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CATEGORY OF EQUITY IN THE CONTEXT OF THE LUXURY TAX IMPLEMENTATION

Pavlo KRAINII¹

Abstract:

The luxury tax is one of the most discussed taxes to make possible the introduction of a policy of social equity, which is extremely relevant and in demand. It is worth noting that the category of "equity" is certainly a basic category, which plays a significant role in the formation of the concept within which such a tax policy is implemented. Despite its comprehensive significance, the concept of equity is an important social ideal that helps to realize the luxury tax. One way or another, throughout history and within various forms of state, government and political systems, there have been implemented luxury taxes. Although not every time, the concept of "equity" played a decisive role in such a process. However, in the XXI century, it is impossible to imagine the necessity of introducing a luxury tax was accompanied by any other concept than the ideal of "equity".

Keywords:

Tax; Luxury; Equity; Equivalence.

The luxury tax is one of the most discussed taxes to make possible the introduction of a policy of social equity, which is extremely relevant and in demand. It is worth noting that the category of "equity" is certainly a basic category, which plays a significant role in the formation of the concept within which such a tax policy is implemented. Despite its comprehensive significance, the concept of equity is an important social ideal that helps to realize the luxury tax. One way or another, throughout history and within various forms of state, government and political systems, there have been implemented luxury taxes. Although not every time, the concept of "equity" played a decisive role in such a process. However, in the XXI century, it is impossible to imagine the necessity of introducing a luxury tax was accompanied by any other concept than the ideal of "equity".

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The problems associated with the implementation of the concept of "equity" in the tax law, in particular in terms of the introduction of a particular tax type, were the subject of research by both domestic and foreign scholars. The research of domestic scholars are concentrated in the field of normative improvement of the current tax legislation, namely, property taxes [1]. Attention is also paid to the analysis of separate legal constructions of the tax on immovable property, different from land plots, and the possibility of improving law enforcement practice [2]. The transport tax is relatively new in domestic tax law, which despite its detailed structure did not take into account the principle of fair taxation, and as such is analyzed by a separate block [3].

In foreign scientific works, the given problem is considered in the field of economic substantiation [4].of taxation by introducing progressive rates, taxation at progressive rates [5], and introduction of tax privileges [6].

A significant drawback of the foregoing, and with a share of other scientific positions of domestic and foreign scholars, lies in the use of their predominantly world-view approach to legal positivism, and are in contradiction with the new human-centered paradigm, which is becoming increasingly relevant in Ukraine.

The study is based on the analysis of fundamental categories of law such as equity, social equity [7], wealth tax and luxury tax. The dialectical method of cognition, which stipulates that the problems of implementing the category "equity" in the taxation of luxury are traced to the process of their development, in the unity of social content and legal form, is one of the fundamentals. The method of system analysis is a logical complement to it, being crucial in distinguishing and examining various aspects of regulating the legal mechanism of the luxury tax as a coherent system, the features of the integrated links between the elements that make it up, and the principle of equity - which affects the values of such elements.

With the help of historical and original methods in combination with the method of systemic and structural analysis, the necessity and inevitability of replacing the state centered legal model of this tax by its human centered legal model will be substantiated.

The private-legal methods - such as formal legal and comparative legal methods - became the main methods of the study. Thus, the formal legal method was used for doctrinal interpretation of legal norms and terms of tax law. The comparative legal method is used in the study for a detailed study of the current tax legislation of Ukraine in comparison with foreign law.

The concept of "equity" in luxury taxation plays a key role, since it: 1) determines the redistribution (through the budget and services provided by the local government) of incomes from the most well-off sections of the

population owning objects of luxury, to the less well-off sections; 2) allows to regularly replenish the budgets of different levels with stable payments; 3) establishes the principle of social equality in society; 4) confirms the efficiency of using the progressive scale of taxation; 5) forms the basis for the implementation of policies against concealing income and tax evasion.

The correct and complete application of this concept allows, in practical measurement, to realize one of the areas of wealth redistribution that is based on the taxation of objects (movable and immovable property), that has specific features and is perceived by others as a sign of wealth, luxury through the luxury tax. The effectiveness of its further administration depends on the unequivocal understanding of justice by all parties of the legal relationship arising from the payment of this type of tax.

It is worth noting that the concept of "equity" is extremely difficult to define. The search for equity and the ways of ensuring it is the determining goal of an individual, regardless of his/her social background, property status, country of residence, etc. That is why it is difficult to disagree with the comments of some scholars that "equity is considered to be almost the only measure of the legitimacy of public coercion, the right to exist of any social institution - from the established forms of coexistence to the state. This causes the complexity and multidimensionality of the structure of justice as a phenomenon" [8].

