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Reforms of Legal Foundations of Tax-Preferential Regulation in Post-Soviet Ukraine (by Tax Code of Ukraine)

Summary

The article deals with the research of methodological grounds and basic content of the reform of tax-preferential regulation in post-soviet Ukraine (according to Tax Code of Ukraine). Tax Code of Ukraine provides three basic types of tax preferences: tax privileges, tax immunities and tax generally corresponding to worldwide tendencies of tax-preferential regulation of managing activity. According to the criteria of a target direction of tax-preferential regimes in Ukraine social-oriented regimes are obviously prevailing, and tax preferences having the aim to promote the adoption of high technologies in industry cannot stand any competition with them. In Tax Code of Ukraine there is distinctly traced the inter-relation of preferences with restrictions in tax law, in another words, “positive” and “negative” tax preferences, there is outlined more effective, comparing with the applied before, the regime of incentive of entrepreneurs’ activity for the managing subjects and at the same time there is much better outlined the legal regime of restrictions for the subjects of public power and state employees. It is emphasized that the tax-preferential regulation lacks distinctly outlined general strategy and basic stages of its realization, proper flexibility, especially in terms of the world’s economic crisis, and also strict public direction, which is a necessary condition for legitimacy of tax-preferential deviation from general constitutional tax-legal regime. The reform of tax-preferential regulation in Ukraine with the adoption of Tax Code started at last, though, as the experience of more advanced, in this direction, societies of the world ensures, not a dozen of years will be required for its complete realization.

Keywords: The reform of legal of tax-preferential, Tax Code of Ukraine.

Setting the problem

As a drop of water reflects the essence and the content of the whole sea or even the ocean, so in tax preferences economic and political strategies and tactics, security phenomenon of the state and socium as the whole merge and become one. Yet ancient sages comprehended the truth of a criterium: "Tell me who your friend is and I will tell you who you are." With the same accuracy we can judge of the economy, the politics and the security of the state by the content of its tax-preferential regulation. As the historic experience convinces, this instrument for achieving strategic and tactic objects has successfully been applied by all civilized societies of the West, and those who master it skillfully obtain impressing results. Nowadays post-Soviet Ukraine faces rather urgently and acutely the necessity of a deep qualitative reformation of tax-preferential regulation. Moreover, Ukraine has already done a certain way in this direction with varying success. Yet, the lion's share of joint efforts of political and business elites in reformation of legal foundations of tax-preferential regulation in the country is still waiting for its time. One of inevitable consequences of Ukraine transition from administrative-command model of development to a market one is a deep transformation of the whole instrument set of the state and its legal foundations, activation of the search of adequate juridical constructions of legal provision for creation and application of legitimate "positive" and "negative" incentives for managing subjects, which is dictated by economic nature of a market and new strategic aims of social development. The beginning of economic reforms in Ukraine has become an additional incentive for acceleration of the elaboration of a new set of juridical instruments of influence on market economy as a whole, and its separate segments specifically. It coincided with the acceptance of Tax Code of Ukraine in 2010 embodying among different know-how new visions of tax and customs preferences, subsidies, subventions, privileges and immunities by Ukrainian political elite.

1. Legal nature of tax preference

This, so-called, institution of legal privileges did not emerge on an empty place, it turned out to be a kind of re-comprehension of the experience of a privilege policy of a preceding twenty-year development of a sovereign Ukraine extrapolated to new historic challenges for Ukrainian socium and its original "privilege" mentality. This mentality contains a theoretic-methodological component impossible not to be mentioned separately in our research. In another words, it deals with a degree of scientific elaboration of the problem. The analysis of a Soviet and especially post-soviet scientific juridical literature considering these problems, allows us to make a conclusion that for a long period legal privileges

have been investigated by Ukrainian scientists-lawyers only on a branch level, moreover, mostly by the representatives of a labour, administrative, civil and, lately also financial law and the law of social support. Ukrainian scientists-lawyers identified legal privileges mostly with every possible relieves, guarantees, permissions, immunities, etc., for the subjects of corresponding public relations, moreover not in the quality of independent instruments of legal policy of the state, but as an exception to common rules.

For example, in reference to tax-legal relations, a famous Ukrainian scientist lawyer-financier M.P. Kucheryavenko writes: "...tax relief recognizes an exemption of a tax-payer from a tax charge and payment or a payment of tax in a less amount, if there are reasons for it defined by the legislation of Ukraine. The exemption from a tax payment is possible in full or partial amount. Under the exemption in full amount a tax-payer is completely released from tax charge and tax payment. Under the exemption in partial amount a tax-payer is released from tax payment only in a certain part of his/her tax duty. The grounds for granting tax relieves are the specialties characterizing a certain group of tax-payers; the kind of their activity and the object of taxation (singled out by me – G.R.). Legal regulation of tax relieves is exercised on two levels. First – tax laws fixing principled exceptions for certain categories of tax-payers or branches (singled out by me – G.R.). Second – sub-law acts defining tactic aims in reference to specific subjects and solving more limited aims"¹.

