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THE TAX ON IMMOVABLE PROPERTY, DIFFERENT FROM THE LAND PLOT: THEORY AND PRACTICE OF APPLICATION

Igor BABIN¹, Lyudmila VAKARYUK²

Abstract

The tax on immovable property is one of the oldest types of taxes known to the financial and legal science. In fact, a land tax and a tax on immovable property, different from the land plot, are those local taxes that are subject to taxation in each territorial community. In addition, this tax: 1) relatively simple and transparent in administration; 2) is fixed and does not depend on the results of the economic activity of the payer; 3) encourages the redistribution of property from a less efficient to a more efficient owner; 4) facilitates a better assessment of own assets by payers-legal entities; 5) allows to bring in to taxation the income received as a result of shadow activity; 6) provides relatively stable and projected revenues to the budget. The problems of taxation of real estate in Ukraine are both economic and political in nature. Among the first group of problems is the choice of the form of taxation of real estate, the definition of tax base, tax rates, benefits, as well as differences in the taxation of certain types of real estate. The second group of problems is relate to the ambiguous perception of tax by citizens, the presence of a strong political lobby that allowed long to delay the introduction of this tax and the possibility of not paying even now.

Keywords:

tax system; tax on immovable property, different from the land plot; taxation of real estate; taxes on wealth; local taxes; Ukraine.

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1. Introduction

Tax on immovable property different from the land plot, is one of the most ancient types of taxes known to financial and legal science. Such properties of structures as visual clarity, permanence of location, duration of existence, the need for state registration make them a convenient object of taxation, and the introduction of tax encourages the owner to make the most effective use of such property, preventing the accumulation of real estate by individual owners. Real estate in any social structure is an object of economic and state interest, therefore state registration is obligatory for this category of property, which allows one to identify the property and the subject that has rights to it, because the connection them is invisible, and the transfer of real estate through physical moving is impossible.

2. Theoretical Background

Problems associated with the real estate taxation have repeatedly been the subject of scientific research of domestic and foreign scientists. Studies of domestic scientists on this issue are mainly focused on finding opportunities to improve current tax legislation [1]. Attention is paid to the harmonization of local taxes and fees in Ukraine in accordance with the legislation of the European Union, the problems of financial independence, independence and autonomy of local governments [2]. A number of studies are devoted to the analysis of: particular elements of the legal construction of a tax on immovable property, other than the land plot, the possibilities for their improvement, and the generalization of relevant law enforcement practice [3].

In foreign scientific publications on this subject, attention is usually focused on the study of the tax competence of local territorial communities, its impact on the development of these communities in general and financial independence in particular, the development of tax competition models at the local level, the conditions for the existence of special tax regimes on the territory of individual communities [4: 276].

The most significant shortcoming of all the above mentioned publications and the lion's share of other publications by foreign and

domestic researchers on this issue is primarily that they are made from ideological and methodological approaches of legal positivism, and therefore they are in antagonism with the new person-centered paradigm of Ukraine's development.

3. Argument of the paper

With the help of philosophical principles of the unity of the form and content of the object of cognition, the general scientific methods of systemic approach, there will be investigated the sociocultural, instrumental and cognitive limitations of the modern legal construction of the tax on immovable property different from the land plot. With the help of historical and genetic methods, together with the method of system-structural analysis, the necessity and inevitability of replacement of the state-centric legal model of this tax will be substantiated by its human-centric legal model. With the help of hermeneutical and axiological methods, as well as the civilizational approach, there will be analyzed the comparative experience and the best practices of applying innovative legal models of real estate taxation in foreign countries, as well as experience and best practices in solving financial self-sufficiency issues by the most successful local communities in Ukraine. All of the above mentioned methods will be used in their interaction.

4. Arguments to support the thesis

Tax on immovable property different from the land plot: 1) relatively simple and transparent in administration; 2) it is fixed and does not depend on the results of payer's economic activity; 3) it encourages the property redistribution from a less efficient to a more efficient owner; 4) it facilitates a better assessment of own assets by payers-legal entities; 5) it allows to bring to taxation the income received as a result of shadow activity; 6) it provides relatively stable and predictable proceedings to the budget. In case of tax evasion, there always is a "ready" object of a tax pledge that can be seized and from the sale of which it is possible to obtain the funds necessary to repay the tax debt. At the same time, on the one hand, tax lien does not extend to all the property of the payer, but only to the property on which the tax is not paid, and on the other hand, the owner does not make sense to

hide behind the offshore, individuals, fictitious firms, because the object are proprietary rights, actually real estate, no matter who it belongs.

