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THE ASYMMETRIC NATURE OF STATE AND LOCAL TAXES: COMPARATIVE LEGAL RESEARCH

Viktoria RARITSKA[1]

Abstract

This paper explores the nature of state and local taxes by comparing of specifies of their legal regulation within Ukrainian legal system and legal systems of foreign states.

In this regard, the purpose of the contribution is to carry out the comparative legal research of the asymmetry of state and local taxes and basic criteria for identification of its nature.

Firstly, the paper addresses broad issues concerning the dominant in science and tax law doctrinal approach of tax understanding. It is quite important due to the fact that local taxes, as well as state ones are integral parts of the tax system of the State. Therefore, dominant doctrinal approach has significant influence on understanding their nature.

Dominated in legal doctrine of many countries, including Ukraine, etatist approach makes its main idea that taxes are an attribute of the State became the basis for the legislative definition of the legal status of the State with its unlimited, sovereign power to tax. Such an asymmetric State's tax power gives it the opportunity to decide on the scope of tax right's of local authorities. In particular, it provides the State with an opportunity to limit tax power of local authorities in the area of tax administration; to set restrictions on their right to establish taxes, determine tax rates and tax exemptions, etc. This leads to asymmetry of tax power of the State and tax rights of local authorities and thereby, asymmetric nature of state and local taxes.

However*, tax decentralization process draws attention to a fundamentally different from the etatist tax doctrine the anthroposociocultural methodological approach. It shows a distinct correlation between the right to tax of such authorities and their reciprocal obligation to provide public goods. In this regard it has become the methodological basis for our research.*

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State's power to tax, tax asymmetry, tax decentralization, state and local taxes, anthroposociocultural approach.

1. Introduction.

System of local taxes is a necessary component of the tax system of the State, therefore, the doctrinal approach to tax understanding that is prevailing in science, current law and practice of law-making, is inevitably reflected in the features of their legal regulation. Havrilyuk R. [1] investigating the nature of tax law from the standpoint of the anthropo-sociocultural approach reasonably noted in this regard that within the scientific community of scholars of finance lawyers of Ukraine, the Russian Federation, other states, at the present time continues to dominate the legist, etatist doctrinal approach to legal thinking. At the same time, she concludes that from the standpoint of the legist doctrine to legal thinking tax is considered as an attribute of the State, arose with it, and therefore, respectively, the tax law is the right of the State. The indicated methodological approach of legal thinking has become the basis for the legal definition of the legal status of the State, with its inalienable, sovereign, asymmetric right to tax [2]. Such an asymmetric tax authority of the State gives it the opportunity to decide on the amount of tax rights of local authorities.

Nevertheless, the growing process of tax decentralization, the constituent element of which is the transfer from the State to local authorities of tax collection powers, as well as the obligation to meet the public needs of the community at their expense, forces the scientific community, as well as legislators and law enforcers, to draw attention to the necessity of using of the anthroposociocultural methodological approach of its understanding.

It is extremely important to use this approach because of the fact that, as an original post-soviet theorist of financial law Patsurkivskiy P. [3: 155] argues, «…post-soviet science of financial law, both Ukrainian and foreign, on the whole remains at Marxist philosophic-methodological positions of understanding law and its system-building factors. It comprehends law as a mechanical body of legal rules, created or authorized by the state, appealed to regulate this medium, in our case, public financial reality, which is nonsense in itself». The scientist assumes, that financial law

as the law on the whole, is not a mechanical aggregate of positive legal norms of the state, but a procedural constructive reality, that cannot be scientifically cognized on the basis of classic standards of scientific approach [3: 144]. The aforementioned researcher of the nature of the tax law Havrilyuk R. [1] supports this opinion and continues, that only non-classic or post-non-classic standards of the scientific rigor are applicable. She quite rightly substantiates that financial law in particular, as law on the whole, has anthroposociocultural nature, thus, for its true cognition instrumentally-based on needs philosophic-methodological approach is required.