The situation with the degree of basic-theoretical elaboration of the problem of legal relieves in Russian Federation is considerably positive comparing with the degree of scientific elaboration of the problem of legal nature of legislative relieves and preferences for the subjects of public relations, about what in 2007 I.S. Morozova wrote: in R.F. "... it is possible to separate the works where relieves were considered as an independent legal instrument, but nowadays they lost their actuality... At present time, – I.S. Morozova resumes, – complex theoretical-legal investigation of legal relieves taking into account considerable changes occurred in modern Russian legislation, new approaches, both to the institution of relieves and to the mechanism of relieving and exercising relief-legal policy, is absent."². We should note that this gap in post-soviet basic theory of Russian law is considerably overcome by I.S. Morozova's dissertation for Doctor's degree and by a number of other works³ what cannot be said about Russian

¹ Кучерявенко М.П. Податкове право України. Академічний курс. Підручник. – Київ: Правова єдність. Всеукраїнська асоціація видавців, 2008. – С. 199–200.

² Морозова И.С. Теория правовых льгот: Автореферат диссертации на соискание ученой степени доктора юридических наук. 12.00.01. – Теория и история права и государства; История учений о праве и государстве. – Саратов, 2007. – С. 4–5.

³ See, for example: Малько А.В. Стимулы и ограничения в праве. – 2-е издан., перераб. и доп. – М.: Юрист, 2003. – 250 с.; Малько А.В. Льготная и поощрительная правовая политика. – СПб.: Издательство «Юридический центр Пресс», 2004. – 233 с. и др.

science of financial law, and also about the science of financial law of countries-members of EU, especially in reference to tax-preferential regulation. Though many scientists approached it close by investigating the function of tax⁴.

Federal Constitutional Court of Germany having approved the permissibility and possibility of the state to charge taxes with non-fiscal aims came right up to solving this task. Special attention was paid to the fact that “in modern industrial society the tax inevitably becomes a central governing instrument of an active state economic and public policy (singled out by me – G.R.), moreover, the aim to raise taxes for financing common state tasks, even as a subordinate purpose, is often relegated to the background”⁵. Nevertheless, the legal definition of tax preference, according to the context of the article by M.Yu. Mizhinsky, was not formulated by Federal Constitutional Court of Germany either.

Till nowadays in all without exception post-soviet countries, deep modern scientific elaborations of the nature of legal relieves in the sphere of public-financial relations in cardinally changed social-economic, public-political and globalised international conditions are absent.

It acutely concerns their institution, such as tax preferences, having been successfully used in tax policy of the majority of the world's developed countries. For example, in the 50-ies of the last century, as one of the rulers of Japanese government of that time admitted, highly-flexible tax preferences turned out to be “fundamental condition of a Japanese miracle”⁶. In Ukraine and many other post-soviet countries this experience, the experience of other developed countries in the world in elaboration and enforcement of tax preferences policy as the instrument of economic management is not only used in practice but not even studied by a special science of finance law.

Thus, juridical constructions of tax preferences abounding in tax legislation of post-socialist countries are mostly not perfect and not effective because of above mentioned reasons, and sometime as a consequence of their realization in practice, they give quite the opposite results to the aims declared by the legisla-

⁴ See, for example: Кучеров И.И. Теория налогов и сборов. Монография. – М.: ЗАО «ЮрИнфоР», 2009. – С.135; Саттарова А.А. Актуальные проблемы и перспективы налоговой реформы в Российской Федерации // Финансовое право. – 2007. - № 4; Брюммерхофф Д. Теория государственных финансов. Пер. с нем. Под общ. ред. А.Л.Кудрина, В.Д. Дзгоева. – Владикавказ, 2001. – С.186 и др.

⁵ Quoted by: I.I.KucheroV draws attention to the fact of existence of the opposite, much less spread approach to tax preferences as to the instrument of tax policy in developed countries of the world. “We should note,-writes he,- that in some countries, as for example, the USA, establishing taxes in any another aims than financing state expenditures is forbidden by law, respectively the abilities to use tax – legal regulation actually having the character of a veto are restricted in this country”. See: Кучеров И.И. Теория налогов и сборов. Монография. – С. 150.

⁶ The Japanese Tax System. – Tokio, 1989. – P. 46-50. См. также: Тихоцкая И.С. Налоговая система Японии. – М.: ИВ РАН, 1995. – С.5.

tors. Still more often these aims are formulated in outline and sometimes their real sense and destination are veiled in principle. In this respect Tax Code of Ukraine is quite demonstrative.

Then what is the legal nature of a tax preference? The science of finance prompts an unexpected answer to this question, as it happened already in the science of finance law in earlier times. Thus, M.N. Shmakova investigating tax preferences as the instrument for stimulation of innovative activity of enterprises, paid attention to a dualistic economic nature of taxes leading to a collision of fiscal and incentive function of a tax. By means of this methodological key and from the position of economic approach she distinguished the notions of “tax relieves” and “tax preferences” and gave the economic definition to the notion of “tax preference”.

