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Illia YURIICHUK¹

Abstract

In the article analyzes the features of administrative procedures in the local taxation system. It's determined that at the present stage of development of our state, the unconditional fact is that the development of the institute of administrative procedural law in Ukraine is one of the main tasks of administrative reform, the purpose of which is to create a proper and highly developed system of public administration bodies that will ensure and guarantee the protection of rights, freedoms and the legitimate interests of each person. Increasing the efficiency of the work of the State fiscal service and its territorial bodies in the field of taxation directly depends on the effectiveness of administrative procedures, which, of course, is one of the basic components of administrative reform.

The author pays his attention that the effective functioning of the Ukrainian tax system is impossible without proper administrative procedures and a reliable system of administering local taxes and fees. Established in 2011, the Tax Code of Ukraine introduced significant changes in the process of administering local taxes and fees, but today there are a number of problems, namely: the lack of quality regulatory administrative procedures, the lack of a unified approach to the definition of "administrative procedure" and the presence of gaps in the practical aspect of the functioning of the tax system. The conclusions is drawn about the definition of the concept of administrative procedures in the field of local taxation and the improvement of Ukrainian legislation in the area of local taxation in order to protect the rights and interests of taxpayers.

Keywords:

administrative procedures; tax system; local taxes and fees; administering of the local taxes and fees; rights and legitimate interests of taxpayers.

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Introduction

At the current stage of increasing of our state, the unrestricted fact is that the development of administrative procedural law in Ukraine is one of the most important tasks of administrative reform. It has a one purpose – to create appropriate and advanced system of public administration bodies that will guarantee the protection of rights, freedoms and the legitimate interests of everyone. The work of the State fiscal service and its territorial bodies in the field of taxation in a straight line depends on the effectiveness of administrative procedures, which is one of the fundamental components of administrative reform, and requires supplementary research.

As Mykola Chinchin notes, the characteristic of the system of procedures used in regulating the administration of local taxes and fees, their ratios are mediated by the content of tax relations. The appointment of a legal procedure is oriented towards the implementation of legal rules. Legal procedures actually cover all relationships from the moment they arise to the termination [1]. Therefore, the administration of local taxes and fees should be considered from the standpoint of statics and dynamics - as a set of tax procedures and a set of procedural actions for their implementation [2: 219].

The need for an analysis of the legal nature, importance and role of administrative procedures in the field of local taxation led to the practical relevance of this study.

Theoretical background

Successful working of the Ukrainian tax system is unworkable without proper administrative procedures and a trustworthy system of administering local taxes and fees. The Tax Code of Ukraine, which was established in 2011, introduced major changes in the process of administering local taxes and fees. But, nowadays, there are three main problems, namely:

- the lack of quality regulatory of administrative procedures;
- the lack of a unified approach to the definition of "administrative procedure";
- the presence of gaps in the practical aspect of the functioning of the tax system, which leads to its imperfection.

The theoretical and practical aspects of the implementation of administrative procedures in the field of activities of public administration bodies on the ground regarding local taxes and fees were investigated by a number of Ukrainian and foreign scientists, in particular: Alla Lutsyk,

Vladislav Teremetsky, Maria Victorchuk, Sergiy Bratel, Irina Boyko, Illaria Bachilo, Alla Grishkovets, Yulia Basova, Olexandr Bukhanevich, Mykola Chinchin, Sergiy Stetsenko, Yuriy Tikhomirov, Elvira Talapina, Valentin Galunko, Volodymyr Kurilo, Viktor Zyuzin, Richard McGee and others. That why, the purpose of the article is to study the administrative procedures in the field of local taxation in Ukrainian law system.

Argument of the paper

Nowadays in the field of development of legal science there are a significant number of scientific approaches to the definition of the phenomenon of "administrative procedure", which led to the lack of a single interpretation of this category of administrative law.

The concept of "procedure" should be considered through the prism of social relations, that is, the sequential actions that make up the procedure, as Sergiy Bratel notes, "must be regulated by certain norms of law and be directed to achieve a legal result, which is reflected in certain legal consequences" [3]. That is, a procedure is a certain algorithm (order of action) to achieve a particular result.

From a lexical point of view, the notion of "administrative procedure" is meaningfully filled with two terms - "procedure" and "administrative".

1. The term "procedure" in legal science is a certain order (algorithm) in committing actions to achieve a certain legal result.

