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THE IMPLEMENTATION OF THE VENICE COMMISSION RECOMMENDATIONS ON THE PROVISION OF THE MINORITIES LANGUAGE RIGHTS IN THE UKRAINIAN LEGISLATION

Maryna FEDORCHUK

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LEGAL DOCTRINE OF LOCAL TAXES IN UKRAINE

Maryna FEDORCHUK[1]

Abstract

The article is devoted to the research of the legal doctrine of local taxes in Ukraine. Developed the idea that the tax-legal doctrine in general and the legal doctrine of local taxes are the branches of legal doctrine. The article analyzes the reasons for the dominance and disadvantage of the etatist legal doctrine of local taxes in Ukraine. According to this doctrine, the tax is a person's duty and local taxes are an attribute of local governments. It has been established that the legal doctrine of local taxes in Ukraine is influenced by the legal culture and the level of legal consciousness of the society. Special attention is paid to the human-center legal doctrine of local taxes in Ukraine, that is the opposite of the etatist legal doctrine of local taxes. According to this doctrine local taxes are a means of ensuring the public welfare and interests of a certain community. These interests are providing by local government, that is an organization that consists of individuals who coordinate their actions in order to achieve common goals. It was investigated that local taxes have a higher level of poviding of citizens' interests compared to the state taxes. This statement is analyzed by the example of the property tax, consisting of a tax on immovable property, other than land plot, transport tax; land rent.

Keywords:

tax law; local taxes; legal-tax doctrine; etatist legal-tax doctrine; anthropsociocultural approach.

[1] Assistant Professor of Department of Public Law, Yuriy Fedkovych Chernivtsi National University. Chernivtsi, Ukraine, m.fedorchuk@chnu.edu.ua

Introduction

Local taxes are a necessary attribute of any territorial entity. According to Art. 143 of the Constitution of Ukraine the right to establish local taxes and fees belongs to local self-government.[1] However, they are established in accordance with the list and within the limits of the rates determined by the Tax Code of Ukraine.[2] A peculiarity of local taxes is that they are paid for satisfying the needs of the inhabitants of territorial communities. Local taxes can be considered as one of the primary forms of satisfying common needs of people of a certain territorial entity. In fact, public goods, services provided to the results of paying local taxes are the closest to the consumers of these goods, namely, people living within the territorial formation. So it is reasonable that this has found its place in the budget law. In particular, Art. 7 of the Budget Code of Ukraine establishes the principle of subsidiarity, which is based on the need to maximally approximate the provision of guaranteed services to their immediate consumer. Also, this principle is established in the European Charter of Local Self-Government, which states that "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen."[3] Consequently, local self-government bodies should have the resources for providing such needs. Local taxes and fees are one of the most advanced instrument for providing financial capability. Throughout the development of legal regulation of financial support of local self-government, various doctrines of legal regulation of local taxation have been developed. Therefore, the topic of local taxes is relevant, both in practice and in the legal doctrine. The doctrinal study of local taxes makes it possible to understand the essence of this phenomenon, its significance for a person.

Theoretical background

It should be noted that the problem of legal doctrine in the national legal science is studied only at the general theoretical level. In particular, the works of I.V. Semenikhin are devoted to the subject of legal doctrine. In his work "The Legal Doctrine: General Theoretical Analysis" he analyses the legal doctrine from the standpoint of modern methodological approaches as a specific legal phenomenon, an important component of the legal system, reveals its nature and essential features, determines the place of doctrine in the system of sources of law in Ukraine. S. S. Maksimov explores the legal doctrine from the standpoint of the philosophical and legal approach. He proves that the legal doctrine is a special way of understanding law and

existence of law having special ontological and epistemological foundations, methodological means and philosophical and legal substantiation. M. Ye. Mochulskaya, in her dissertation research and series of works, carried out a comprehensive theoretical analysis of the place and role of legal doctrine in the continental legal system, in particular, in Ukraine. Also she characterized the process of formation and development of legal doctrine as an independent legal phenomenon, researched the forms of expression and sphere of influence of legal doctrine on legal phenomena and processes occurring in the continental legal system. Ye.P. Yevgrafova in her works explores the legal doctrine in the context of the sources of law, as well as analyzes the concept of doctrine in legal science and practice, general and special features of the doctrine and the conception. M.V Karmalita in her dissertation research and other works conducted an analysis of legal doctrine as a source (form) of law, place of legal doctrine in the system of sources of law and the legal system of Ukraine. She also researched the origins of legal doctrine, the peculiarities of the evolution of legal doctrine in Roman-Germanic and Anglo-American legal systems.