Pointing out the mistaken comprehension of “tax relieves” and “tax preferences”, M.N. Shmakova came to the conclusion that the given instruments of tax policy of the state have different aims and content. “Tax relieves, – writes she, – have compensatory and incentive meaning for the subjects [of managing – G.R.], to whom their activity is directed. The compensatory function provides the creation of egalitarian conditions for the subjects of a managing activity, possessing unequal possibilities because of these or those reasons. That is, tax relief is to compensate distinguishes in economic, financial or social components and to eliminate negative influence of these distinguishes on labour and entrepreneur activity of tax-payers. The second, incentive function, – continuous M.N. Shmakova, – is directed to the development of separate kinds of branches, certain types of activity, and creation of favourable conditions for them (singled out by me – G.R.). Incentive effect of tax relieves is in the fact that the person is not obligated but motivated to obtain the result useful for the state. Thus, tax relieves as the means of stimulation influence the obtaining of socially significant result by satisfying tax-payers’ private interests”⁷.

Moreover, M.N. Shmakova drew attention to the circumstance that juridical facts (i.e. taxpayer’s circumstances under which a legislator forms the granting of a tax relief) may have absolute character (cases of outside influence not depending on tax-payer’s wish, will and behaviour) and suspended character (in cases when tax-payer is charged by a tax legislation to take a certain model of behavior or to choose the type of activity more profitable for a taxpayer, moreover, in these cases the will of the very tax-payer takes place). Taking this for basis, M.N. Shmakova performed strict economic distinguish of tax compensations – relieves with incentive absolute character, and tax preferences – relieves with incentive suspended character. On the basis of the mentioned above M.N. Shmakova came to the conclusion that from the economic point of view “tax

⁷ Шмакова М.Н. Налоговые преференции, как инструмент стимулирования инновационной деятельности предприятий. // Автореферат диссертации на соиск. уч. степени канд. эконом. наук. – Новосибирск, 2001. – С. 6.

preference – is a partial or complete exemption from tax payment granted to the organizations and natural persons with the aim to stimulate types of activity recognized by the state to be prior ones, and in the case of following the conditions provided by legislation on taxes and collections”⁸.

It is an economic comprehension of tax preference revealing public nature of a given phenomenon. By means of it, first it is possible to identify and then to analyze analogous tax-preferential relations defined in Tax Code of Ukraine, to reveal their aims and functions, to find out the criteria of their classification, to study their types, try to see the hierarchy and competition of tax preferences among each other, dialectic interrelation of preferences with the restrictions in tax law of Ukraine and, on the basis of all it to define a legal nature of tax preference.

The analysis of tax-preferential regimes established in Tax Code of Ukraine allows us to make some preliminary generalization, estimations and conclusions. If from the economic point of view tax preferences are reduced to maximum consideration of dualistic economic nature of a tax emerging in inevitable collision of fiscal and incentive function of a tax, than in legal sense tax –preferential regulation consists of partial (as a rule) or complete change of elements of juridical construction of a tax or a collection and, in exceptional cases it consists of an exemption of managing subjects from payment of separate taxes and collections⁹. In another words, *legal nature of tax preference is in partial or complete change of generally accepted elements of juridical construction of a corresponding tax or a collection and, in exceptional cases – is a complete abolition of separate taxes or collections for corresponding subjects of managing activity*. They pursue the aims of a stimulation of managing activity of certain types and have a conditional character unlike tax relieves being compensatory and absolute ones.

2. Doctrinal premises of tax-preferential reformation in Ukraine

First of all, we should pay attention to a rather piquant circumstance related to legal regulation of tax preferences by Tax Code of Ukraine – in the latter the notion “tax preference” is never mentioned. At the same time practically all the content of Tax Code of Ukraine from beginning to the end is penetrated with the idea of tax preferences, and it represents a number of their specific juridical constructions. Probably, this fact cannot be explained but as the absence of the latest doctrinal elaborations of the problem of tax preferences by the science of finance

⁸ Шмакова М.Н. Налоговые преференции, как инструмент стимулирования инновационной деятельности предприятий. // Автореферат диссертации на соиск. уч. степени канд. эконом. наук. – Новосибирск, 2001. – С. 7.

⁹ Податковий кодекс України. – К.: Юрінком Інтер, 2012. – С.8.

law and economic national science on one hand, and the acutest actual need of Ukrainian socium in realization of modern tax-preferential policy intensified with the beginning of economic reforms and the necessity of the economy of Ukraine transition in innovation way of development on the other hand. This is one more actual manifestation of the policy of the quest for the truth by the method of tests and errors having become traditional for Ukraine.

Thus, in article 14 “Definition of Notions”, chapter 1 “General Principles” of Tax Code of Ukraine there are given the definitions for the number of real instruments for regulation of tax-preferential relations: depreciation; excise tax; investment constituent; minimal excise tax liability; under-excise goods (production); tax credit; tax deduction; rent payment; suspended exemption from customs duties taxation; suspended exemption from value added taxation in cases of goods import to the customs territory of Ukraine; financial aid; financial credit, etc. Nevertheless, a number of other, widely used by Tax Code of Ukraine, concrete juridical instruments for regulation of tax-preferential relations have not got an official fixation and definition in this article 14 “Definition of notions” of Tax Code of Ukraine. First of all it concerns the special tax regimes, provided for the number of public activity types and the branches of enterprises, for regulation of which a separate chapter XIV “special tax regimes” of Tax Code of Ukraine is dedicated.

