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LAND FEE AS A PROPERTY TAX COMPONENT

The inclusion of Ukraine in European and global integration processes necessitates the reform of both the national taxation system and system of public revenues in general. This requires improving their legal regulation and reaching a level that would meet the current trends of legal development as well as international standards in this area.

Under present-day market conditions, when the composition of incomes, their place and role in the formation of state and local budgets significantly changes, the system of existing state incomes includes a variety of payments. In most countries with a developed market economy and stable tax system, it is customary to rely on property taxation to ensure the interests of society at local levels. Therefore, the question of how to increase budgetary tax revenues, especially property tax revenues, will always be relevant.

Speaking about legal regulation of land taxation, let us consider the Tax Code of Ukraine [1] in the first place, according to which the land fee is a component of the property tax (Article 265). In its turn, it is a mandatory payment levied in the form of land tax or fees for the land plots being in state or

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municipal property (Article 14.1.147). As a specific tax levy, the land tax is used to distribute a part of the net income received by producers regardless of their costs and efforts but mainly due to natural factors (or earlier investments). Being one of the main tools of the public administration mechanism with regard to the land use and protection, it is an indispensable component of the modern taxation system and stable source of budget revenues.

According to Article 14.1.72 of the Tax Code of Ukraine, the land tax is a mandatory payment levied on owners of land plots and land shares (units) as well as permanent land users. It should be said that such a definition does not actually reflect the legal nature of this tax payment, since it is of a general nature.

It should be said that such a definition does not actually reflect the legal nature of this tax payment since it is of a general nature. According to financial law, there are different points of view with respect to the land tax expressed at different times. However, all they had the following things in common: they took into account its role, significance and place occupied by it at one time or another in the structure of budget revenues. In addition, approaches to characterizing the land tax depended on corresponding social, economic, political and other conditions in the state.

It is generally known that obligations related to the payment of the land tax are unilateral based on their nature. That is, tax liabilities apply to one subject only, the taxpayer, in the field of fiscal legal relations. The state being a party to such legal relations does not incur any counter obligations. Taking into account the stated provisions, non-repayable nature of the tax is considered as one of the determinant attributes [2, p. 99; 3, p.p. 28-31].

Taking into account the non-reimbursable nature of the tax, a conclusion can be reached that the taxpayer cannot expect any specific benefits from the state. However, this conclusion is fallacious. In this case, it is the question of

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meeting the public needs including those of the payer of the land tax. Any particular taxpayer contributing to the budget revenues does not get and cannot expect any compensation for the fiscal charges paid. Based on the aforesaid, we should agree with P.S. Patsurkivsky's opinion that as a result of collecting a respective fee from the payer (either individual or legal entity), the payer as a member of the society benefits from this either directly or indirectly [4, p. 126].

The land tax does not have a designated purpose and fails to provide for a certain equivalent exchange. In addition to the aforesaid features of the land tax stipulated by objective characteristics of its legal nature, there are other legal distinctions as well. In the course of the land tax payment, the title to the fiscal amounts is transferred from the taxpayer to the state. Individuals or legal entities possessing, for example, a land plot being private property fulfills the tax obligation by alienating a part of the property owned in the form of monetary assets being transferred to the respective budget. Fiscal amounts are payable to respective local budgets. The land tax as a financial and legal tool does not provide for the taxpayer's freedom of choice. A failure to pay the land tax within the stipulated term results in negative outcomes for the taxpayer, in particular, financial sanctions. At the same time, sanctions cannot be interpreted as limitation of rights granted to the payer of the land tax. It follows from the constitutional, public and legal obligation of the taxpayer to pay the tax amount.

According to Ukrainian tax legislation, permanent land users using land plots without being their owners shall pay the land tax as well (Article 269 of the Tax Code of Ukraine). So, according to the law, public and municipal enterprises, entities and organizations belong to land tax payers. Obviously, this approach on the legislator's part to the latest subjects paying the land tax is insufficiently justified. Considering the fact both private landowners and land users act as land tax payers, it should be concluded that the law actually does not make a difference between such subjects. Meanwhile, they are characterized by

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different legal statuses and specific features. The fact that both private land owners and land users are obliged to pay mandatory budgetary payments for a particular land plot does not constitute a sufficient basis for making such subjects indistinguishable from the financial and legal points of view. Private land owners use them based on the property right while permanent land users (in particular, public and municipal enterprises, entities and organizations) use them based on the permanent usage right. Due to this, it would be appropriate to distinguish between budget revenues in the form of land tax payable by private land owners and special use fee payable by permanent land users. As mentioned above, the use of land plots by persons who are not their owners and who have the status of permanent land users refers to special land use by its nature. Such land use is in fact a kind of a special use of natural resources. The legal effect of using the land being in communal property by the subjects based on the right of permanent use is their obligation to pay appropriate monetary amounts in the form of a fee for special use of the lands payable to local budgets. Permanent land users shall pay the fee, and their list is set out in Article 92 of the Land Code of Ukraine [5]. In fact, enterprises, organizations and institutions created on the basis of state or municipal property provided with land plots for permanent use have the status of special land users share common features with subjects enjoying special use of other natural resources (land use as well as other natural resources use is based on a paid basis, the right is based in the permitting system, etc.). This approach to allocating land tax payments and special land use fee as budget revenues fully meets the requirements of the state tax policy and interests of local budgets.