2. The term "administrative" in science shall be construed as referring to management, and that which is intended to serve. Such a dual understanding of the basic category of administrative law stipulates the existence of two types of legal relationships that arise in the field of public administration:

1) relations that are of a managerial nature, which arise at the initiative of the dominant entities, in which individuals are primarily responsible for the performance of their duties (managerial legal relations);

2) relations with public administration, in which private individuals realize a significant part of their rights (public service legal relationships) [4]. Therefore, these types of doctrinal approaches in the field of public administration, due to their heterogeneity, require different rules for their normative-legal regulation. At the same time, administrative procedures should be considered from the point of view of administrative service law,

since their main objective is the realization by private individuals of their rights, freedoms and legitimate interests.

4. Arguments to support the thesis

In legal literature, the concept of administrative procedure is interpreted in a narrow and broad sense. According to the first administrative procedure, is a procedure for consideration and resolution by the authorized state body (mainly executive body) of specific individual cases related to the appeals of citizens and organizations to the relevant body in order to implement or protect their rights and legitimate interests. The administrative procedure is regulated by law or by subordinate normative act (the procedure for consideration of citizens' complaints, rules for registration of legal entities, rules for issuing licenses, permission to use weapons, etc.). In a broader sense, the administrative procedure is the procedure for the execution of an executive body, an official authorized by them for the authority (the procedure for the elaboration, discussion and adoption of a legal act, the execution of a document having a legal significance, the procedure for admission of a person to the civil service, certification and registration of relevant documents, the procedure for reviewing materials on the promotion of employees, the prosecution of disciplinary proceedings, the procedure for the execution of control and supervision activities, etc.) [5].

We agree with Vladislav Teremetsky that the existence of administrative procedures in tax law pursues several goals: firstly, to establish the most appropriate, reliable and effective procedure for the interaction between controlling bodies and taxpayers; and secondly, the need for a strict procedure ensures protection of the rights and legitimate interests of taxpayers from possible abuses and manifestations of arbitrariness by the authorities [6]. The existence of a clear and effective procedure, on the one hand, makes it impossible to commit unlawful actions by the controlling bodies and guarantees the achievement of legal consequences; on the other, it guarantees the protection of the rights and legitimate interests of taxpayers in case of their violation.

It should be noted that the main normative and legal act that regulates administrative and procedural activities in the area of local taxation in Ukraine is the Tax Code of Ukraine. So, according to pp. 14.1.1-1, clause 14.1, art. 14 of the Tax Code of Ukraine [7, art. 112], administration of taxes, duties, customs duties, a single contribution to compulsory state social

insurance and other payments in accordance with the legislation, control over compliance which is entrusted to supervisory bodies - a set of decisions and procedures of control bodies and actions of their officials, who determine the institutional structure of tax and customs relations, organize the identification, accounting of taxes and single payers and tax objects, provide a service maintenance of taxpayers, organization and control over payment of taxes, fees, payments in accordance with the procedure established by law.

For a more detailed study of the administration of local taxes and fees by volume of tax procedures, they need to be considered in a broad and narrow sense.

In the broad sense, as Maria Viktorchuk thinks, it contains the whole set of procedures for the establishment, introduction, amendment and abolition of local taxes and fees, the performance of tax obligations by taxpayers and fees, tax control, the application of measures to ensure their payment to the local budget and measures of state coercion in the case of detection of offenses, as well as procedures for resolving tax conflicts in the mode of administrative harmonization and in court. In the narrow sense, the administration of local taxes and fees should be reduced exclusively to the administration of procedures for their payment to the local budget, which results in actual receipt of funds [2].

Given the study of the administration of local taxes and fees in a broad and narrow sense, it can be considered as a procedural activity: a) bodies of state power (legislative, executive and judicial) and local self-government to ensure the implementation of the tax liability of the taxpayer, tax control, bringing to justice and resolving tax disputes; b) solely fiscal authorities and customs authorities (executive bodies) for the collection of taxes and fees, tax control, collection of taxes and fees, prosecution and dispute resolution in administrative reconciliation [1].

In view of the lack of proper regulatory regulation of administrative and procedural legal relations, we consider it necessary to distinguish between the concept of "administering local taxes and fees" and "administrative procedure in the field of local taxation", which are related to each other as a general and specific one. Since administration is a set of decisions and tax procedures of the controlling bodies, the administrative procedure determines the order of such administration.

In view of this, for a more thorough study of the phenomenon of "administrative procedures in the field of local taxation", it is necessary to determine their types and analyze their classification distribution.