In foreign research, the concepts and meanings of the legal doctrine are devoted to the work of Emerson H. Tiller, Frank B. Cross. Among Russian researchers A. A. Vasiliev made a significant contribution to the study of legal doctrine, who substantiated the legal doctrine as a source of law in different legal systems, the place of legal doctrine in the system of sources of law.

Instead, the phenomenon of tax-legal doctrine and the legal doctrine of local taxes in particular, did not become the subject of direct research. The purpose of our research is to study out the essence of the legal doctrine of local taxes.

Individual works are devoted to the tax-legal doctrine of such academics as R.O. Havrylyuk, P.S. Patsurkivsky. In particular, R. O. Havrylyuk in her monographs "Anthroposociocultural code of tax law. Book 1. The origins of tax law", "Anthroposociocultural code of tax law. Book 2. Constants of Tax Law", "Nature of Tax Law: Anthroposociocultural Approach" investigates the doctrine of tax law from the standpoint of anthroposociocultural approach. Also M. P. Kucheryavenko investigates the problem of tax-legal doctrine, especially methodological issues of the tax-legal doctrine.

The concept of legal doctrine

In order to explore the tax doctrine and, in particular, the legal doctrine of local taxes, it is first of all advisable to consider the category of legal doctrine.

The term "doctrine" is often used in science and law-making, but there is no single definition of this notion. The word "doctrine" means "theory, science, based on certain tasks." [4: 170-171] The doctrine (from the Latin doctrina "doctrine; learning", formed by the doctor "teacher") is considered as "political, scientific, philosophical, military, etc. learning, theory, system of views". [5: 314]

The doctrine is of particular importance to law, since it is an element of the legal system that is characteristic of all branches of law, including tax law and local taxes in particular.

Pointing to the role of doctrine, Rene David points out that "it is possible, of course, to call law only legal norms. However, the doctrine of our day, as well as in the past, is a very important and viable source of law. "This role is manifested in the fact that the doctrine affects the lawmaker, because lawmaker expresses those trends that have developed in the doctrine. [6: 106] M.V. Karmalita emphasizes the importance of the legal doctrine for lawmaking. She notes the preparation of proposals for the improvement of the current legislation by representatives of leading law schools. Through the legal doctrine, the ideas of the theory of legal scholars are embodied in the legal orders of legislative acts and become mandatory for all subjects of law.[7: 154-8]

I.V. Semenikhin notes that legal doctrine is a system of ideas and scientific views on law determined by the nature of political and legal culture of society, the actual directions of development of the legal system, which are recognized by legal community and are the conceptual basis of normative, law-enforcement, legal interpretation. Also, the author highlights the defining features of the legal doctrine, which are: the original nature of the legal doctrine of legal science; scientific positions acquire the features of doctrine, if they receive the general recognition of the legal community; on the basis of the analysis of the current legislation and practice of its implementation, the doctrine forms the appropriate system of knowledge, ideas, judgments about the law and the legal system as a whole; the ability of the legal doctrine to affect all key elements of the legal system; the orientation of the legal doctrine to the future realization of the relevant

scientific conclusions, formulated ideas, provisions in state legal practice.[8: 72]

Polish-Swedish theorist and philosopher of law A. Pechenik characterized legal doctrine as the activity of scientists and the product of this activity, that is, the content of books and research.[9] With this statement we can agree only partially, whereas this characteristic describes legal science more than legal doctrine.

According to M. L. Davydova, legal doctrine is one of the forms of representation of law at the level of legal consciousness. [10: 66-7; 115] This position is shared by other lawyers, such as V. O. Chetvernin, who believes that legal doctrine is a manifestation of legal consciousness. [11: 145-6]

S. I. Maksimov argues that legal doctrine is a certain type of legal investigation and its results. He argues it on the basis of the application of a special method, consisting in a systematic, analytical and appraisal explanation of the essential meeaning of law: private, public, criminal, etc. In addition, he compares the concept of "legal doctrine" and "legal science", "legal dogmatics". The author concludes that the term "legal science" is a broader concept and includes legal doctrine. S.I. Maksimov sees the difference between legal doctrine and legal dogma, noting that their relation can be defined as initial basic provisions of positive law, its establishment and action (dogma), and the doctrine of these same provisions, that is, the reflection of the dogma of law, legal method and methodology (doctrine). [12] Ye. P. Yevgrafova, comparing doctrine and science, concludes that the category of doctrine is almost identical with the concept of science. Although science is in fact a more profound and complex phenomenon, it is always in dynamics, first of all it carries out the functions of comprehensions of patterns of nature and society, including law and state. [13]