This phenomenon, first of all and mostly, is inevitable consequence of tax – legal etatism, still dominating in Ukraine – historically first and at the same time the most widespread classic doctrine of taxation. Its basic attributes are absolutely different politic-economical properties and categories of paternalism and political corruption, adequate to them, and its most significant juridical features are reduced to: 1) full isolation of public interests of individuals from their private interests and opposing the first to the second; 2) establishment of juridical inequality of taxpayers and state; 3) proclamation of state interests to be prevailing in tax legal relations and neglect of natural rights and legal interests of taxpayers; 4) construction of the whole system of taxation by power principle.

In modern Ukraine and other post-soviet countries this juridical gist of etatism in taxation is still more enhanced by insufficient development of market mechanisms, private property, civil society which facilitate the absorption of the latter by a state. On paradigm level juridical essence of tax-legal etatism can be adequately reflected in the notion “order of a sovereign”. Nowadays it is exhausted completely and it influences extremely negatively the development of all spheres of a socium, that is why in many countries of the world an active search of alternatives to etatism in taxation is conducted on the high constitutional level.

On the border of the second and the third millennia in constitutional tax doctrine of the most developed states of the world the egalitarist idea of taxation gained a definite dissemination. That is, in the second half of XX – early XXI

century the democratic and market transformations of the most world's societies put forward new requirements to the constitutional regulation of taxation, specifying first of all its aims and instruments. The main thing having become inevitable in constitutional tax doctrine of the states is their ability to transform fiscal policy from the system of practically complete state provision of the consumers of public services to the system of "creation of possibilities" for them to create these benefits mostly independently and maintain themselves.

It emerged with a special force in the constitutions of the latest constitutional models adopted on the border of XX-XXI centuries and not yet comprehended in a sufficient extent even by theoretic-constitutionalists, not to mention representatives of other law sciences, specifically, the science of finance law. Thus, in paragraph 1, article 95 of Constitution of Ukraine it is stressed that the "budget system of Ukraine is founded on the principles of just and unprejudiced distribution of public wealth among citizens and territorial communities"¹⁰ (singled out by the author). And in paragraph 2 of the same article it is fixed that "any expenditures of the state on the needs of the whole society, size and target allocation of these expenditures are defined exclusively by the law of the state budget of Ukraine"¹¹.

It should be emphasized that in Ukraine this principally new methodological approach to the comprehension of legal nature of tax receipts in budget, and public financial resources taken as a whole, is not yet perceived neither by the science of finance law nor by other juridical sciences, even by the very legislator of Ukraine. But it is the very approach which, as the experience of other states persuades, enables to apply these objective laws of the development of the human as the system-forming principles of the society taken as the whole, especially its financial sector, to overcome ideological cliché and subjectivism, inertia of thinking traditionally dominant in finance-legal theory and practice.

Generalizing methodological approaches to revealing legal nature of taxes and property right for tax receipts applied in the Constitution of Ukraine and many other states, we cannot help admitting that their juridical constructions are not one-dimensional but multi-dimensional ones. First of all they represent a juridical form of economic gist of public finance. The latter means that tax receipts in the budgets of states are impersonal and due to this they obtain the quality of common use fund, "public wealth", according to the terminology of the Constitution of Ukraine, the only destination of which is financing public needs.

In the Constitution of Polish Republic a juridical construction of the same gender belonging of "communal property"¹² and concerning the state taken as

¹⁰ Конституции Государств Европы: В 3-х т. Т. 3. / Под общ. ред. Л.А. Окунькова. – М.: Изд-во НОРМА, 2001. – С. 332.

¹¹ Конституции Государств Европы: В 3-х т. Т. 3. / Под общ. ред. Л.А. Окунькова. – М.: Изд-во НОРМА, 2001. – С. 332.

¹² Конституции Государств Европы: В 3-х т. Т. 2. / Под общ. ред. Л.А. Окунькова. – М.: Изд-во НОРМА, 2001. – С. 694.

a whole, – typologically different, still traditional juridical construction of “property of Treasury of the State” is used¹³. Legal nature of these juridical constructions is distinguished on the highest of possible, namely, on a paradigm level, that is why among them there exists not natural competition characteristic to different juridical forms of public needs, but there is inserted inevitable antagonism which was many times revealed in their practical application in Polish Republic.

Secondly, the construction “public wealth” is established in the Constitution of Ukraine by measure of a necessary behavior of the state concerning public finance. Tax receipts and all other receipts in a budget of the state cannot be used by it for anything, but public needs. As the system analysis of the Constitution of Ukraine ensures, this measure includes the establishing limits of fiscal withdrawal from private sector by the state in order to reach the most effective use of GNP and national income on a public level.

