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FEATURES OF LEGAL REGULATION OF THE SIMPLIFIED TAXATION SYSTEM IN UKRAINE, ROMANIA AND MOLDOVA

Igor BABIN¹, Lyudmila VAKARYUK²

Abstract

Small business is one of the main factors of the political and social stability of society and the national economy in modern European states. At the same time, small business is susceptible to a number of factors and requires state support. The most effective instruments of state support are financial methods, primarily fiscal methods of influence, which are implemented directly through the taxation system. In Ukraine, Romania and Moldova special attention is paid to the issue of tax incentives for small businesses. Each country has its own tax incentive system, which makes it possible to apply one or another type of tax instruments, as well as various options for combining them. The analysis allows to single out the following main tendencies in the relationship between this states and small business entities: 1) establishment of preferences for small and medium-sized businesses within the general taxation system; 2) wide use of special tax regimes in combination with the granting of tax privileges to small businesses. At the present stage of development of domestic tax legal relations between the state and small business entities, the most optimal is the preservation of special tax regimes and tax incentives for small businesses, while improving the content of such regimes in order to prevent tax evasion and avoidance of the tax law, as well as forms and methods of control activities of fiscal bodies.

Keywords:

Tax law; tax system; preferential taxation; special tax regimes; simplified taxation system.

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1. Introduction

Small business is one of the main factors of the political and social stability of society and the national economy in modern European states. At the same time, small business is susceptible to a number of factors (inflation, high cost of credit resources, instability and complexity of tax legislation, burdensome public administration and licensing system) and requires state support. In the world practice of state support of small business a wide range of tools is used, among them: targeted budget financing, assistance in the formation of start-up budget, preferential loans, preferences in taxation, leasing, franchising, protectionism in investment and export policy, priority subsidization, and the like. The most effective instruments of state support are financial methods, primarily fiscal methods of influence, which are implemented directly through the taxation system.

2. Theoretical Background

The study of the specifics of the use of tax instruments to stimulate small business has been devoted to a significant number of works by both domestic and foreign scientists. Traditionally, more attention is paid to the analysis of tax practices of developed European states. At the same time, the experience of tax incentives for small business in the post-socialist states remains poorly researched. Special research attention is required by the tax practice of stimulating small business by neighboring countries, which are closer to Ukraine, both historically and territorially, and in terms of socio-economic development and mentally. Such an approach will help to show the specifics of small business taxation and obtain the necessary material for improving the domestic tax system. The theoretical basis of the study is the works of I.I. Babin, A.V. Muzychenko, MA Pozhidaeva and other scientists. The purpose of the article is to disclose current trends in the application of tax incentives for small businesses in the national tax systems of post-socialist countries to improve the simplified taxation system in Ukraine.

3. Argument of the paper

World experience testifies to wide use of various tools of tax regulation, and also variants of their combination with the purpose of

creation of favorable conditions for development of small business and individual business. At the same time, in countries with advanced economies, the use of a complex of tax concessions is more common, combined with simplification of the procedure for registration, record keeping and tax reporting. Small businesses are on a common taxation system and pay all taxes determined by tax legislation. At the same time, they have the right to use incentive and supportive tax incentives established for them. Stimulating incentives encourage taxpayers to act to solve national problems. In turn, supportive benefits reduce the tax burden for small businesses, provides tax benefits that are more favorable than for other taxpayers [1, p. 58]. In countries with economies in transition, preference is given to special tax regimes that improve the functioning of small businesses, providing an opportunity to obtain significant savings by reducing the tax burden and reducing management costs.

4. Arguments to support the thesis

In most post-socialist countries, tax preferences for small businesses are realized through the provision of tax incentives and the introduction of special tax regimes into tax systems. Tax incentives as a tool of tax credit are characterized by high efficiency and extreme flexibility. The introduction of benefits allows the state to reduce tax burden quite quickly in certain categories of payers or certain types of activities rather than changing the current charging mechanism. Tax benefits can be provided both in the form of exemption from payment of tax on a permanent or temporary basis, or by reducing the base tax rates or by removing individual objects from taxation. The basis for granting such benefits to small businesses is the amount of income, type of activity, creation of new jobs, attraction of foreign investments, and so on. In turn, special tax regimes are complex instruments of tax regulation that are introduced by the subsystem into the tax system, act as an alternative to the general tax regime, are implemented by a set of financial and regulatory measures for certain categories of taxpayers, establishing a special procedure for calculating and paying taxes.

