

LAND TAXATION PROBLEMS IN UKRAINE

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Анотація: У статті розглядаються деякі проблеми оподаткування землі. Викладено актуальність обраної теми та рівень її дослідження. Проведено аналіз таких категорій як плата за землю, платник земельного податку, пільги по сплаті земельного податку та ін. Розкриваються окремі передумови існування земельного податку. Підкреслюється необхідність внесення змін до законодавства, що регулює оподаткування землі. Зроблено висновки стосовно пропозицій щодо вирішення зазначених проблем.

Ключові слова: Податковий кодекс України, плата за землю, земельний податок, платник податку, податкові пільги, бюджет, дохід.

Аннотация: В статье рассматриваются некоторые проблемы налогообложения земли. Изложена актуальность выбранной темы и степень её исследования. Проведен анализ таких категорий как плата за землю, плательщик земельного налога, льготы по уплате земельного налога и др. Раскрываются отдельные предпосылки существования земельного налога. Подчеркивается необходимость внесения изменений в законодательство, которое регулирует налогообложение земли. Сделаны выводы относительно предложений по решению обозначенных проблем.

Ключевые слова: Налоговый кодекс Украины, плата за землю, земельный налог, плательщик налога, налоговые льготы, бюджет, доход.

Annotation: This article discusses some problems of land taxation. Set out the relevance of the topic chosen and the extent of research. The analysis of such categories as payment for the land, the land tax payer, the benefits to pay land tax and others. Revealed the existence of separate premises and land tax. Highlights the need for changes the law that governs the taxation of land. The conclusions on the proposals to address the problems identified.

Key words: tax code of Ukraine, land fee, land-tax, taxpayer, tax exemptions, budget, income.

Land tax and rental fee for land plots being in the state and communal property belong to a compulsory component of budget revenues related to the application of such an important natural resource as land. According to the Ukrainian legislation, Section XIII «Land Use Fees» of the Ukrainian Tax Code regulates collection of the payments. Land occupies a commanding place among natural resources as a part of the common environmental system thus being one of the most promising and stable sources of budget revenue for the state.

Substantial attention is paid to studying the legal mechanism of the land tax to provide for a constant flow of funds for the budget system as well as protect the taxpayers'

rights. Financial and legal researchers including N. Kucheryavenko, V. Khokhulyak, P. Patsurkivsky, A. Yalbulganov, etc. have been focused on the problems related to legal regulation of the tax. At the same time, it is worth mentioning that only certain aspects of the issue have been explored. Therefore, the subject demands further studies.

The right of land use is exercised on both permanent and temporarily basis. The spectrum of permanent users is limited to legal entities only, and their list is set out in Article 92, Land Code of Ukraine. Land plots being in the state and communal property are provided to such subjects for permanent use. Both individuals and legal entities use land on a temporarily basis including lease conditions. Land plots are let for lease at the expense of the land being state,

communal or private property. At the same time, it should be noted that in the latter case the private owner (being an individual or legal entity) can use the land plot independently or let it for lease to another person. However, in any case, the private owner is the subject of the land fee being the payer of the land tax.

According to the Constitution of Ukraine (Article 13), the land shall be the object of property rights of the Ukrainian people. State authorities and local self-government bodies shall exercise the ownership rights on behalf of the Ukrainian people within the limits determined by the Constitution. The Constitution also emphasizes that every citizen shall have the right to use the natural objects of the property rights in accordance with the current legislation.

It is worth mentioning that the property or land use rights impose certain obligations on subjects of land-related relations including obligation to pay a respective fee. The state protects the rights of all property rights holders and economic entities and provides for the social orientation of the economy. All the property rights holders are equal before the law. The property right for the land guaranteed by Article 14 of the Ukraine's Constitution is acquired and exercised by citizens, legal entities and the state exclusively in accordance with the legislation.

Provisions of the Ukrainian Constitution (Article 92) serve as the legal basis of the land fee and formation of respective budget revenues. They are specified in Chapter XIII of the Tax Code of Ukraine [1] where the land fee is defined as a national tax levied in the form of the land tax and rental fee for the used land plots. Under the current conditions, the land fee belongs to one of the principal revenue items for the budget.

It should be noted that the obligations related to the payment of the land tax are unilateral based on their nature. It is a well-known fact that tax liabilities apply to one subject only, the taxpayer, in the field of fiscal legal relations. The state being a party to such legal relations does not incur any counter obligations. Taking into account the stated provisions, such features of the tax as its non-repayable and non-reimbursable nature are considered as ones of the determinant attributes in the financial law theory [2, p. 99; 3, p. 28-31]. Taking into account the non-reimbursable nature of the tax, a conclusion can be reached that the taxpayer cannot expect any specific benefits from the state. However, this conclusion is fallacious. In this case, it is the question of meeting the public needs including those of the payer of the land tax. Any particular taxpayer contributing to the budget revenues does not get and cannot expect any compensation for the fiscal charges paid. Based on the aforesaid, we should agree with P. Patsurkivsky's opinion that as a result of collecting a respective fee from the payer (either individual or legal entity), the payer as a member of the society benefits from this either directly or indirectly [4, p. 126].