Thirdly, the construction “public wealth” in the Constitution of Ukraine is a definite measure of freedom of counter-agents of the state in tax legal relations. The part of their private property, not covered with legal regime of “public wealth”, is a priori undividedly and completely in their private property, and in regard to it they have a right to use all the set of powers of a proprietor. The second share of a private property of counter-agents of a state in tax legal relations, covered in a proper legal form with juridical regime of “public wealth” can be claimed for by its producers together with the other members of society and not as private proprietors but only as consumers of public benefits.

But according to the Constitution of Ukraine, the state has no property right for public wealth produced in such a way, – it only on behalf of society exercises the control and disposes it. Moreover, as it clearly follows from the article 95 of the Constitution of Ukraine, the state in juridical construction “public wealth” is an obliged party, having power to perform actions only provided by the society. That is, according present Constitution of Ukraine the state is not a real proprietor of a State budget of Ukraine and tax receipts in it, and only on behalf of a real proprietor – society – it exercises its rights “only on the grounds, in terms of authorities, and in the way provided by the Constitution and laws of Ukraine¹⁴. With reference to it we dare to suppose that the changes of substantial qualities of a classic state became inevitable too. In our opinion, it is prematurely to judge what direction the vector of these changes will take.

The constitutional principles of tax-legal doctrine of Ukraine given above, its refined properties allow us to make rather well-grounded conclusion that the tax legal doctrine of Ukraine is transformed from etatistic to egalitar doctrine, and that the process became irrevocable, the point of restitution to the past was

¹³ Конституции Государств Европы: В 3-х т. Т. 2. / Под общ. ред. Л.А. Окунькова. – М.: Изд-во НОРМА, 2001. – С. 726.

¹⁴ Конституции Государств Европы: В 3-х т. Т. 3. / Под общ. ред. Л.А. Окунькова. – М.: Изд-во НОРМА, 2001. – С. 313.

passed, first of all in the sphere of property. Given phenomenon should be estimated as the most important peculiarity of tax policy in Ukraine of nowadays.

The second peculiarity of the same type is an eclectic combination of remained icebergs of etatism and sprouts of egalitarianism in tax policy of Ukraine. Tax Code of Ukraine contains wonderful illustrations of a given phenomenon, its ideology and methodology, not especially reflected in Tax Code but really existing layers of fiscal relations in socium, and thus, unregulated in a proper way – as in the past so in the present and, perhaps, due to many reasons, in the future. The fact that the Tax Code or in another words, economic Constitution of Ukraine, appeared by the end of the second decade of the existence of an independent Ukrainian state should be estimated as the victory of fiscal stabilization strategy. Secondly, the methodology of overcoming structural fiscal deficits, being a real scourge in tax practice of Ukraine was written rather correctly in Tax Code of Ukraine, taking into account national and foreign experience and achievements of finance-legal science. Thirdly, Tax Code of Ukraine, proposed to the socium, outlined precisely the directions and stages of completing the period of transition from paternalism in taxation to egalitarianism of fiscal doctrine both in vertical and horizontal sections.

Nevertheless, Tax Code proposed to Ukrainian socium is not deprived with serious disadvantages. First of all it concerns its paradigm and methodological inconsistency. Thus, egalitarianist paradigm provides the necessity of transition from a bipolar opposition of tax interests along the line of society (taxpayers) – state to a dialectic combination of public and private interests of taxpayers with the assistance of the state on the basis of juridical construction of public wealth mentioned above. Though, according to Tax Code of Ukraine the effective motivation of voluntary tax-payment was not laid into juridical constructions of Tax Code of Ukraine. The situation is strengthened with the fact that mentally, Ukrainian socium tends totally to avoid paying taxes or another necessary payments and considers this phenomenon to be natural for them. This situation has deep historical, public-economic, social and other roots, so Ukrainian society and first of all the state need long system attempts to overcome it. Undertaken reform of legal grounds of tax –preferential regulation in post-soviet Ukraine also provides the solution of this problem as one of its most important aims.

3. Basic types of tax-preferential regimes according to Tax Code of Ukraine

As it was mentioned in the previous part of our research, generally they are focused in a separate chapter XIV “Special Tax Regimes” of Tax Code of Ukraine. The analysis of this chapter of Tax Code of Ukraine, especially the specialty of tax regimes allows us to formulate the following regulations. First,

specialty is included in the peculiarities of the object and the basis of taxation. Secondly, specific in all cases of special tax regulation is the order of assessment impact and the terms of corresponding tax payment. But their main distinction from general tax regime in Ukraine – is of course, the rate of corresponding taxes. Thus, the taxpayers covered with the simplified system of taxation, calculation and accounts are provided with the fixed rate of a uniform tax in per cent from the amount of minimal wages: 1) for the first group of uniform tax payers – in limits from 1 to 10 per cent of the amount of minimal wages; 2) for the second group of a uniform tax payers from 2 to 20 per cent of the amount of minimal wages; 3) percentage rate of a uniform tax for the third and the fourth groups of a uniform tax payers is charged in the amount: a) 3 per cent of income – in the case of payment of value added tax separately, in conformity with Tax Code of Ukraine and b) 5 per cent – in the case of including value added tax into the amount of a uniform tax. Moreover, Tax Code of Ukraine provides a uniform tax- payers with a number of other specialties of taxation on the level of these or those elements of juridical construction¹⁵.