The said makes this tax attractive as a means of meeting the needs of local communities in filling the revenues of local budgets. In fact, the land tax and tax on immovable property, different from the land plot are those local taxes, the taxation object of which exists in each territorial community.

5. Arguments to argue the thesis

In Ukraine, the introduction of a tax on immovable property, different from the land plot, had few prerequisites. It primarily is a harmonization with the tax legislation of the EU countries, solving the problem of funding gap in local budgets, and the implementation of the principle of social justice in taxation. The necessity of establishing this tax was stipulated by the Law of Ukraine "On the Taxation System" of June 25, 1991. During nearly 20 years of Ukrainian independence, attempts have been made to introduce it, but draft laws that were put forward for consideration did not even pass the first reading in the Supreme Council of Ukraine. This situation was explained by the fact that many provisions of these draft laws were not clearly defined and did not have adequate scientific substantiation and interrelation with the peculiarities of national economic and social development. But the main reason, according to M.I. Carlin and N.M. Bobokh, was "in fact, the reluctance of the majority of Ukrainian parliamentarians to impose a tax on real estate. Otherwise it would have existed for a long time. Everyone knows that the overwhelming majority of the elected officials are rich people, owners of expensive mansions and apartments, and that is why year after year the Ukrainian authorities postponed the introduction of an unpleasant tax" [5: 134]. One of the restraining factors for the introduction of a real estate tax in Ukraine was the opposition of a large part of the population, caused by lack of awareness of the provisions of the bills under consideration.

The nature of the tax on immovable property, different from the land plot, is characterized by several principal features. First, for the most part this tax has historically been local, and it is not an accident because like no other it corresponds to the principle of profit. Funds received from its

collection are used to finance services at the local level. For taxpayers whose property value increases as a result of taxation, the tax is associated with the payment for services provided by local authorities. Secondly, according to the form of taxation this tax is direct, since it is collected in the process of accumulation of material goods in the form of real estate, it is determined by the size of the taxation object and paid by the owner [6: 155]. The owner of the property is responsible for paying the property tax. He may instruct the tenant or any other person to do it, but in case of a malignant tax evasion, the property can be seized and forcibly sold in order to repay the tax debt, hence the owner bears the negative consequences. In a sense, tax payment helps to strengthen property rights, because in such a way the owner confirms his/her rights. For example, in case of controversial issues regarding the ownership of an object or part of it, the payment of tax by one party may be a powerful argument in his/her favor. Thirdly, the tax on immovable property, different from the land plot, is closely connected to personal taxation. Quite often it is considered as an addition to personal income taxation [7: 170]. Such a statement can be both accepted and objected. It is necessary to proceed from the tax base and the source of tax payment. The source of personal income tax is direct income, which is also a source of property taxes. The tax on immovable property, different from the land plot, in terms of determining the object of taxation is a type of property taxes, and from the point of view of tax financing it is the extension of personal income tax, because it is paid at the expense of income received by the taxpayer (similar to any other property taxation).

An important feature of the property tax is its social orientation. In developed countries, this tax plays a significant role in the social plan, as it enables to significantly increase budget revenues at the expense of well-off groups of the population, and thereby balance social interests. It is closely interwoven with the social orientation of the use of property tax as a means of combating income concealment and evasion of other taxes, because it is really capable of withdrawing from the "shadow" part, sometimes quite substantial part, of incomes and thus ensuring the principle of social justice - the rich must pay more. Property tax allows you to at least partially collect a tax on illegal proceeds. Investing in real estate was one of the most profitable types of business in Ukraine that only very wealthy citizens could

afford. Quite often, this was done at the expense of funds received in the "shadow" sector of the economy. Accordingly, the taxation of real estate may, to a certain extent, lead to the de-colonization of the Ukrainian economy, which is one of the strategic goals of its implementation, and ensuring social justice.

At the present stage, the tax on immovable property, different from the land plot, exists in about 130 countries of the world, but its value in budgeting is different. The world experience in collecting real estate taxes shows that if the correct approach is used, it can become one of the main income items in the local budget. According to a World Bank study, real estate taxes make up 40-80% of payments to local budgets in developed countries. Due to a fairly broad base, which includes virtually all real estate objects, the real estate tax has a high share in the revenues of the local budgets in the countries of Southeast Europe, whose economies are developing (Moldova, Bulgaria, Romania, Macedonia, Montenegro, Serbia, Bosnia and Herzegovina) and it is in the range of 4% -15% of revenues to local budgets [8: 453].