Classification of legal doctrines

In addition to defining the concept of legal doctrine, the classification of legal doctrines is also important. A.A. Vasiliev notes that depending on the degree of abstraction and the scope of dissemination, legal doctrines can be universal and partial. Universal doctrines reflect the idea of law, its values and its role in society. Partial, specific theories apply to certain branches of social life.[14: 36] This division was partially supported by S.I. Maksimov, who notes that universal doctrines acquire doctrinal character only when they are used to solve one or another legal issue, although these learning are formulate their positions in the abstract, most general form. In

turn, partial theories are actually divided into actually partial and general legal doctrine. The relationship between general and sectoral legal doctrines is manifested in following: branch doctrines use arguments developed in the general legal doctrine and vice versa, the general legal doctrine generalizes the results of branch. [12]

Ye.Yu. Polyanskyy structures the legal doctrine by constructing its hierarchical vertical, singling out the so-called doctrinal levels. He considers the highest level of general legal doctrine, which defines common principles and approaches that are common to the branches of the system of law. The second level is the branch doctrine that correspond certain branches of law (constitutional legal doctrine, criminal legal doctrine, tax legal doctrine, etc.). Ye.Yu. Polyanskyy refers the doctrine of the concept to the lowest level, that is the doctrine in the narrowest sense of understanding this concept. The scholar also points out that branch doctrines are the most approximate to the process of law enforcement and more favorable to external factors, such as scientific developments, legislative stories, requirements of practice. [15] The branch legal doctrine is also a tax-legal doctrine that includes legal doctrine of local taxes.

The concept of tax law doctrine

The category of tax-legal doctrine is also among the controversial in science. R. O. Havrylyuk considers tax-legal doctrine as the system of fundamental conceptual ideas, scientific knowledge about tax activity of the state, which are expressed in axioms, presumptions and legally established principles of tax law. [16: 157] M.P. Kucheryavenko notes that the tax-legal doctrine began to be formed directly in the early 90's of the twentieth century. This is due to the development of the tax legislation of Ukraine. [17]

P.S. Patsurkivskyy considers the tax-legal doctrine of Ukraine as a way of understanding and existence of the tax law, which has valuable and existential rooting in the tax culture of the people, its own methodological means of its knowledge and philosophical and legal substantiation, doctrine occupies a central place in the structure of tax and legal reality. [18: 200]

In the process of investigating the category of legal doctrine of local taxes, we can conditionally divide into the tax-legal doctrine, which prevails the etatist principle, and the tax-legal doctrine, in which the natural-legal principle prevails.

The etatist tax-legal doctrine links the tax law with the right of the substantive state. According to R. O. Havrylyuk, the etatist doctrine of tax law of the substantive state is a phenomenon of a particular historical and socio-cultural age. It is generated by the same concrete historical and sociocultural phenomenon as a substantive state. Substantial state considers people, like a mass, a crowd that needs a leader.[19]

According to the etatist tax-legal doctrine, local taxes are an attribute of local self-government bodies. It is believed that local taxes are the obligation of people of the respective territorial community and the need for their acquisition is conditioned by the need, first of all, to ensure the interests of the relevant local government body.

Reflecting on which tax-legal doctrine can come in Ukraine to replace the current etatist tax-legal doctrine, P.S. Patsurkivskyy notes that the vast majority of researchers in tax law in Ukraine, because of their ideological and methodological priorities, do not even think about such a question or consider it too pondered, artificial and act as apologists for the perfection, modernization of the etatist doctrine of tax law as the only possible. Therefore, in such a situation, the civilizational antagonism between the old tax-legal doctrine of Ukraine and qualitatively new goals of its social development becomes inevitable.[18]