Tax-legal regime of fixed agricultural tax rose from the fact that the object of taxation with this tax for managing subjects is the area of agricultural land and/or the area of water fund being a property of an agricultural commodity producer or given for use, including the terms of rent. The basis of taxation is a normative monetary evaluation of a hectare of an agricultural land (held after a condition on June 1, 1995), and for the lands of water funds – is normative monetary evaluation of a hectare of an arable land, held after a condition on the same time. The size of rates of a fixed agricultural tax from a hectare of agricultural lands and /or the lands of water fund for agricultural commodity producers depends on a category (type) of lands, their location and comprises (in percentage from the basis of taxation) from 0,15 to 1¹⁶.

Chapter XIV “Special Tax Regimes” of Tax Code of Ukraine also provides a collection in the form of the target extra charge to the real tariff for electric and thermal energy, except the energy produced by qualified co-generative installations. The payers of this collection are wholesale suppliers of electric energy having a license for the right to exercise entrepreneur activity in producing electric energy and trading in it out of wholesale market of energy and also thermal energy. The object of taxation with this collection is: a) for wholesale supplier of electric energy – the value of sold electric energy without taking into consideration value added tax; b) for legal entity – the value of sold electric energy out of wholesale market of electric energy, reduced to the value of electric energy, produced by qualified co-generative installations and/or from renewal sources of energy, and for hydro-energy – exclusively in the part of production by small hydro-electro-stations without taking

¹⁵ See: Податковий кодекс України. – С.485-487.

¹⁶ See: Податковий кодекс України. – С.500.

into consideration the value added tax. The rate of this collection is 3 per cent from the cost of practically sold electric energy by a taxpayer without taking into consideration the value added tax¹⁷.

Finally, the payers of one more necessary payment provided by special tax regimes of Ukraine – collection in the form of target extra charge to real tariff for natural gas for consumers of all forms of property – are the subjects of managing and their separated subdivisions, exercising activity in supplying consumers with natural gas on the basis of agreements concluded with them. The object of charging this collection is the value of natural gas in the volume sold to every category of consumers in the period under review, defined on the basis of acts of gas acceptance-transfer, signed by a payer and corresponding consumer (for population- on the basis of accounting documents), taking into a consideration a corresponding tariff. The rate of the collection is 2 per cent for: a) enterprises of municipal thermal- power engineering, thermal-power station, electric transmission network and boiler subjects of managing; b) budget establishments; c) industrial and other subjects of managing and their separate subdivisions using natural gas and 4 per cent for volumes of natural gas supplied to the population¹⁸. But these tax rates are the most dynamic and concise which was many times confirmed by national practice of taxation.

The method of content-analysis of Tax Code of Ukraine confirms that the worldwide approach to tax-preferential regulation is in general being realized in Ukraine. It means that tax preferences first of all are related to profit taxation¹⁹. For this purpose, tax rate for added value or another compulsory elements of juridical construction of this tax are applied as legal instrument²⁰ and the aim pursued is not the economic transition of Ukraine to innovation way of development, but rather a realization of some social programs which looks rather natural in conditions of modern Ukraine – the society where inertia of rendering by public power of some social sops for the population took roots, but strategically it is without good prospects, and even destroying.

According to the data of Finance Ministry of Ukraine, in 2011 – the first year of Tax Code of Ukraine functioning – many tax preferences pursued the social aims. Thus, 7.2 mlrd grivnas comprised an exemption from the value added taxation of the services in transporting the passengers and goods as transit via territory of Ukraine, 319.3mln. UAN – in transporting passengers in public passenger transport, 1.57mlrd. UAN – comprised an exemption from value added taxation of the services on all the levels of education, supporting the children in pre-school institutions and their feeding; 2.7mlrd UAN- delivery of medicinal remedies, goods of medicinal purpose and means for rehabilitation of invalids,

¹⁷ See: Податковий кодекс України. – С.505.

¹⁸ See: Податковий кодекс України. – С.506.

¹⁹ See: Податковий кодекс України. – С. 168–173, 177–186, 189–195, 211 и др.

²⁰ See: Податковий кодекс України. – С.319, 323–347 и др.

health protection services, granting passes to sanatorium-health resort establishments; 7.8 mlrd UAN- is the sum of preferences connected to the support of agricultural producers. In accordance with the international agreements of Ukraine ratified by Supreme Soviet the enterprises were granted the exemption from the profit tax payment to the sum of 2.0mlrd grivnas, value added tax – is 200mln grivnas. Nevertheless, despite the given and other outlays of public fund of the finance resources of Ukraine, in 2011 the State budget of Ukraine received 314.6mlrd grivnas, that is 74mlrd UAN or 30.8 per cent more, comparing with analogues indexes of 2010. Tax revenues in the State budget of Ukraine in 2011 comprised 216.6mlrd UAN, that is 94.7mlrd UAN or 56.8 percent more comparing with analogues indexes of 2010²¹. These facts in general, are the confirmation of absolute progressivity of Tax Code of Ukraine comparing with the previous tax legislation functioning in Ukraine.

