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Pavlo BARTUSIAK¹

Abstract

The article is devoted to the disclosure of the peculiar properties of the prevention of inflation within the framework of local taxation in Ukraine. Author emphasizes that spontaneity and the fundamental ineradicableness of inflation within the limits of human civilization require an adequate understanding of the specifics of restraining of this phenomenon in the tax sphere. In the article the effects of inflation on the tax system as a whole are considered, as well as the ways of the legal policy of prevention of inflation in the world are described. The elements of the juridical constructions of a number of local taxes and fees in Ukraine are analyzed and evaluated in detail. The main indicators for such an assessment are the tax base and the tax rate, because, firstly, they are typically expressed in monetary terms, and, secondly, their measures ultimately determine the assessed tax amount. The elements of the juridical constructions of such taxes are investigated in the article: tax on immovable property, other than a land plot, transport tax, land tax and land rent. Particular attention is paid to the principles and mechanisms of indexation of normative monetary evaluation of land plots, which is a necessary component of the tax rates in juridical constructions of land tax and land rent. A generalization is made that inflation transforms a number of tax principles, provided in the Tax Code of Ukraine, in particular the principles of fiscal adequacy, social justice, tax efficiency, tax neutrality and equability of tax payments.

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Keywords:

Local taxation; preventing of inflation; tax on immovable property, other than a land plot; land tax; transport tax.

Problem statement.

We have already noted that inflation is one of those existential phenomena that are totally widespread in life [1: 184]. This, on the one hand, determines its properties [1: 185-91]. On the other hand, such properties of inflation not only affect the relevant legal reality, but often radically change it including the transformation of the legal nature of various phenomena. The latter considerably concerns local taxation, as well as taxation as a whole.

Regarding the abovementioned American scientist Martin Feldstein reasonably observes that our tax laws were written exclusively for socio-economic conditions with zero or too low inflation. But reality, in his opinion, shows that even the inflation rate of 6 or 8 percent or more causes considerable tax constraints. As an example, he notes about the taxation of income from capital in 1960-1970-s in USA, where inflation created fictitious income for the government to tax, and taxpayers (savers) had to pay tax not only on their real income from savings, but on their fictitious income as well [2: 154].

According to the 'Monetary Policy Guidelines for years 2016 – 2020' the strategic direction of the entire national monetary policy of Ukraine is inflation targeting. This act, in particular, states: «Understanding that low and stable inflation is the one of the main inputs for sustainable economic growth achievable by a central bank, the NBU (National Bank of Ukraine – P.B.) considers Inflation Targeting (IT) as the most appropriate monetary regime for creating the environment of low and stable inflation» [3]. The essence of the inflation targeting regime presupposes the public announcement of quantitative inflation targets and the central bank's commitment to achieve these goals over the medium term [4].

The prevention of inflation in local taxation is particularly significant, since at this level of public finance there are very limited compensatory mechanisms for reduction of inflation's negative effects on the local taxes and fees. This problem in the science of financial law is not sufficiently investigated.

For the very reason, as the **purpose** and the **subject of this article**, I have chosen the problem of clarification the legal means of preventing inflation in local taxation.

Since the fact that inflation appertains due to its legal nature to the anthroposociocultural legal phenomena [1: 191], as an essential **cognitive instrument** we will use the anthroposociocultural approach that, as established by science, enables the disclosure of the anthroposociocultural code of all social phenomena [5].

Ruslana Havrylyuk in a special monographic study showed that this approach is the core of the methodological tradition of the natural law doctrine in general [6: 613]. She also found that its origins reach the first (ancient Greek philosophical) research programs, in particular, sophistic [6: 63], ascending philosophical and methodological credo of which was the principle "Man is the measure of all things" [6: 65]. Sophists, as the first representatives of the methodological tradition of the doctrine of natural law came to the conclusion, as the author concludes, that everything rooted in the existence of human being is natural [6: 68]. This provision also applies to the law as an existential phenomenon generated by the natural human rights and the needs for their realization [7].