5. Arguments to argue the thesis

The introduction of special tax regimes to stimulate small business and self-employment is provided for by the tax laws of Moldova, Romania and Ukraine. The analysis of special tax regimes provided for by the tax legislation of these countries, in the context of such an element of the legal design of the tax as a "subject of tax", shows the application of both the taxation regimes for the actual income received and the taxation regimes for the potential income (taxation on external signs).

The regime of taxation of actually received income provides for determining tax liabilities of taxpayers on the basis of taxation of the actual results of their activities, such as income or gross revenues. This kind of special tax regime can include tax on microenterprises in Moldova and Romania.

In the Republic of Moldova since 2012, there is a taxation of economic entities - subjects of the sector of small and medium-sized enterprises. The subjects of such a taxation regime may be economic entities that are not registered as VAT payers, with the exception of peasant (farmer) enterprises and self-employed individuals who, as of December 31 of the tax period preceding the declared tax period, received income from operating activities of up to 1,2 million lei or did not receive any income at all. The choice of such a special tax regime is carried out by specifying it in the accounting policy of the business entity before April 25, and for new payers, by the 25th day of the month following the registration quarter. The tax period for such entities is a calendar year, at the end of which the income from operating activities is determined. The object of taxation is income from operating activities received during the declared tax period. The rate of the approach tax is 4% of the object of taxation. Calculation of the tax is made annually, and payment is quarterly up to the 25th day of the month following the corresponding quarter [2].

From January 1, 2017, the special tax on microenterprises, which operates in Romania, has undergone significant changes. Any legal person with an authorized capital of at least 45,000 Romanian lei (or earlier it would have been necessary to have a share capital of 25,000 euro or more) can

become its payer. The income threshold at which a legal entity can apply a tax on microenterprises is 500 thousand euro per year (previously this amount was 100 thousand euro). The object of taxation is the income received by such an enterprise. Since January 6, 2017, there are two rates of this tax: 1% for microenterprises that have at least one employee; 3% for microenterprises that do not have employees. They can't use the right to pay a special tax on microenterprises legal entities that: 1) carry out banking activities; 2) carry out insurance activities and activities on the securities market, with the exception of legal entities engaged in mediation in these areas; 3) carry out activities in the field of gambling; 4) carry out activities for the exploration, development and operation of oil and natural gas fields [3].

Regimes for the taxation of possible revenues (or taxation on external grounds) are introduced for groups of taxpayers whose activities make practically impossible to determine the actual results. Such problems usually arise when taxing self-employed individuals. The large number of such taxpayers complicates the sufficient control of their activities. The incomes of such individuals, as a rule, are small. At the same time, they sell their products or provide services almost always for cash, so they have the opportunity to hide actual incomes. To determine the amount of tax liabilities of such persons, tax authorities are forced to use indirect methods of determining the tax liability. That is, to evaluate the potential income depending on the external characteristics of the activity (type of activity, location, number of employees) [4: 255-257]. The experience of using such a kind of taxation have Ukraine and Moldova.

It is well-known that the wide application of tax benefits narrows the base of income taxation and reduces revenues to the budget. The introduction of minimum taxes in such cases contributes to the solution of the problem, because it forces enterprises to pay either a normal or a minimum tax, and in some cases to refuse excessive use of benefits. The latter is explained by the fact that in case of widespread use of tax preferences, the amount of the usual corporate income tax may be less than the minimum tax amount. At the same time, it is the rule that if the amount of the ordinary tax is exceeded, the taxpayer does not have return the excess of paid funds [5: 225].