Reflecting on the category of "equity", it is worth noting that the discussions over its content and meaning have been conducted for more than one century. Given the characteristics of a particular social system, the understanding of such a category had been changing significantly. Thus, the ancient Greek thinker Plato in his reasoning relates equity to the beautiful, the greatest good, which everyone should own [9]. Aristotle for the first time divided justice into two forms: equalizing justice, in which the basis is the principle of equality in the possession of goods and distributive justice, in which everyone receives a benefit depending on his or her merits. [9].

In the 20th century, the American sociologist John Rawls proposed one of the most progressive and topical concepts of understanding equity. Equity of distribution is that "all socially important benefits — freedom and opportunity, income and wealth, and other bases of self-esteem — should be distributed equally, unless the unequal distribution of one or all of these benefits becomes beneficial for the less well-off. [10]. The above concept actually serves today as one of the standards on the basis of which the Western countries are actively proclaiming and implementing tax policies, including through the introduction of a luxury tax. It is worth noting that the given concept despite its popularity also has critical remarks. In particular, it would not be correct to assert that distributive justice exists in its pure form

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and provides the expression of absolute equalization of different segments of the population depending on their material assets, objects of property, movable and immovable property, etc. The opposite opinion is of the representative of the Austrian school of political economy Murray Rothbard, who says that it is impossible to prove the fairness of the existence of taxation, «if the taxation itself is unfair, then no matter how the tax burden is distributed, there is no need to talk about any kind of equity» [11]. In his opinion, only the market will help to independently regulate relations on the redistribution of income, and hence wealth.

It is difficult to agree with such reasoning and accept it for true, because, based on the tenets proposed by Adam Smith, equity, as the principle of taxation, primarily provides for the possibility of paying taxes in accordance with the amount of income of the payer. At the same time, as the world practice shows, the introduction of the luxury tax is quite actively used especially during times of economic upheaval.

We agree with the opinion of Ruslana Havrylyuk, that it is reasonable to assert that "the very fact of the creation of society consists in the legitimization of inequality (the structure of the social space consists of men and women, young people and elderly, children and adults, working and unemployed, etc., in a word, of unequal). Hence, the key problem of legal equity is to achieve the most optimal combination of equality and inequality for each concrete historical case, finding the optimum for them. The incredible complexity of solving this task precisely is the main source of constant dissatisfaction in society, by "injustice", and the wide variety of shocks and cataclysms caused by it [12].

Property taxes were among the first mandatory payments in favor of the state. It should be noted that historically, not only land but movable and immovable property constituted private property. It also included slaves, gold, domestic farm animals and the like. Thus, even in the ancient Babylonian state in the XIII century BC collection of property taxes was legally secured. They were called taxes and reflected obligatory payments from property and were paid in kind or in cash (gold). These taxes were levied to the royal treasury and to the treasury of the local nobility. Typically, the amount of tax was 10% of all the property - the total volume of ownership. The tax was paid by free landowners and artisans. Consequently, citizens and individuals were the subject of taxation, and the objects of property in the aggregate volume - the object.

Thus, the general property tax was introduced for the purpose of taxation of land in Athens at the times of the ruler of Solon about 596 BC. (As the wealth in Greece grew during this period, the land tax was extended and related to other forms of property - wealth. In 378 BC in Athens, not

only the buildings and the land were taxed, but slaves, cattle, furniture, money as well [14].

A similar system of property taxation was also developed in the Roman Empire, under the rule of Emperor Tiberius, and property taxation was one of the most important forms of taxation of European countries until the late Middle Ages. In order to tax, the tax assessment base included land, land ownership and monetary property.

That is, as a source of collection of property taxes, private property was the most important object of taxation. From the economic point of view, private property stimulates the development of the market and market relations; from the social point of view – it contributes to the process of social progress through increased personal wealth; from the fiscal position – it provides for the creation of tax objects and increase the volume of tax revenues to the state budget. The very fact of possession of a certain property from ancient times was considered a sign of wealth. From time immemorial the presence of a certain real estate in personal possession and disposal served as a significant sign of abundance, luxury and wealth of individuals. For such people, the use of a more powerful tax burden has always been initiated. In every society there has always been a category of wealthy people with a significant amount of income, and able to pay a luxury tax.

Proceeding from the history of the genesis and development of taxation, one can see that the primary form of recovery was not the separate property taxation, but the collection of a single integral tax on the total amount of private property. The complex form of personal tax has been kept for a long time, constantly updating and modifying. In the process of tax evolution, separate property taxes were allocated more and more at the level of separate property objects, which are quite widely used today. However, today there exists a modified primary form of taxation of private property in aggregate - a luxury tax. This means that the concept of the introduction of a single integrated tax has found its practical implementation from the very beginning of the tax case and is successfully implemented in modern conditions.

In world practice, the taxation of "luxury goods" can be secured both when taxing the consumption of such things (indirect taxes: excise taxes, sales tax, VAT), and with the taxation of ownership of such objects (property taxes: vehicle tax, tax on property, land tax, real estate tax, different from the land plot).