2. Theoretical Framework.

The problem of distributing tax powers between State and local authorities in the context of tax decentralization was studied by such scientists as R. Bahl, R. Bird, K. Davey, S. Golem, T. Hart, J. Martinez-Vazquez, A. Sacchi, etc. However, the problem of asymmetry of local taxes in relation to state taxes from the point of view of anthroposociocultural approach to legal thinking is still not disclosed. Given this, the purpose of the contribution is to investigate the imbalance between local and state taxes from the point of view of the anthroposociocultural doctrinal approach to understanding the nature of local taxes, as well as a comparative legal analysis of the legal regulation of the asymmetry of local taxes in the legal systems of different States, which we will try to do in the article.

3. Discussion

Asymmetry, according to a dictionary definition represents the «Lack or absence of symmetry…» [4], «Lack of equality or equivalence between parts or aspects of something» [5]. It represents a way of comparing interrelated components of a system and intends to assist in discovering of the imbalance and irrelevance between them. Within tax law, it can be used to convey the idea that there is an imbalance between state and local taxes that is caused by asymmetric tax capacity of the State and local governments.

This is particularly relevant for showed in most countries a tendency towards tax decentralization which is defined as the transfer of some responsibilities for expenditures and revenues to lower levels of government. The idea of tax decentralization is to expand the fiscal capacity of local authorities. Therefore, within the decentralization process the legislator aims to increase the power of local authorities with regard especially to their revenue and expenditure decisions because these governments provide

public goods and services more effectively than central ones. By localized or decentralized provision of public goods, it is assumed that local governments can more easily identify people's needs and thus supply the appropriate form and level of public goods [6].

The introduction of such changes is conditioned above all by the fact that socio-economic transformations should be adequately consolidated in legislation in the process of legal reform [7]. However, local governments exercise only the powers that the central government chooses to delegate. In our opinion, this is primarily due to the fact that there is an etatist approach of legal thinking dominated in tax legislation and practice of its application. For this reason, we fully agree with the position of Havrilyuk R. [2: 130], who claims «…it is shown, that creating or authorizing financial-legal norms, the state actually acts not chaoticaly, but absolutely purposively, that it constructs these norms in strict accordance with some ideal theoretical model, the philosophic-methodological basis of which is the etatist doctrine of financial law». Particularly important for this is the basic idea of etatism, according to which the State has an unlimited, sovereign, asymmetric right to tax. Therefore, State tends to limit a degree of tax autonomy of local authorities despite their urgent necessity in sufficient freedom to make tax decisions.

There are a number of criteria for determining the degree of tax autonomy of local authorities in European tax law science. In particular, it tryes to answer the question "What kind of tax can be considered as decentralized?". In an effort to find out, Bird R. [8] draws his attention to the following answers of the above question: Decentralized tax is one 1) where local governments have the power to decide whether to impose it or not, 2) where they determine the tax base, 3) where they set the tax rate, 4) where they determine the liability of particular taxpayer, 5) where they collect and enforce the tax, 6) where they receive the revenue. They also note, that «There are many possible ways to 'mix and match' these characteristics» [8: 4]. But the certain combinations of the above conditions should exist. Nevertheless, investigation of the combination of these indicators will allow us to demonstrate the level of existing in the Ukrainian tax system asymmetry of local and state taxes.

There is a multilevel system of taxation in most countries, including Ukraine. It consists of two levels of taxes - local and state (Tax Code of Ukraine. Article 8. Types of taxes and fees) [9]. At the same time, the distribution of tax revenues occurs at a greater number of levels - state, regional and local levels. A lot of states have such a complex tax system, for

example, Germany (taxes are levied by three levels - the federal government, the states and the municipalities), Spain (national (federal), regional and local government levels of taxation), or Japan (the national level, the prefectural level and the municipal level of taxation) etc. But the research suggests that the number of levels almost does not affect the tax autonomy of local authorities.

The above thesis is confirmed, in particular, by the analysis of the tax system of Ukraine.