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The peculiarity of the tax legislation of Ukraine with regard to tax incentives for small business is not only the simplification of administration and the reduction of income tax rates, but the introduction of an alternative system of taxation by the possible replacement of payment of all or the majority of taxes and fees paid by small businesses by a single tax. Such a simplified taxation system, which provides for the possibility of paying a single tax, was later borrowed by many CIS member states (Azerbaijan, Belarus, Kyrgyzstan, Russia and Moldova).

Founded by the Decree of the President of Ukraine "On the simplified system of taxation, accounting and reporting of small businesses", the simplified taxation system at the first stages of its existence ensured the dynamic development of small business, stable revenues to the budget and at the top of its development (2009) covered more than 1.3 million single-tax payers. But after the tax reforms of 2014-2016 the simplified taxation system became less attractive for business entities and the number of single tax payers began to steadily decrease [6: 31].

The principles of the single taxation are: a) the simplicity of calculating and paying taxes; b) minimization of tax reporting; c) harmonization of accounting and tax accounting; d) minimizing the number of penalties; e) reduction of administrative expenses [7:478]. The essence of a single tax is disclosed through its signs: 1) consistency; 2) alternativeness; 3) voluntariness of election of its payment; 4) scope of application.

The consistent nature of the single tax is manifested through the association in it of a certain set of mandatory payments, the collection of which is provided by the current tax legislation. Thus, Article 297 of the Tax Code of Ukraine provides for the exemption of single tax payers from the obligation to charge, pay and submit tax reports on such taxes and fees: 1) corporate profit tax; 2) tax on personal income; 3) value-added tax (except for payers of Group III, who chose a 3% tax rate and payers of Group IV); 4) land tax; 5) rent for special use of water by payers of group IV. Previously, the list of tax payments, the payment of which was replaced by a single tax, was much broader and also included a single contribution to

compulsory state social insurance, which made the system of simplified taxation for small businesses significantly more attractive.

The alternativeness of a single tax provides that it is an alternative to a certain set of existing mandatory payments, from which the payer of the single tax is exempted, and the taxpayer can choose the mechanism for taxing his income from business activity either by paying one (single) tax, or in accordance with general practice [8: 28]. In addition, the payers of the single tax of the III group have the right to choose the tax rate.

Voluntariness of choosing of single tax payment is that the legislator grants to subjects of small business in the presence of corresponding bases independently to choose it with the purpose of simplification of the taxation of their incomes from business activity. On the basis of this right there arises the obligation to pay a single tax. This tax becomes mandatory only after the fact of voluntary taking by a small business entity the responsibility to pay it.

The scope of application of the single tax is determined by a limited range of small business entities. One of the fundamentally new norms for determining restrictions for the application of a simplified system was the inability to apply it to non-residents. But such a prohibition contradicts the basic principles of tax legislation, enshrined in Article 4 of the Tax Code of Ukraine, in particular the principle of the equality of all payers before the law, the prevention of any manifestations of tax discrimination. The prohibition of the choice by non-residents of the simplified taxation system, which is contained in Art. 291 of the Tax Code of Ukraine, may be regarded as discrimination of legal entities and individuals-non-residents by nationality or citizenship of an individual. The impossibility of choosing a simplified system of taxation for non-residents discourages the flow of foreign investment into the economy and the entry of foreign companies to domestic markets, constrained by the complexity of applying the general taxation system [9: 18].

The subjects of small business for the availability of their choice of a simplified taxation system must meet three types of requirements. The combination of these three requirements (type of activity, the amount of income and the number of employees) allows to determine the right of the

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payer to pay a single tax with the use of a particular group [10: 26]. In addition, an important condition for the transition to a single tax is the absence of tax debt for the previous reporting (tax) period.