During the first half of 2011, at the level of most local councils in Ukraine, the relevant provisions and decisions regarding the procedure for calculating and paying taxes on immovable property, different from the land plot, were approved, but they only began to operate from January 1, 2014. The three leaders in terms of the time of making such decisions included Donetsk, Kiev and Ivano-Frankivsk. Since the introduction of the Tax Code of Ukraine, the tax on immovable property, different from the land plot, has undergone many changes, complicated its structure and was actually transformed from the tax exclusively on the wealth to the tax on ordinary real estate and wealth. The essence of the wealth tax is revealed by the important fact that a person achieves a fairly high level of financial and property status, which gives the state the potential opportunity to enter it and mobilize additional funds into the budget. The wealth tax is an additional burden for wealthy citizens in the context of personal income-property taxation. Out of the total private property, separate objects are allocated for which specific fiscal requirements are imposed and for which special taxes are assigned. Thus, the Tax Code of Ukraine provides that if

the taxpayer owns the property object (objects) of residential real estate, including its shares owned by a natural or legal person, a taxpayer whose total area exceeds 300 m² (for an apartment) and/or 500 m² (for a house), the amount of tax increases by 25,000 hryvnias per year for each such object of residential real estate (part of it). Such special taxes exist in many European countries, in particular, France [4: 257] and Spain [10: 756-63]. The fiscal efficiency of the wealth tax is realized in its own way. The payers here are much less than in payment of a regular tax, because they are only well-off citizens with a high level of well-being. Therefore, the effectiveness of the tax is successfully compensated.

In turn, the payers of the ordinary tax on immovable property different from the land plot according to paragraph 266.1 of Article 266 of the Tax Code of Ukraine are physical and legal persons, including non-residents who own residential and/or non-residential real estate. But, the current mechanism for calculating the tax on immovable property, other than the land plot, places in unequal position individual payers who own the property on the basis of the common joint and common share ownership or common joint ownership with the division of the object between them in kind. The question arises - is it a casual oversight of the legislator or a "green corridor" for evading taxes? Why, in the case of is one and the same object of taxation, but different forms of its ownership, the amount of tax will be significantly different?

A lot of gaps remain in defining such an element of legal construction as an object of taxation. The differentiation of the taxation object of into residential and non-residential real estate is of fundamental importance, since the right to housing is one of the main and inalienable rights of the individual, declared by Article 47 in the Constitution of Ukraine, and a guarantee of their other constitutional rights. This inalienable human right applies irrespective of their labor productivity and the ability to use housing effectively, unlike legal entities. For an individual, housing (if it is used specifically for living) is more a measure of income (sometimes – past one) than their source.

According to item 14.1.129, article 14 of the Code, residential real estate objects are residential house, an annex to a residential house, an apartment, a cottage, rooms in multi-family (communal) apartments, a garden house, a country house. At the same time, the reduction of the tax base of the object / objects of residential real estate, including their shares owned by an individual, applies exclusively to apartments and residential buildings. And what about the owners of cottages, rooms in communal apartments, other residential real estate objects? A literal interpretation of paragraph 266.4.1 in the Tax Code of Ukraine deprives them of the right for a tax benefit. It is considered biased to increase the size of the non-taxable area for owners of different types of residential real estate. First, it is not clear why the owner of two objects of residential real estate has the right for a larger amount of tax benefit than the owner of one, and how can this be explained by social justice? Secondly, why does only the owner of a house and an apartment has a right to increase the size of the non-taxable area, but not the owner of two apartments or two houses?

The establishing of the tax base of the property tax in the world practice is carried out in two ways. The first method is based on cost approaches to the tax base. The second way is based on a simple method that involves calculating the tax depending on the actual area occupied by the property. This way is chosen in Ukraine. But, nevertheless, this method is used by fewer and fewer countries, especially by the developed ones. The reason is that the weighty tax burden falls on the largest real estate objects, but this does not yet indicate their high cost and the ability of the owners to pay high taxes. For example, the same tax will be levied on a house in Kiev and similar one in Chernivtsi, the same tax will be paid for an apartment that is more than 30 years old and for a new apartment.

According to the existing tradition in the world, real estate tax rates are defined as fixed or variable, taking into account the planned budget expenditures and the size of the existing base. In Ukraine, due to the increase in the size of the minimum wage to which the tax rate is tied, local councils began to move gradually from setting a single rate to progressive taxation. For example, in 2017 Chernivtsi City Council has set the following tax rates: 0.5% of the minimum wage per 1m² for warehouses that belong to

taxpayers who are registered and pay all taxes in Chernivtsi; 1% - for all other types of non-residential real estate objects. For residential property owners, the tax rate ranges from 0.1 to 1% of the minimum wage.