Payers of the luxury tax are those individuals who have a fairly significant financial and property wealth, i.e wealthy citizens. In every society there is always a category of very wealthy citizens - an elite of civilization,

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capable of paying a luxury tax. The presence of real estate in personal possession has always been a sign of the welfare of the person. It were these individuals who have been subjected to higher tax liabilities. Today, the category of such people is quite high in countries with a developed market economy: the luxury tax is paid by hundreds of thousands of citizens, and the budget proceeds from their collection are in the billions. At the same time, the number of taxpayers on luxury items increases annually.

In particular, in India, Spain, France and Sweden, the luxury tax object are: buildings, structures, vehicles, securities and shares; in Pakistan - bank and pension contributions, insurance policies; in Spain, these may be copyright patents, and finally, in Uruguay - jewelry, works of art, antiques can be the luxury tax objects. *In China, luxury taxes are applicable to any goods that can be categorized as luxuries. These are expensive watches, perfumes, clothing, wine, electronics. The official single tax rate is 15%.* And in Thailand the luxury tax is charged to Internet users and is about \$ 30 a month [15].

In Ukraine, the luxury tax is levied in the context of property taxation, but it serves as a separate fiscal element in the group of property taxes. By the end of 2010, the system of property taxation in Ukraine was presented by taxes on certain types of property - payment for land, tax on owners of vehicles. Property taxes can include the taxation of inherited property and gifts associated with the transfer of ownership of this property, which were collected (and still levied) as part of the personal income tax. To the system of property taxation, the Tax Code of Ukraine, adopted in December 2010, related a local tax on immovable property, different from the land plot, the state fee for land and the fee for the first registration of a vehicle and the indirect taxation of property in the transition of ownership of property in inheritance and gift relationships. However, since 2015, this system has undergone a reform - the state has introduced a local tax on property, which, along with the payment for land and transport tax, also includes a tax on immovable property, different from the land plot [17].

In its financial and legal nature, the property tax is a direct tax. As you know, direct taxes are not charged when selling goods and services, their burden can not be transferred to the consumer. Exceptions include land taxes and real estate - when commercially using real estate, these taxes in some countries may be included in rentals and housing fees, agricultural products prices, etc. Direct taxes are commensurate with the solvency of citizens, and therefore their collection affects the incomes of the middle and low income groups of the population. That is, the object of taxation, together with other elements of the legal composition of the tax, determines the amount of the tax payment.

As a result, one can deduce the rule and determine that the higher the quantitative characteristics of the property, the greater will be the amount of tax liability. This helps to take into account the actual possibilities of the taxpayer, which in turn is a form of manifestation of such a fundamental principle of tax law as social justice, established in clause 4.1.6 of Art. 4 of the Tax Code of Ukraine [17].

The direct income, which is also a source of personal income tax, is the source of property tax. That is, according to Igor Babin and Lyudmila Vakaryuk, "the tax on immovable property different from the land, in terms of determining the object of taxation is a type of property tax, and from the point of view of tax financing is the extension of the personal income tax, since it is paid on the basis of income received by the taxpayer (like any other taxation of property)" [16].

Also, setting tax breaks at the legislative level is a special tool that allows you to realize the principle of equity in the taxation of luxury. Quite obviously, the latter are manifested in relation to the tax on immovable property, different from the land plot.

Tax exemptions for real estate in Ukraine are divided into three groups: exemption from taxation, tax base reduction and reduced rate.

Tax exemption is a tax benefit aimed at eliminating the taxation of individual real estate objects, i.e. reducing the tax base for individual taxpayers. In particular, in accordance with Clause 266.2.2 of the Tax Code of Ukraine, the reduction of the tax base provides for reduction of the tax base of the object / objects of residential real estate for an apartment / apartments, regardless of their number and provided for in paragraph 266.4.1. Tax Code of Ukraine. The preferential tax rate for property, provided in clause 266.4.2. of The Tax Code, stipulates that tax concessions, which are paid in the relevant territory from residential real estate, are not granted to individuals for the following: object / objects of taxation, if the area of such object / objects exceeds five times the size of the non-taxable area, approved by the decision of local self-government bodies; objects of taxation used by their owners for the purpose of receiving income (given for rent, leased, loaned, used in entrepreneurial activities) [17].

Having considered the mechanism for real estate tax treatment different from the land plot, it can be noted that it has considerable potential for more effective application of the principle of equity, and the application of the market value of the property to determine the amount of the tax payment on immovable property, different from the land plot, will best match the capabilities of each taxpayer in the fulfillment of his / her tax burden.

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The above shows that the legal and social problems lie at the basis of the practical implementation of the principle of equity in luxury taxation. The first category should include the imperfection of the current tax legislation, which leads to problems in the implementation of the luxury tax. Not least, this is due to the incomplete definition of justice, but through this value of the latter in the taxation of luxury. The second category of problems includes the lack of a finalized idea of active participation in solving social problems of that category of citizens who own wealth, which, in contrast to Western countries, is only in the formative stage.

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