Current legislation in its list of payers does not take into account foreign states that can acquire non-agricultural land in Ukraine. In this connection, a question arises whether it is possible to consider a foreign state as a land tax payer. In addition, under present-day conditions individual entrepreneurs can

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acquire land plots for entrepreneurial activities. As a result, they shall be recognized as independent land tax payers as well.

Under market conditions, the problem of fair, transparent and affordable taxation of land as real estate based on the land market value acquires special importance. According to literature sources, land being real estate is unmovable property featuring such unique features as visibility (its presence, obvious level of income and welfare), permanent location, long-term existence, compulsory state registration, etc.

Speaking about the land tax object, it should be noted that the Tax Code of Ukraine mentions land shares (units) being someone's property as such (Article 270.1.2). In its turn, the Land Code of Ukraine (Article 2) provides for lands within the territory of Ukraine, land plots and rights to them including land shares (units). However, Article 206 of the Code fails to consider land shares (units) as objects of the land fee. Based on the analysis of the above standards, it is more justified to assign the right to a land share (unit) as an object of land taxation.

Based on the aforesaid, we can claim that land taxation in Ukraine has not evolved to become a system providing for an efficient process for calculating estimated receipts from the aforesaid payments, establishing tax rates, land management, etc. Unstable material and financial base of local self-government is the major negative result of this situation.

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

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Шульга Т. М.

Плата за землю як складова податку на майно

У статті піднімається ряд питань, які виникають при розгляді плати за землю як складової податку на майно в Україні. Так, при дослідженні суб'єктного складу платників земельного податку, робиться висновок, що податкове законодавство визнає такими також постійних землекористувачів, які використовують земельні ділянки, не будучи їх власниками. Таким чином, до складу платників земельного податку закон включає також державні і комунальні підприємства, установи та організації. Приватні власники земельних ділянок використовують їх на праві власності, а постійні землекористувачі (зокрема, державні і комунальні підприємства, установи та організації) - на праві постійного користування. У зв'язку з цим в статті пропонується розрізнити бюджетні доходи у вигляді земельного податку з приватних власників земельних

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ділянок та збору за спеціальне використання землі постійними землекористувачами. Чинне законодавство, визначаючи коло платників, не враховує іноземні держави, які можуть набувати у власність на території України земельні ділянки несільськогосподарського призначення. У зв'язку з цим виникає питання про можливість визнання платником земельного податку іноземної держави. Порушуючи проблему встановлення об'єкта земельного податку, зазначається, що більш обґрунтованим буде закріплення в якості об'єкта земельного оподаткування саме права на земельну частку (пай).

Ключові слова: бюджет, податок, плата за землю, земельний податок, платники податку, землекористувачі.

Шульга Т. М.

Плата за землю как составляющая налога на имущество

В статье поднимается ряд вопросов, которые возникают при рассмотрении платы за землю как составляющей налога на имущество в Украине. Так, при исследовании субъектного состава плательщиков земельного налога, делается вывод, что налоговое законодательство признает таковыми также постоянных землепользователей, использующих земельные участки, не будучи их владельцами. Таким образом, в состав плательщиков земельного налога закон включает также государственные и коммунальные предприятия, учреждения и организации. Частные владельцы земельных участков используют их на праве собственности, а постоянные землепользователи (в частности, государственные и коммунальные предприятия, учреждения и организации) – на праве постоянного пользования. В связи с этим в статье предлагается различать бюджетные доходы в виде земельного налога с частных владельцев земельных участков и сбора за специальное использование земли

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постоянными землепользователями. Действующее законодательство, определяя круг плательщиков, не учитывает иностранные государства, которые могут приобретать в собственность на территории Украины земельные участки несельскохозяйственного назначения. В связи с этим возникает вопрос о возможности признания плательщиком земельного налога иностранного государства. Затрагивая проблему установления объекта земельного налога, отмечается, что более обоснованным будет закрепление в качестве объекта земельного налогообложения именно права на земельную долю (пай).

Ключевые слова: бюджет, налог, плата за землю, земельный налог, плательщики налога, землепользователи.

Shulga T. M.

Land fee as a property tax component

The article addresses a number of issues related to the land fee as a component of property tax in Ukraine. Thus, when examining the subject matter of land tax payers, it is concluded that the tax legislation also recognizes permanent land users using land plots without being their owners. So, according to the law, state and municipal enterprises, institutions and organizations belong to land tax payers. Private land owners use them based on the right of ownership while permanent land users (in particular, state and municipal enterprises, institutions and organizations) use them based on the right of permanent use. In this regard, the author proposes to distinguish between budget revenues in the form of land tax payable by private land owners and fee related to special use of the land payable by permanent land users. The current legislation determining the circle of payers does not take into account foreign states that can acquire land in non-agricultural land ownership in Ukraine. In this connection, a question arises whether it is possible to consider foreign states as land tax

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payers. Concerning the problem of the land tax object, the article emphasizes that it is the land share title that shall be considered as the object of land taxation.

Key words: budget, tax, land fee, land tax, taxpayers, land users.

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