As Ruslana Havrylyuk argued, the phenomenological legal cognition with its formula of a priori law by Adolf Reinach is particularly fruitful for the knowledge of existential phenomena [6: 561]. According to the author, it represents a method by which Adolf Reinach distinguished from the objective reality a priori legal formations – spontaneous social acts – and substantiated their existence, as totally unlike any other phenomena of reality [6: 581]. The phenomenon of inflation belongs to the same type of spontaneous social acts. There are also a number of other proven methods in science for an adequate cognition of these acts. In particular, Ruslana Havrylyuk calls: the Martin Heidegger's fundamental ontology, the social ontology by Peter Berger and Thomas Luckmann, the ontology of social facts and social institutes

by John Searle, the methods of structural-functional analysis: Claude Levy-Strauss's anthropological structuralism, Lucien Goldman's genetic structuralism, structural functionalism by Talcott Parsons, Robert Merton, Alfred Radcliffe-Brown and Bronisław Malinowski, the system-constructive approach by Niklas Luhmann and the cybernetic approach to the analysis of systems by Gregory Bateson, and a number of other cognitive tools [8: 5-6]. All of them were to any extent used in the process of clarification the legal problems of preventing inflation in local taxation.

On the other hand, taking into account that taxes and tax law in Ukraine and other post-socialist countries are still marked by the dominance of the etatistic approaches in the implementation and collection of taxes, I have considered and used in the preparation of the article the methodical recommendations, assessments and conclusions represented by Petro Patsurkivskyy [9], Ruslana Havrylyuk [10], Dmytro Kostya [11], Andrii Khudyk [12] and Viktoriya Raritska [13], concerning the consideration and expression of the general state and local public interests in taxation.

Presentation of basic material of the article.

In the world's practice of taxation the following most obvious effects of inflation are distinguished:

Distortion of the personal tax burden, or the limits of the tax liability of the person caused by the mutual influence of inflation and any progressive taxation [14: 1]. Through the impact of inflation nominally determined tax bracket boundaries in progressive taxation trigger the increasing of nominal incomes to the higher tax rates. This effect is called 'bracket creep' that is the transfer of taxpayers to the tax bracket boundaries with the higher tax rate due to the nominal increase in incomes because of inflation [15].

The Olivera-Tanzi effect – deliberate delay of the term for the tax payments to the state budget by the taxpayers under the conditions of increased rate of inflation. Such an effect is observed in the process of accumulation of inflationary pressure in the economy, when motives for deferral of the term for the tax payments are created due to the fact that during the delay money is depreciated, resulting the gain for the

taxpayer. However, under such conditions, the state budget deficit and the general instability of the financial system increase [16].

Reducing of the real value of tax exemptions and deductions, which are defined in a fixed nominal amount. This results in a faster growth of taxable income than an increase of real income [14: 2].

Deformations in the amounts of tax debts defined in absolute value, amounts wrongly paid and/or overpaid amount of the tax liability and penalties, which in some cases are evaluated in the form of a fixed sum (e.g. in the Art. 118-120 of the Tax Code of Ukraine) [17].

Practice has already developed a number of prevention tools for the negative effects of inflation in the field of taxation including the local taxation. The latter, among others, include: full or partial indexation [14: 4] (indexation of tax rates; indexation of the tax bracket boundaries within the scope of progressive taxation; indexation of tax exemptions, etc.); establishment of the rule for annual public disclosure of the quantitative growth of real taxes due to inflation [14: 5]; the use of amortization for tax purposes, for which, instead of indexing, the rules of depreciation deduction and the principles of revaluation of materials and stocks are used (e.g. in case of the property taxes, where the amount of tax depends on the nominal value of such property and progressive tax rates); introducing of the discretionary amendments in the tax exemptions and nominal limits of tax brackets [18: 205].

We will consider some local taxes and fees in Ukraine in terms of the presence in their legal constructions some inflationary risks that is open wounds that can be 'infected' by inflation. This implies an assessment of such taxes and fees from the standpoint of their relative stability, elasticity with regard to the permanent and spontaneous nature of inflation. The main indicators for such an assessment will be primarily the tax bases and the tax rates, because, firstly, they are typically expressed in monetary terms, and, secondly, their measures ultimately determine the assessed tax amount.

We shall begin with the property taxes, in particular, from the tax on immovable property, other than the land plot. As stipulated in Art. 266 of the Tax Code of Ukraine, the tax base for such tax is the total area of the object of residential and non-residential real estate including its shares [17]. At first glance such formulation of the tax base neutralize any influence of inflation, since the base is not attached to

either the market price of real estate, nor to its monetary value, etc. On the other hand, the definition of the tax base in the legal construction of the tax on immovable property, other than the land plot is defective. In the process of money depreciation an imbalance of tax revenues from such tax is emerged, that is, the corresponding local budgets receive amounts of taxes in nominal amounts for the same object of taxation (from the same area, since the area remains unchanged), however the real value of the tax sums to local budgets is reduced. For example, 100 Ukrainian hryvnias (approx. 5.2 euro) that was paid, as the tax sum, in 2015 and 100 Ukrainian hryvnias (approx. 3.0 euro) in 2018 do not reflect adequately the tax burden on the taxpayer and reduce the actual budget revenues.