V. Khokhulyak carried out a thesis-based study of the land tax legal regulations in Ukraine. He concluded that the aforesaid interpretation of the land tax fully complies with its essence. According to him, its description in itself reflects the meaning of the payment. The lawmakers imposing the land tax provide for yielding the funds from the use of land plots. However, the land plot as a localized natural resource and business entity cannot be taxed directly if there is not a respective legal relation. According to the current Ukrainian legislation, the property right that is acquired from the date of its state registration shall lay the basis for the specific person's legal relation to the land plot in kind (localized land plot). The author reasonably suggests that the land tax

imposed by the legislative authority and enforced by the state shall mean a financial payment to the budget of the respective level payable by the land owners being individuals or legal entities on a mandatory, unilateral, non-repayable and non-reimbursable basis for the purposes of meeting the public needs [6, p. 67]. In this case, it is the question of the material nature of the payment as an independent form of budget revenues. In general, approving the suggested definition of the land tax, it is important to keep in mind as follows. The current Ukrainian legislation providing for the multi-subject nature of the land property right declared three forms of the right: state, communal and private. Based on the fact that the land tax definition suggested by the author applies to the land being private property of individuals and legal entities only, the definition seems to be grounded and reasonable. The suggested approach actually emphasizes the state's sole right to impose the land tax at the legislative level. It follows from the definition that the private owner of the land plot is the payer of the land tax. Paying the tax is the payer's legal obligation directly related to the land property right. In the course of paying the land tax, the social function of private land property intended to meet the needs of the private owner and society in general is implemented. In this case, it is the question of budget receipts from the land tax to be applied by the state to implement its functions in the future. At the same time, it should be noted that in addition to the land being private property with individuals and legal entities as its subjects, there are state and communal property rights to the land provided by the legislation to be considered as kinds of public property. According to Article 80, Tax Code of Ukraine, the following are the subjects of the land ownership right: a) territorial communities to exercise the right directly or through local self-government bodies – concerning the land in communal ownership; b) the state exercising the right via respective state authorities – concerning the land in state ownership. The land owned by territorial communities being legal entities according to the Ukrainian legislation provides for the need to settle the issues related to the land taxation. Taking into consideration the legal provision that the private, communal and state forms of land ownership are equal, it may seem that the land being communal property shall be taxed on a common basis. At the same time, such a conclusion would be ill-judged and wrong. First, the communal land ownership provides for public needs and not private ones, in particular, the needs of all residents of the village, settlement or city. Secondly, it is necessary to take into consideration the fact that the land being communal property belongs to the territorial community, and the particular features of its legal status are set out, first of all, in Article 142 of the Ukrainian Constitution. In particular, the article sets out that personal and real estate, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities and city districts shall be the material and financial basis for local self-government. Meanwhile, the territorial community is a subject obtaining budget revenues and cannot be a taxpayer including the land tax.

According to the present-day financial law doctrine, there are at least two groups of prerequisites for the land tax. Different points of view concerning the matter, composition and content of the groups have been stated. For example, S. Pepelyayev provides for socioeconomic and political prerequisites of the land tax. According to him, the former ones come out when the state governs any public processes not by means of direct instructions or bans taking into

consideration the given circumstances but through its indirect influence using taxation to solve the socioeconomic issues it faces. The author considers that the latter prerequisites provide for a close relation between the political and fiscal systems of the state manifesting itself by means of driving the taxpayer to control the government disposing of the tax receipts to the budget [7, p. 16-18].

N. Kucheryavenko suggested a slightly different structure of the tax prerequisites comprising two provisional groups: 1) socio-political; 2) legal (judicial). According to him, transition from the subsistence economy to the generation and formation of the state belongs to the socio-political prerequisites [8, p. 5]. According to the author, legal prerequisites include the formation of the legal system that is closely related to the development of the state as a whole. The latter approach seems to be the most appropriate and complete. Unlike the first classification defining the tax as a financial tool of the state's influence on the political system without taking into account its legal essence, the second one makes it possible to consider the tax as a financial and legal tool providing for the principal needs of the state and society. It is the tax that is imposed by the will of the state authority and levied to meet the public interests. It seems that socioeconomic and legal prerequisites form the basis for the land tax. Establishing tax rates and benefits, distributing the receipts between the state and local budgets and other essential aspects – all this is directly dependent on the objective socioeconomic conditions in the society.