Tax social relief in 2004–2012

| Year | maximal size of income, giving right to receive tax social relief, UAN | minimal wages, UAN | size of relief % | sum of tax social relief, UAN | | |
|------|--|--------------------|------------------|-------------------------------|--|--|
| | | | | 100% for any taxpayer | 150% for persons defined in pp. 169.1.3 TC | 200% for persons defined in pp. 169.1.3 TC |
| 2004 | 540,00 | 205 | 30 | 61,50 | 92,25 | 123,00 |
| 2005 | 630,00 | 262 | 50 | 131,00 | 196,50 | 262,00 |
| 2006 | 680,00 | 350 | 50 | 175,00 | 262,50 | 350,00 |
| 2007 | 740,00 | 400 | 50 | 200,00 | 300,00 | 400,00 |
| 2008 | 890,00 | 515 | 50 | 257,50 | 386,25 | 515,00 |
| 2009 | 940,00 | 605 | 50 | 302,50 | 453,75 | 605,00 |
| 2010 | 1220,00 | 869 | 50 | 434,50 | 651,75 | 869,00 |
| 2011 | 1320,00 | 941 | 50 | 470,50 | 705,75 | 941,00 |
| 2012 | 1500,00 | 1073 | 50 | 536,50 | 804,75 | 1073,00 |

According to ind. 8 p.1 ch. XIX of TC from 01.01.11 to 31.12.14 tax social relief is 50% of the size of living minimum for able-bodied persons (accounting for a month) established by law on June,1 of the year under tax review, – for any taxpayer.

* Tax social relief is applied to the income charged in taxpayer's favour during the month under tax review as wages if their size do not exceed the sum of month's living minimum valid for able-bodied person on January, 1 of the year under tax review, multiplied by 1,4 and rounded off to the nearest 10 grivnas (ind.1pp.169.4.1 TC). Maximum size of the income giving the right for receiving a tax social relief to one of the parents in the case and in the size provided in pp.169.1.2 TC is defined as a product of the sum defined in ind. 1 pp. 169.4.1 TC, and to a corresponding quantity of children.

²¹ See: Офіційний сайт Міністерства фінансів України [Електронний ресурс] — Режим доступу : <http://www.minfin.gov.ua>.

At the same time the analysis of the totality of tax-preference regimes, provided by Tax Code of Ukraine and managing subjects related to profit taxation compelled us to make a conclusion, that a certain part of them pursue not the public aims but is directed to satisfy only private-proprietary interests of separate business-groups and corporations, which monopolized some types of economy and the sphere of services, and managed to lobby their interests by means of legislator. First of all, it concerns the taxation of the economy of nature use and economic sectors related to it. Thus, rent payers for the transportation of oil and oil products, transit transportation of natural gas and ammonia by pipelines through the territory of Ukraine, rent payment for oil, natural gas and gas condensate produced in Ukraine and also the payment for using the bowels of Ukraine, of the collection for special (industrial) use of water, the collection for special use of timber resources succeeded in getting the rates of their taxation without the percentage (proportional) dependence from the obtained profit, but were expressed only in grivna equivalent, based on speculative calculations, rather opaque and deprived of ratio and natural measure comprehensible for socium²². The aim of this step is obvious – to complicate public control of tax preferences in public purposes. Consequently, in Ukraine the extremely negative tendency formed still before the adoption of the Tax Code of Ukraine and expressed in illegitimate appropriation by managing subjects of nature resources of Ukraine, being the objects of property rights of Ukrainian people, cannot have been overcome²³.

Thus, according to the Accounting Chamber of Ukraine after a condition on 2010, the level of tax burden in consequence of illegitimate tax preference functioning for managing subjects related to use of natural resources of Ukraine, amounted to 26 percent of rent income²⁴, while in the countries of UE it swings from 50 to 85 percent of rent income. In Norway created the most effective system of tax-preferential charging for the use of natural resources, the rate of taxation of oil companies provides their tax payments in the amount of 80 percent of the obtained income. In the Republic of Kazakhstan the rates of rent tax for raw oil, gas and condensate are fixed in the sizes providing oil-producing companies with profitability also on the level of 20 percent.

The same method of content-analysis of Tax Code of Ukraine mentioned above, helped us to clear out one more interesting fact- practically the whole chapter XX neutrally called “Transition Regulations” of Tax Code of Ukraine, actually is dedicated to tax-preferential regulations: a specialty of charging a tax for some income of natural persons (taxation object specialties); specialties of charging the value added tax (specialty of the object and terms of taxation); spe-

²² See: Податковий кодекс України. – С. 431-432, 433-436, 438-451, 511-524, 518-524.

²³ See: Конституція України. Прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року. Офіційне видання. – Київ, 2006. - Ст. 13.