At the same time the tax rate of the tax on immovable property, other than the land plot, according to Art. 266 of the Tax Code of Ukraine is set at the level not exceeding 1.5 per cent of the minimum salary established by law on January 1 of the reporting (tax) year per 1 square meter of the tax base [17]. Regarding the inflationary risks associated with using of the minimum salary in the legal construction of such tax, it can be said that the legislator's approach to defining the tax base is intended to neutralize partially the impact of inflationary processes. As practice shows, annually the minimum salary increases and in an ideal scenario its growth should either coincide with the level of inflation or even outstrip it. However, modern Ukrainian social reality demonstrates that this is not always the case. For example, according to the official statistics from January 1, 2014 (1218 Ukrainian hryvnias, approx. 110 euro) until January 1, 2015 (1218 Ukrainian hryvnias, approx. 63 euro), the minimum salary remained unchanged [19], while the inflation rate in 2014 was 124.9% [20]; then in 2015-2016 years, the minimum salary increased by 13.7% from 1218 to 1378 Ukrainian hryvnias [19] (approx. 53 euro), and the inflation index during this period amounted to 143.3% [20]; in 2016-2017, the minimum salary increased from 1378 to 3200 Ukrainian hryvnias [19] (approx. 113 euro) and that is more than 130% and the index of inflation during 2016 amounted to 112.4% [20].

We can state that the latest sharp increase in the minimum salary has performed the function of anti-inflationary measure in local taxation. By means of it the government tried to compensate the reduction of tax revenues that had been lost due to inflation in previous years, induced by the binding of a number of taxes to the minimum salary that did not fully respond to inflationary trends.

The transport tax is included in the structure of the local taxes and refers to the property taxes. According to the Art. 267 of the Tax Code of Ukraine this tax is charged on cars which are not older than five years and with an average market value exceeding 375 minimal salaries as of January 1 of the reporting year [17]. Regarding to the inflationary risks associated with the use of the minimum salary in the legal construction of the transport tax (e.g. object of taxation), the arguments may be the same as for the previous tax. It should be noted that in the tax on immovable property, other than the land plot the minimum salary played a key role in determining the tax rate. In the legal construction of the transport tax the minimum salary is one of the criteria for designation cars as the objects of taxation.

In the 'Methodology for Determining the Average Market Value of Passenger Cars' it is stated that the average market value of the car is assessed as the multiplication of the price of a new vehicle on a correctional index, which depends on the term of exploitation and on the car mileage [21]. Such an approach, in our opinion, is protected sufficiently from the effects of inflation, since the data on prices of new cars is derived from the current official price lists of manufacturers (dealers) [21] that already absorb the impact of inflation.

There is a completely different situation with the rate of the transport tax. It is established in the amount of 25 000 Ukrainian hryvnias for each taxable vehicle for a calendar year [17]. This element of the legal construction of the transport tax, in our opinion, is the most vulnerable to inflation. Since inflation is a permanent and temporal phenomenon, the tax rates that are set in absolute terms and also in the nominal size of the national currency most probably fall under the influence of the inflationary processes.

One of the most interesting local taxes in terms of protecting the legal structure from the effects of inflation is another property tax that is a land tax. Art. 271 of the Tax Code of Ukraine establishes that, the base

of the land tax is the normative monetary valuation of land plots taking into account the indexation coefficient, determined in accordance with the procedure established in art. 289 of the Tax Code of Ukraine, as well as the area of land plots, the normative monetary valuation of which has not been carried out [17].

From the standpoint of the influence of inflation there are important two facts here: the actual meaning of the normative monetary valuation of the land plots expressed in money and the algorithm of its indexing. According to the Law of Ukraine 'On Land Valuation' the normative monetary valuation of land plots is a capitalized rental income from a land plot defined by the established and approved standards [7]. In accordance with the 'Order of the Normative Monetary Valuation of Lands within the Settlements' the result of the normative monetary valuation is the estimated value per square meter of land derived by the formula [22]. Thus, the normative monetary valuation actually is the nominal monetary value of a land plot for tax purposes.