In our opinion, the first and the main criterion for classification is the type of activity of the supervisory bodies at the local level, which can be divided into internal and external ones. Internal administrative procedures are implemented without the participation of taxpayers (individuals and legal entities) within the framework of the activities of the controlling body (for example, administrative procedures for document management). External administrative procedures include the presence of two entities - the control bodies and payers of local taxes and fees (for example, administrative procedures for accounting of taxpayers) [8].

The second, equally important, criterion for classification is - depending on the existence of a dispute in the tax relationship between local control bodies and taxpayers, one can distinguish: jurisdictional and non-jurisdictional administrative procedures. Jurisdictional, in turn, can be divided into: 1) procedures in cases of administrative offenses in the field of taxation; 2) procedures in administrative courts regarding the appeal of decisions, actions or inactivity of territorial bodies of the fiscal service, its officials. On the other hand, non-jurisdictional administrative procedures can be divided into: 1) rule-making procedures - the activities of authorized bodies and officials regarding the preparation and adoption of legal acts in the field of taxation; 2) enforcement procedures - activities of authorized bodies for the resolution of administrative cases using the rules of administrative, tax law; 3) registration procedures - activities of authorized bodies and officials regarding the official recognition of the legality of the relevant acts or regulations; 4) attestation procedures - activities of authorized bodies and officials to determine the conformity of certification objects with the requirements necessary for functioning in a particular area; 5) control and oversight procedures - the activities of authorized bodies and officials in exercising control and supervision in the field of public administration, etc. [9].

In addition to the above criteria of classification, as noted by Alla Lutsyk, there are a number of others: by the subject of the administrative procedure (applications and interruptions) initiative, depending on the level of regulation (ordinary and simplified procedures), etc. [10].

5. Arguments to argue the thesis

If we analyze the doctrinal definitions of "administrative procedure", we can state some ambiguity in the views of academicians. Yes, Yulia Basova notes that under administrative procedures it is necessary to understand the

established procedure of law-enforcement activity of public administration recognized by administrative-legal rules for the resolution of individual administrative cases, the result of which is the adoption of an administrative act or the conclusion of an administrative contract [11]. By definition, Sergiy Bratel, the administrative procedure is a procedural form, which is regulated by administrative and procedural rules defining the order in which the consistent activity of the subjects of the administrative procedure and the actions which is carried out of other participants [3: 102]. Olexandr Bukhanevych defines the administrative procedure as the procedure established by law for the consideration and resolution by the administrative body of individual cases related to the treatment of individuals and legal entities in order to exercise their rights, freedoms and legitimate interests [12].

Despite the considerable number of approaches of administrative scholars to the notion of "administrative procedure", as a rule, all of them argue that the administrative procedure is directly related to the activities of public administration bodies, and it is a certain procedure of the actions of executive authorities, local self-government, and their officials.

Also, one of the fundamental issues that need a meaningful study is the elemental composition of administrative procedures in the field of local taxation [8]. This, in turn, will allow more clearly define the criteria characterizing administrative procedures in this area and ensure proper legal regulation of their implementation.

In the theory of administrative law, there is still no single approach to determining the elemental composition of administrative procedures. Thus, Yuriy Tikhomirov and Elvira Talapina include to the elements of administrative procedures: a) procedural rules intended for the legal use of material-competence norms; b) a typical "set" of legal acts and acts performed and adopted by the subjects of competence; c) the stage of activity of the subjects of competence and related other subjects of law, the sequence of legal actions and their connection; d) temporal characteristics (terms, duration, periodicity) [13]. According to Victor Zyuzin, the elements of administrative procedures of public administration bodies should include: a) the parties to the procedure; b) the rights and obligations of the parties to the procedure; c) individual management acts; d) lines of procedures [14].

6. Dismantling the arguments against

We believe that the most accurate and meaningful definition of the administrative procedure was given by Valentin Galunko. He believes that

the administrative procedure is the procedure for the consideration and resolution of individual administrative cases by the public administration authorities in order to ensure the rights, freedoms and legitimate interests of individuals and legal entities, the normal functioning of civil society and the state [15].

Consequently, on the basis of the above scientific approaches to the definition of the administrative procedure, we can offer our author's definition. The administrative procedure should be understood as a normatively-assigned algorithm (procedure for achieving the result) of consideration and resolution by public administration bodies of individual administrative cases, carried out with the aim of realizing and protecting the rights, freedoms and legitimate interests of individuals and legal entities, and ensuring the rule of law in the Ukrainian society.