R. O. Havrylyuk points out that the etatist doctrine is characterized by its sociocultural, instrumental and cognitive limitations as a phenomenon and its limited capacity. She notes that the etatist doctrine of tax law is a concrete historical phenomenon generated by the practice of developing post-socialist societies at the stage of formation of substantive states in them. At this stage, people have already developed their own stable ideas about the culture of taxation as a common cause for common goals, that is, truly social needs, in contrast to the statist doctrine that links taxes to ensure the interests of the state. The instrumental limitations of etatist one manifests itself in its inability to adequately meet the needs of a substantive state in public financial resources: this is its most important, if not the only, purpose. In fact, according to the etatist doctrine, the tax is generated by the state and is consumed by it as well. Speaking about the cognitive limitation of the etatist doctrine, R.O. Havrylyuk notes that the etatist doctrine is an integral phenomenon, which consists, firstly, of the positive tax law of the state, and secondly, of the dogmatic (formal-legal) principles of this right, that are transformed into its corresponding tax-legal structure, in other words, the dogma of law and, thirdly, the theoretical understanding of this right from the position of the positivist legal tradition and the realization of

the results of this understanding in the system of adequate categories and the understanding of the tax law of the state. [20: 346-395]

In her works R.O. Havrylyuk for the first time considered tax law from a position of anthroposociocultural approach, that is different, opposite to the etatist doctrine. R. O. Havrylyuk and P. S. Patsurkivskyy consider the anthroposociocultural traditions of legal thinking from the position of the paradigm of transcendental exchange of goods between people. This exchange is caused by the attributive conditions of the possibility of the human world, namely the existentially constructed attributive orientation of people for the continuous realization of their own autonomous essence and communicative solidarity. R. O. Havrylyuk and P. S. Patsurkivskyy denote that perpetum mobile of these eternal aspirations of people is their need for goods and the vital need for their satisfaction. [21: 118]

Since people living in a certain territory have common needs, adequate forms of satisfaction of these needs are required. According to the anthroposociocultural doctrine of understanding local taxes, such a form of ensuring public welfare and interests of residents of a particular community are local taxes. The subject of providing of these interests is local self-government, which is an organization that consists of individuals who coordinate their actions to achieve common goals. And in order to ensure these interests, local self-government bodies must have financial resources that should be proportionate in terms of authority, sufficient and flexible, and they must have their own revenues. [22: 120] Therefore, the Charter of Local Self-Government states that "part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate." However, the Charter of Local Self-Government is not defined what percentage of the local budget should be such revenues. In each country, the amount of revenues to the local budget in the form of local taxes and fees is different. In developed countries, local taxes and fees have a larger share in the local budget. Local taxes are in the total amount of local budget revenues in Austria - 72%, Japan - 55%, France - 48%, Spain- 31%.[23] There are differences in the amount of these local taxes and fees. For example, in the United Kingdom, there is only one local tax - from real estate, while in Belgium - over 100 taxes and fees. Slightly lower indexes in Germany - 45, France - 50, Italy - about 70. [24]

In Ukraine, the amount of local taxes and fees, as well as their share in local budgets, is constantly changing. In recent years there is a tendency to

increase the share of tax revenues to local budgets. This is also facilitated by the decentralization reform, which helps to improve the financial capacity of local budgets. In 2007-2010, their share was only 1.1% -1.4%, then from 2011 to 2014 it increased to 8.8%, and in 2016 it already amounted to - 27.1%. [25]

The number of local taxes and duties always is changing in Ukraine. The implementation of the system of local taxes and duties in Ukraine began in 1992, while the Decree of the Cabinet of Ministers of Ukraine "On Local Taxes and Duties" was adopted. At that time, there were sixteen types of local taxes.[26: 224] The current Tax Code of Ukraine defines the following list of local taxes: property tax (consisting of a tax on immovable property, other than land plot, transport tax; land rent); single tax; parking fee for vehicles; tourist fee.[27] The largest share in the structure of local taxes and fees is accounted for by income from property tax (in terms of land rent (55%) and single tax (more than 40%). Since income from property tax (in terms of land fees) occupies the largest proportion weight in the structure of local budgets, it can be assumed that this tax is more contributes to the interests of the inhabitants of a certain territorial community.

Conclusions

Thus, the legal doctrine of local taxes is a branch legal doctrine. The legal doctrine of local taxes is conditionally divided into a tax-legal doctrine in which the etatist principle prevails, and the tax-legal doctrine in which the natural-law principle prevails (anthropocentric tax-legal doctrine, natural tax-legal doctrine). According to the anthropocentric doctrine, local taxes and fees are a means of ensuring public welfare and interests of the inhabitants of a particular community. A peculiarity of local taxes is that they are paid for satisfying the needs of the inhabitants of territorial communities and local taxes are form of satisfying common needs of people of a certain territorial entity. Public goods, services provided to the results of paying local taxes are the closest to the consumers of these goods, namely, people living within the territorial formation. Local self-government provides interests of the inhabitants of a certain territorial community. Local self-government is an organization that consists of individuals who coordinate their actions to achieve common goals.

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