To select or transit to a simplified taxation system, the business entity submits an application to the fiscal service body. In case of compliance with the established requirements, legal entities and self-employed individuals are registered as single tax payers. To date, single tax payers are divided into 4 groups:

1) self-employed individuals who do not use the labor of hired persons, who exclusively sell retail goods from trading places in the markets and / or carry out economic activities for the provision of personal services to the population and whose income during the calendar year does not exceed 300 thousand UAH;

2) self-employed individuals engaged in economic activity in the provision of services, including households, to single tax payers and / or population, production and / or sale of goods, activities in the restaurant industry, provided that within a calendar year they correspond to the following criteria: 1) do not use the labor of hired persons or the number of persons in labor relations at the same time does not exceed 10 people; 2) the amount of income does not exceed 1500000 UAH;

3) self-employed individuals who do not use the labor of hired persons or the number of persons in labor relations are unlimited, and legal entities of any organizational and legal form, in which, within a calendar year, the volume of income does not exceed 5 million UAH;

4) agriculture goods producers, having the share of agricultural production for the previous tax year equal to or exceeding 75%. The legislator has retained for this group all the positive features of taxation to fixed agricultural tax of agricultural producers: the procedure for paying taxes takes into account the seasonality of agricultural production; the right of payers in the implementation of any types of business activity permitted by law is not restricted; activities are not limited; a special form of tax accounting, which minimizes the need for its management is provided.

The single tax rates for payers of Groups I and II are established by local governments within up to 10% of the minimum wage for Group I and up to 20% of the minimum wage for Group II. Therefore, local governments within their powers have a flexible tax tool that they can use to develop small businesses on their territory. For the third group of tax payers, the rate is 3% of the income - in the case of the payment of value added tax and 5% of income - if the value added tax is included in the single tax. The size of the tax for payers of Group IV is set as a percentage of the normative monetary assessment of agricultural land and depends on the category of land and type of activity (from 0.16% to 5.4%).

The tax period for the payers of the single tax of Groups I, II and IV is the calendar year, and for the third group - the calendar quarter. Payers of Groups I and II pay a single tax by making an advance payment no later than the 20th day of the current month, and Group III within 10 calendar days after the deadline for filing a tax return for the tax quarter. Payment of the tax by the payers of the IV group is carried out quarterly within 30 calendar days following the last calendar day of the tax quarter in the following amounts: in the I quarter - 10%; in the II quarter - 10%; in the III quarter - 50%; in the IV quarter - 30%.

Since 2016, the single tax has also been introduced in the Republic of Moldova. Single tax payers are any legal entities and individuals registered in the Republic of Moldova as business entities and meet all the conditions specified by the legislation on information technology parks. The object of taxation with a single tax is the income from sales, monthly reflected in the accounting records. The minimum amount of the single tax is calculated based on the number of employees and the size of the average monthly wage in the economy, projected for the year to which the corresponding tax period applies. The single tax rate is 7 percent of the object of taxation, but not less than the minimum amount. The minimum amount of the single tax is determined monthly for each employee and is 30 percent of the size of the average monthly wage in the economy, projected for the year to which the tax period applies. The tax period for the single tax is a calendar month. The single tax includes the following taxes, fees and charges: a) a tax on business income; b) income tax on wages; c) compulsory state social insurance

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contributions paid by employees and employers; d) compulsory health insurance contributions paid by employees and employers; e) local fees; f) real estate tax; g) the fee for the use of roads by vehicles registered in the Republic of Moldova. The following taxes, fees and charges are not included in the single tax: a) value added tax; b) excise taxes; c) other taxes, fees and obligatory payments not expressly indicated as part of the single tax [2].

6. Conclusions

Summarizing the above, it should be noted that in Ukraine, Romania and Moldova special attention is paid to the issue of tax incentives for small businesses. Each country has its own tax incentive system, which makes it possible to apply one or another type of tax instruments, as well as various options for combining them. The analysis allows to single out the following main tendencies in the relationship between this states and small business entities: 1) establishment of preferences for small and medium-sized businesses within the general taxation system; 2) wide use of special tax regimes in combination with the granting of tax privileges to small businesses. At the present stage of development of domestic tax legal relations between the state and small business entities, the most optimal is the preservation of special tax regimes and tax incentives for small businesses, while improving the content of such regimes in order to prevent tax evasion and avoidance of the tax law, as well as forms and methods of control activities of fiscal bodies.

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