Thus, having clarified the essence of the notion of "administrative procedure", we propose the definition of "administrative procedures in the field of local taxation", which should be understood as the normative procedure for the activities of public administration bodies regarding the consideration and resolution of individual administrative cases in the field of public administration aimed at provision and realization of rights and lawful interests of local tax payers and fees.

A well-known American researcher R. McGee in his paper "The Philosophy of Taxation and Public Finance," notes that, as a general rule, taxpayers pay governments more than receive them as services, given the cost of government retention. The state, taking away from the payer the car to fulfill its tax duty, gives him a bicycle. Contradiction is worsened by the practical lack of control of citizens for the purposes for which the state uses the collected tax and their compliance with the interests of society, which this tax pays [16: 23-4].

From this we can state that the purpose of administrative procedures in the tax law is to establish the most expedient, reliable and effective procedure for the interaction between controlling bodies and taxpayers, because the existence of a clear scientifically sound procedure makes it impossible to disperse the actions of the control bodies and guarantees the achievement of the maximum positive result with the least cost of resources, but the need for a strict procedure, as noted by Vladislav Teremetsky, provides protection of the rights and legitimate interests of taxpayers from possible abuses and manifestations of arbitrariness by the authorities [17].

Analysis of administrative and procedural relations that arise in the field of local taxation (the procedure for the preparation and adoption by the

controlling body (official) of an individual act and the procedure for the preparation and adoption by the controlling body (official) of a normative act) allows us to conclude, and agree with the opinion of Alla Lutsyk, the elements of the administrative procedure in this area are:

1) the parties to the procedure (taxpayers, the State fiscal service of Ukraine, its territorial bodies and officials);

2) the rights and obligations of the parties to the administrative procedure;

3) the terms of the procedure (terms for the commission of procedural actions and the general time for the resolution of the administrative case);

4) final result of the procedure - the administrative act passed, that is, the decision of the fiscal authority in the individual administrative case (individual act), which concerns a particular taxpayer, or a decision taken to resolve relations arising in internal organizational and external organizational activities fiscal service [8].

An analysis of the legal nature and certain types of administrative procedures in the field of payment of local taxes and fees allows us to conclude that administrative procedures in this area may arise both from the taxpayers' initiative and from the initiative of the fiscal authorities on the ground.

In addition to the existing theoretical and legal problems and the lack of normative regulation of administrative procedures, there are also certain shortcomings that arise in the practical field of the implementation of administrative procedures in local taxation.

For example, according to the Tax Code of Ukraine (Article 265) [7], one of the local taxes is the property tax, which consists of: a tax on immovable property, different from the land plot; transport tax; pay for the land.

The tax on immovable property, different from the land plot and pay for the land are one of the most profitable for local governments and constitutes a significant source of revenues to the local budget. However, under section XII of the Tax Code of Ukraine, only registered immovable property (private houses, land, etc.) falls within the scope of taxation. However, in many settlements of Ukraine, there are a large number of dwelling houses in which people live for a long period of time or privately owned land, but they are not registered or their owners have not duly drawn up legal documents (due to the complexity of the procedure, the high costs money and time, etc.). That is, a situation arises when the taxpayer's property

is not registered in the State Register of Real Rights to Real Estate, which results in the unstable filling of the revenue part of local budgets.

In view of the above, it should be noted that the problems of practical implementation of procedures in local taxation are due to gaps in tax legislation, the lack of proper legal regulation of administrative procedures that require further clarification and improvement.

Conclusions.

The administrative procedure should be understood as a normatively-assigned algorithm (procedure for achieving results) of consideration and resolution by public administration bodies of individual administrative cases, carried out in order to facilitate the realization and protection of the rights, freedoms and legitimate interests of individuals and legal entities and to ensure the rule of law in the Ukrainian society. .

The author's definition of the phenomenon of "administrative procedures in the field of local taxation" was formulated on the basis of the research, under which one should understand the normatively-established procedure of the actions of local self-government bodies regarding the consideration and resolution of individual administrative cases in the field of public administration aimed at ensuring and realization of rights, freedoms and the legitimate interests of taxpayers and tax collectors in the field of tax relations.

The study of the nature of administrative procedures in the area of local taxation allows us to conclude that this legal institution needs further improvement and development in order to proclaim the principle of the rule of law in Ukraine and ensure the protection of the rights and legitimate interests of taxpayers.

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