In the Tax Code of Ukraine, tax deductions on immovable property different from the land plot are determined in two perspectives: a reduction in the taxation base of residential real estate objects and a complete exemption from tax payment. In the first case, the taxation base of the residential property is reduced to 60 m² for an apartment and to 120 m² for an apartment building. However, this approach is not preferable to those who, because of the low income and large area, will not be able to pay this tax. In the second case, tax is not imposed on: residential and non-residential objects owned by public authorities, local governments, family-type orphanages; hostels; residential property unsuitable for living.

After all, the Tax Code of Ukraine contains provisions that entitle the local authorities to influence the real estate taxation. First, local councils independently determine the appropriateness of introducing a tax in their territory. Secondly, the tax legislation allows local councils to narrow the list of taxable objects and regulate the categories of taxpayers. Thirdly and the most importantly, the local councils are entitled to establish tax benefits for individuals on the basis of their property status and income level. Such a social initiative, although important in its essence, is dangerous in the algorithm of implementation by local authorities, since the influence of the human factor on deciding who will pay taxes, and who will be exempt from taxation may not be perceived well by the public and cause a violation of the law. For example, Kherson City Council among other people free from tax on real estate are citizens from Crimea and the ATO zone who received the status of immigrants. However, the migrant status does not yet indicate a social insecurity of such individuals. In the more thoughtful way Vinnytsia City Council approached the establishment of benefits for this tax, they granted tax-exempt status to those who apply for a housing subsidy for the period of obtaining subsidy. After all, the housing subsidy indicates a social insecurity of its recipients. That is why it is important to develop criterial requirements on which the local authorities will rely when using this

preference in practice - taxpayers should really belong to the socially unprotected segments of the population.

6. Conclusions

The above shows that the problems of real estate taxation in Ukraine are of both economic and political nature. The first issue is the choice of the form of real estate taxation, the establishment of tax base, tax rates, benefits, as well as differences in the taxation of certain types of real estate. The second one is connected to the ambiguous perception of this tax by citizens, a strong political lobby, which allowed postponing the introduction of the tax for a long time and the possibility of not paying it even now. During the first years of taxation, the effect of the tax introduction was zero, it has never succeeded in becoming a budget-generating tax payment, and its administration costs exceeded even incomes. The substantial change in the concept of tax on immovable property different from the land plot that has taken place in recent years and plans to change the tax base and tax benefits, has led to complication of tax construction and transforming this tax from the tax on wealth only into the tax on ordinary real estate and wealth.

Bibliography

- Zhebechuk LL. Podatok na nerukhomist' yak element opodatkovannya osobystykh dokhodiv naseleennya. Naukovi pratsi NDFI. 2013; 64 (3): 90-7.
- Sverdan MM. Podatok na bahat'stvo: dosvid ta praktyka vykorystannya v yevropeys'kykh krayinakh. Visnyk sotsial'no-ekonomichnykh doslidzhen. 2014; 52 (1): 61-8.
- Lobach OM. Problemy pravovoho rehulyuvannya podatku na nerukhome mayno, vidminne vid zemel'noyi dilyanky (na prykladi okremykh elementiv podatku). Naukovi zapysky NaUKMA Yurydychni nauky. 2015; 168: 124-30.
- La Fiscalité française: Fiscalité des entreprises – Fiscalité des particuliers. Paris: Guliano Editeur; 2014.
- Karlin MI, Bobokh NM. Rol' podatku na nerukhomist' v sotsial'niy politytsi krayiny z tranzytyvnoyu ekonomikoyu. Demohrafiya i sotsial'na ekonomika. 2009; 2: 132-140.

- Babin II. Podatkovyy pravo: Navchal'nyy posibnyk. Kindle 2nd ed. corrected and supplemented. Chernivtsi: Chernivets'kyi natsional'nyy universytet imeni Yuriya Fed'kovycha; 2013.
- Andersson K. National Tax Policy in Europe: To Be or Not to Be? Berlin: Heidelberg Springer; 2007.
- Korniienko SM. Vplyv podatku na nerukhomist' na dokhody mistsevykh byudzhativ. Hlobal'ni ta natsional'ni problemy ekonomiky. 2016; 12: 450-454.
- Fernández de Soto Blass ML. Suma Fiscal: teoria, práctica, formulas y esquemas del sistema tributario español. Madrid: Dykinson; 2011.