²⁴ Голос України. – 2010. – 1 жовтня.

cialties of charging the value added tax for the operations of import of equipment and completing parts not produced in Ukraine, to the customs territory of Ukraine by taxpayers-enterprises of ship-building industry (specialty of the subject, object and terms of taxation); specialty of raising the enterprises income tax (specialty of the object, rates and terms of taxation); specialty of applying the rates of excise tax and ecology tax (specialty of the object rates and terms of taxation); specialties of raising land tax (specialties of the subject, object and terms of taxation); specialties of uniform tax and fixed tax (specialties of the subject, object and terms of taxation); specialties of subjects and objects of other tax-preferential regimes of compulsory payments²⁵.

If generalize a compulsory accountancy of enterprises on the received by them relieves for separate types of taxes, existing since 1997, it should be noted that if in the first list of these relieves reviewed by the state tax service of Ukraine there were accounted 271 relieves, than in 2011 – were 336²⁶, and since April 1, 2012 there remained only 300 relieves – decreasing of their quantity for the last year occurred from 152 to 104 cases, generally because of decreasing tax preferences for value added tax, and also at the same time because of increasing tax preferences for income tax from 69 to 84 cases during 2011²⁷.

Conclusions

Tax Code of Ukraine provides three basic types of tax preferences: tax privileges, tax immunities and tax generally corresponding to worldwide tendencies of tax-preferential regulation of managing activity. According to the criteria of a target direction of tax-preferential regimes in Ukraine social-oriented regimes are obviously prevailing, and tax preferences having the aim to promote the adoption of high technologies in industry cannot stand any competition with them. In Tax Code of Ukraine there is distinctly traced the inter-relation of preferences with restrictions in tax law, in another words, “positive” and “negative” tax preferences, there is outlined more effective, comparing with the applied before, the regime of incentive of entrepreneurs’ activity for the managing subjects and at the same time there is much better outlined the legal regime of restrictions for the subjects of public power and state employees.

²⁵ See: Податковий кодекс України. – С. 536-568.

²⁶ Довідник №56 пільг, наданих чинним законодавством по сплаті податків, зборів, інших обов’язкових платежів станом на 01.01.2011, затверджений ДПА У країни 26.01.2011 р. [Електронний ресурс] / Режим доступу: http://search.ligazakon.ua/l_doc2.nsf/link1/DPA0631.html

²⁷ Довідник № 61 пільг, наданих чинним законодавством по сплаті податків та зборів станом на 01.04.2012, затверджений ДПСУ 30.06.2011 р. [Електронний ресурс] // Режим доступу: http://search.ligazakon.ua/l_doc2.nsf/link1/DPA0711.html

Nevertheless, it is obvious, that the tax-preferential regulation lacks distinctly outlined general strategy and basic stages of its realization, proper flexibility, especially in terms of the world's economic crisis, and also strict public direction, which is a necessary condition for legitimacy of tax-preferential deviation from general constitutional tax-legal regime. The reform of tax-preferential regulation in Ukraine with the adoption of Tax Code started at last, though, as the experience of more advanced, in this direction, societies of the world ensures, not a dozen of years will be required for its complete realization.

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Reforma podstaw prawnych regulacji podatkowo-preferencyjnych na terenach postradzieckiej Ukrainy (według Podatkowego Kodeksu Ukrainy)

Streszczenie

Przedmiotem badań w artykule są metodologiczne podstawy i główna treść reformy regulacji podatkowo-preferencyjnych na terenach postradzieckiej Ukrainy (według Podatkowego Kodeksu Ukrainy). Podatkowy Kodeks Ukrainy przewiduje trzy główne rodzaje preferencji (ulg) podatkowych: przywileje podatkowe, immunitety podatkowe i odpisy podatkowe (potrącenia), które w większości są zgodne z ogólnoswiatowymi tendencjami podatkowo-preferencyjnymi regulacji działalności gospodarczej. Zgodnie z kryteriami ukierunkowania systemów podatkowo-preferencyjnych na Ukrainie zasadniczo dominują kierunki socjalne, a preferencje podatkowe, których celem jest wspieranie wdrażania wysokich technologii w produkcji, nie wytrzymują z nimi żadnej konkurencji. W Kodeksie Podatkowym Ukrainy wyraźnie można prześledzić wzajemne związki preferencji i ograniczeń w prawie podatkowym, mówiąc inaczej – „pozytywnych” i „negatywnych” ulg podatkowych. Przewidziano tu bardziej efektywny – w porównaniu z wykorzystywanym wcześniej – kierunek stymulowania działalności gospodarczej dla podmiotów gospodarczych i jednocześnie znacznie lepiej przedstawiony został prawny aspekt ograniczeń dla podmiotów władzy publicznej i urzędników państwowych. Wskazano, że regulacjom podatkowo-preferencyjnym brakuje wyraźnie opisanej wspólnej strategii i głównych etapów jej realizacji, należytej elastyczności, szczególnie w warunkach światowego kryzysu gospodarczego, jak również wyraźnie wyznaczonego kierunku publicznego, który jest niezmiennym warunkiem prawidłowości odchyleń podatkowo-preferencyjnych od ogólnego konstytucyjnego systemu podatkowo-preferencyjnego.

Słowa kluczowe: Reforma prawnych regulacji podatkowo-preferencyjnych, Podatkowy Kodeks Ukrainy.