjects, on September 20, 2019, the Verkhovna Rada of Ukraine amended the Tax Code of Ukraine on de-shadowing of settlements in the sphere of trade and services (Poiasniuvalna zapyska do proektu Zakonu Ukrainy vid 29.08.2019 roku № 1073 «Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo detinizatsii rozrakhunkiv v sferi torhivli i posluh», 2019). The tools designed to promote the de-shadowing of the economy of Ukraine and increase the level of consumer protection were to be: a) increasing the motivation of buyers (consumers) of goods (services) themselves to receive fiscal reporting checks; b) creating equal competitive conditions for business entities for which the obligation to use a registrar of settlement operations (RSO) is established; c) fiscalization of risky activities of business entities that are on a simplified taxation system (Poiasniuvalna zapyska do proektu Zakonu Ukrainy vid 29.08.2019 roku № 1073 «Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo detinizatsii rozrakhunkiv v sferi torhivli i posluh», 2019).

The next step in the study is to consider the concept of reforming the taxation system in the context of ensuring tax security in Ukraine, which will allow us to identify areas for improving fiscal policy, taking into account modern challenges and risks.

Studying the retrospective of the cause-and-effect relationships of the emergence, formation and development of the simplified system of taxation, accounting and reporting, let us pay attention to the following aspect. In accordance with paragraph 4 of Section XV «Transitional Provisions» of the Constitution of Ukraine, the President of Ukraine, within three years after the entry into force of the Constitution of Ukraine, had the right to issue decrees on economic issues not regulated by laws. As already noted above, by the Decree of the President of Ukraine dated 03.07.1998 No. 727/98 from January 1, 1999, a simplified system of taxation, accounting and reporting for small business entities was introduced. In our opinion, the introduction of the simplified system of taxation, in accordance with this Decree, did not meet the requirements of Article 92 of the Constitution of Ukraine, because its norms stipulate that the taxation system, taxes and fees are established exclusively by the laws of Ukraine (and not by the Decree of the President). We also emphasize the fact that the Constitution of Ukraine regulates only one, that is, a single taxation system. The Constitution does not mention the plurality of taxation systems, and the aforementioned Decree introduced another taxation system – a simplified one. That is, the introduction of a new tax, namely a single tax, was contrary to the Constitution of Ukraine, since the establishment of a tax is carried out exclusively by law (Kolomiets, 2023: 78).

In confirmation of the author's position, we note that at the end of 2023, the legislator will partially, but still come to a conclusion about the problems of several simultaneously existing tax systems, namely: «In turn, the gradual implementation of measures to reform the simplified taxation system in the long term will completely eliminate the discrepancies generated by different tax systems, and will also significantly reduce the negative impact of shadow economy factors on transparent business due to the distortion of the competitive environment.» (Natsionalna stratehiia dokhodiv do 2030 roku, 2023: 105). That is, contrary to the constitutional principle of the rule of law, the legislator still allows the continuation of the existence of a second, alternative, different, namely, an updated simplified

taxation system: «The updated simplified taxation system will significantly reduce the size and scope of its application. This will be achieved thanks to a set of legislative changes that will be gradually implemented in the period from 2025 to 2027. However, such changes to the legislation will be implemented no earlier than the year following the year in which the measures specified in subsection 4.2.3(b) «Security of data use and access to information on the volume and turnover of taxpayers' funds in their bank accounts» will be deemed to have been implemented (Natsionalna stratehiia dokhodiv do 2030 roku, 2023: 59-60).

In legal science, there is still an acute need for a deep and comprehensive understanding of the problems associated with the legal regulation of the simplified taxation system. Despite the long-term functioning of the simplified taxation system in the legal field of Ukraine, its regulatory and legal framework remains fragmentary, insufficiently systematized and not always consistent with the principles of tax security. The issue of the relationship between the simplified taxation system and ensuring the tax security of the state requires special attention, which, unfortunately, has not yet become the subject of a full-fledged interdisciplinary analysis within the framework of financial law. The lack of comprehensive research into the legal foundations of the functioning of the simplified taxation system as a socio-legal phenomenon capable of influencing the stability and predictability of tax revenues significantly complicates the development of effective mechanisms of state regulation in this area. This necessitates the formation of a new scientific approach to understanding the role of the simplified taxation system in the tax security system of Ukraine.

Conclusion. Modern relations of tax collection and collection, regulated by the Tax Code of Ukraine, are highly risky, which is due, among other things, to the presence of such a tax risk as a simplified taxation system – a way for taxpayers to evade their constitutional obligation to pay taxes.

The simplified taxation system threatens tax security and complicates the implementation of Ukraine's national interests in the field of taxation, because the simplified taxation system is a factor in underfunding both the state and local budgets. The first and most important goal of state policy in the field of taxation should be the formation, provision and implementation of tax policy in order to ensure tax security as the main component of Ukraine's national security, especially in conditions of war realities.

We have substantiated that the simplified taxation system, by reducing the taxpayer's tax liability, is a loss of revenue for both the state and local budgets. In the conditions of martial law and post-war reconstruction of Ukraine, the simplified taxation system does not and will not contribute to the balance of budgets and the maximization of tax revenues. The application of the simplified taxation system in accordance with the Tax Code of Ukraine is such that it does not comply with the Constitution of Ukraine and the interests of the state's tax security. Today and for the post-war period of reconstruction of Ukraine, we propose to abolish the simplified taxation system as a factor threatening the tax security of Ukraine in the context of losses of budget revenue by excluding from the norms of the Tax Code of Ukraine: 1) «Chapter XIV. Special tax regimes»; 2) Article 11. «Special tax regimes»; 3) subparagraph 10.1.2. «single tax» of Article 10; 4) any other regulations related to the simplified taxation system.

These changes will ensure transparency and a common understanding of tax legislation by all participants in public relations in the field of legal regulation of taxation, which in turn will ensure the necessary level of tax security in Ukraine. This is especially important, since it is through taxes that the state's defense capabilities are financed.

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