The normative monetary valuation is the subject to an adjustment on the inflation index. Art. 289 of the Tax Code of Ukraine provides that the State Service of Ukraine for Geodesy, Cartography and Cadastre shall calculate the annual amount of indexation coefficient of normative monetary valuation of land, on which the normative monetary valuation of land is indexed as of January 1 of the current year [17]. The formula of calculation is plain: indexation coefficient (C_i) equals to the consumer price index for the previous year (I_i) divided on 100 ($C_i = I_i / 100$). Nevertheless, the Tax Code of Ukraine contains the clause: 'If the consumer price index exceed 115 percent, such index is used with a value of 115' [17].

It is noteworthy that in 2018 the value of the indexation coefficient of the normative monetary valuation of land plots for 2017 is 1.0 [23]. Although, according to the statistics data the inflation index in 2017 was 113.7% [20], that is, according to the formula specified in the Tax Code of Ukraine, the indexation coefficient should be 1,137 (113,7 divided on 100). But why, then, the State Service of Ukraine on Geodesy, Cartography and Cadastre "erroneously" calculated the coefficient of 1, that is, in fact, presumed that there was no inflation in

Ukraine in 2017? It happened because the Transitional Provisions of the Tax Code of Ukraine established in an imperative manner that the consumer price index for 2017 used to determine the indexation index of the normative monetary valuation of land plots shall be applied with a value of 100 per cent [17]. Thus, for all other calculations in the country, the inflation index in 2017 was 113.7% according to official data, but when adjusting the normative monetary valuation of land plots for taxation purposes, the value of the inflation index is used with the amount of 100%. Without a doubt such condition provides a hidden tax exemption, since indexation coefficient of 1.00 significantly reduces the tax base expressed in terms of money.

The provision under which 'if the consumer price index exceed 115 percent, such index is used with a value of 115' may result in the pronounced tax preferences in perspective when the inflation index will outstrip the same 115%. Although the situation was completely different before the legislative amendments were made to the Tax Code of Ukraine by the law dated on December 21, 2016 [24]: 'If the consumer price index does not exceed 110 percent, such index is used with a value of 110' [17].

The rates of the land tax are set in percentage terms to the normative monetary valuation of land plots – from 0.3% to 12% depending on the type of land, type of the ownership on it, etc [17]. Since they are stipulated in a proportionate numbers, they can be considered, as relatively protected from inflationary factors.

The lease payment for the land plot refers according to the Tax Code of Ukraine to the land fee. It should be noted that its amount under Art. 288 of the Tax Code of Ukraine is also tied to the normative monetary valuation of land plots and represents a certain percentage of it in the annual volume. The annual sum of the lease payment for the land plot cannot exceed 12% of the normative monetary valuation of the particular land plot [17]. An important anti-inflationary measure in the legal construction of the lease payment for the land plot, as in the case of land tax, is the attachment to the normative monetary valuation of land plot which is indexed in accordance with Art. 289 of the Tax Code of Ukraine.

Conclusions.

It should be generalized that in the above-discussed legal constructions of local taxes and fees there are elements that are most exposed to the effects of inflation. As a result of permanent depreciation of money, the inelasticity of tax rates and/or the static character of tax bases lead to the violation of a number of tax principles. In particular, there are the principles of equality of all taxpayers before the law, fiscal adequacy, social justice, tax efficiency, tax neutrality and equability of tax payments.

It should be noted that in comparison with the protection against inflation of tax revenues to the state budget local councils have a number of significant advantages in this context already at the stage of determination and establishment of local taxes and fees. Firstly, local councils are free to independently determine or set a number of taxes: tax on immovable property, other than land plot, fee for parking of vehicles and tourist tax [17]. Secondly, they are free to independently determine which rates within the limits of the specified rates determined by the Tax Code of Ukraine to choose for the corresponding taxes or fees [17]. Thirdly, all questions about the establishment of local taxes or changes in the structure of local taxes or fees are made by the decision of local councils, but not through the amending of the Tax Code of Ukraine. Such decision shall be officially promulgated by the relevant local self-government authority by July 15 of the year preceding the budget period [17]. All of the above mentioned stipulate at the stage of establishing of local taxes and fees more elasticity with respect to inflationary processes, better protection against inflation of revenues to local budgets, and, consequently, better legal protection of public interests of local tax payers.

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