Legal prerequisites of the land tax include the unilateral right of the state to impose fiscal obligations and determine the group of taxpayers as well as their rights and obligations, provide for the sanctions for failing to observe the rights and fulfill the obligations, and establish tax rates, terms and benefits related to taxation, etc. Its regulatory and legal base serves as the common basis for the legal prerequisites of the land tax. The land tax does not have a designated purpose and fails to provide for a certain equivalent exchange.

In addition to the aforesaid features of the land tax stipulated by objective characteristics of its legal nature, there are other legal distinctions as well. In the course of the land tax payment, the title to the fiscal amounts is transferred from the taxpayer to the state. The individual or legal entity possessing, for example, a land plot being private property fulfills the tax obligation by alienating a part of the property owned in the form of monetary assets being transferred to the respective budget.

The land tax as a financial and legal tool does not provide for the taxpayer's freedom of choice. A failure to pay the land tax within the stipulated term results in negative outcomes for the taxpayer, for example, imposing a fine. At the same time, such sanctions cannot be interpreted as limitation of rights granted to the payer of the land tax. It follows from the constitutional, public and legal obligation of the taxpayer to pay the tax amount.

Presently, the issue related to benefits within the land taxation system is considered as very important. In general, fiscal benefits providing for the tax rate reduction or taxpayer's total exemption from the tax if there are proper grounds stipulated by the current legislation, is a controversial problem. This problem was a subject of dedicated thesis-based studies [9, p. 176] and was discussed in monographic literature [10, p. 262-374] and articles [11, p. 7-8]. The analysis of Articles 281-284, Tax Code of Ukraine, demonstrates that land tax benefits are based mainly on the subject-oriented principle without taking into consideration the object-oriented approach

(i.e., properties of the real estate object are not taken into account). In a situation like this, the land cost factor is actually disregarded, and there are cases when this results in concessional taxation of the most attractive real estate objects on the market. Land plots are often officially registered as marginally profitable, which has a direct effect on the results of their appraisal as taxation objects and, ultimately, leads to unreasonably substantial losses of budget receipts. Thus, land taxation benefits declared as a mechanism of social protection result in antisocial enrichment of some land owners at the expense of potential budget receipts. It should be noted as well that the discrepancy between the land taxation objective and practical usage of budget receipts from the land tax has a negative effect on the development of political units and land cost growth prospects as the tax basis [12, p. 30-31]. Based on the aforesaid, we can claim that taxation of land resources in Ukraine has not evolved to become a system joining together the tax basis, efficient budgeting (establishment of tax rate and calculations of estimated receipts as well as their usage) and land fee management. Unstable material and financial base of local self-government is the major negative result of this situation.

Solution of the indicated problem is presently related to introducing changes to the legal regulation of the taxation system of the land as a real estate object taking into consideration that the real estate tax should play a number of roles including formation of revenues of local budgets, taxation of incomes not forming a part of the income tax basis, promoting efficient disposal of real estate, etc.

A number of authors provide a reasonable substantiation to conclude that presently, a system of payments to levy taxes on different aspects of the market turnover of the title to land plots shall be a component part of such a turnover. In particular, it is the question of the land property use tax to be payable by the private owner of the land plot. Such a tax will encourage the land plot owner to start using the land plot efficiently and according its designated purpose or searching for an efficient tenant. The tax receipts will comprise the greater part of all real estate payments, and they must be transferred to the local budgets. In addition to the aforesaid tax, a number of authors suggest imposing a tax relating to transactions with land plots, land plot estate tax and tax to be levied based on the economic results of agricultural enterprises using the land plot [12, p. 32-33].

The stated suggestion concerning a switch in the Ukrainian land taxation from land only to taxation of different real estate types (improved land plots) would increase the budget receipts. However, its implementation is related to the need to take a number of measures in the field of legal and organizational support of the taxation system. In particular, we mean the improvement of respective legal regulations in the field of land taxation.

Introducing respective provisions in the Ukrainian Tax Code would become one of the most efficient means to implement the stated suggestion. Only real estate owners shall be recognized as subjects of the tax payment and fees imposed with regard to land property objects at the legislative level. Benefits shall be provided on the basis of the object-oriented principle (taking into consideration the real estate object) instead of the subject-oriented approach (taxpayers). Benefits shall be provided only to the objects being in use and meeting the public, state and religious needs as well as objects being

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communal property. The tax basis shall be based on the market value of the land plots.

A transition to taxation of different real estate types, in particular, using the market value of the land instead of its pecuniary valuation as the tax basis will not only increase budget receipts and strengthen the material and financial basis of the local self-government but also provide for, in the first place, equitable distribution of the tax burden and, secondly, positive public perception of the real estate taxation institute in the long run.

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