According to the Ukrainian tax law taxes and fees can be defined as local ones if those are set by local authorities within the limits of their powers and are required to be paid in the relevant territory [9]. At the same time, the State, at its own discretion, determines local taxes which are obligatory for levying by the local authorities and which can be imposed at discretion of the municipalities.

In fact, local authorities are denied of the right to independently decide on the issue of setting of a large part of local taxes and fees. Local taxes in Ukraine include: property tax, single tax and local fees, that include 1) parking fees and 2) tourist fees. Local councils necessarily establish a single tax and property tax (in terms of transport tax and land tax). All other local taxes and fees (property tax, with respect to the tax on immovable property, different from the land, parking fee and tourist fee) are at the discretion of the local authority.

In addition, the State sets the prohibition on the setting of local taxes and fees that aren't provided by tax legislation. Although, to a certain extent, such a provision is explained by the need to limit the abuse of both the State and local authorities in the establishment of taxes not provided for by law and thus protect the rights of taxpayers.

This, however, does not explain the absence of local authorities' powers in collecting and enforcing of the local taxes. As Bird R. claims [8: 14], traditionally, an important criterion in assigning taxes in the first place is whether the government which they are assigned can realistically administer them. Even though factors such as scale and administrative capacity favor central government against local governments with regards to local tax collection ability, ability of subnational governments to collect local taxes may dominate that of the center especially when those taxes are targeted for locally determined spending needs. The outcomes of local spending are also better monitored if its costs are correctly signaled to tax payer-consumers, unlike in the case of grant-financed activities [10]. So, Bird R. argues [8: 14], that as experience in numerous countries around the world has shown, sub-

national governments may be correct to worry that the central government will be less enthusiastic about collecting their taxes than its own. Moreover, bringing administration closer to the people it is supposed to serve may result not only in improved accountability gains but also efficiency gains – and perhaps even increased revenues -- because people can more easily identify how fairly taxes are being administered and what the money is being spent on.

However, despite the high efficiency of local tax administration local authorities in Ukraine lack such opportunities. The same can be said about tax autonomy if the local authorities can't independently determine the tax base and set tax rates. It is also worth mentioning the problem with the powers of determining of the tax base and setting the tax rate of Ukrainian local authorities. Actually, they have no power over tax bases. Tax bases of all local taxes (which are obligatory for levying by the local authorities or are imposed at their discretion) are set by the legislation and local authorities can't affect on their size. For example, there is a fixed tax base for transport tax - passenger cars which are not older than five years and which average market value is more than 375 times the minimum wage. Moreover, local authorities have no autonomy in setting the tax rate (it is fixed in the law and makes 25 thousand hryvnia for each automobile), just as they have no power in deciding on the necessity of its levying [9].

On the other hand, as far as other local taxes are concerned, local authorities have some degree of autonomy in determining the tax rates. State sets the upper and sometimes lower boundary of the future local tax rate and local authorities may at their discretion set the tax rate within the specified limits. As we see, in contrast to other decentralized tax criteria, local authorities have a very important opportunity for their autonomy to influence the tax rate. As Slack E. agues [11], «The ability of local governments to set their own tax rates is the most important element of fiscal autonomy». The single most important factor ensuring that sub-national governments are accountable to their citizens is probably to make them clearly and visibly responsible for determining tax rates. The tax rate is for most people the most visible and understandable characteristic of any tax. The more power regional and local governments have in terms of collecting revenue – choosing which taxes to impose, how the tax base is defined, and actually assessing and collecting the tax – the greater their fiscal autonomy. Without the ability to establish and alter tax rates, even if only within some limits, the transparency and accountability of the local revenue

system is likely to fall short of what is needed to support the economic case for fiscal decentralization [8: 5].

One more important factor in determining the type of fiscal decentralization is the extent to which subnational entities are given autonomy to determine the allocation of their expenditures. (The other important factor is their ability to raise revenue.) [12]. Financial responsibility is a core component of decentralization. If local governments and private organizations are to carry out decentralized functions effectively, they must have an adequate level of revenues – either raised locally or transferred from the central government – as well as the authority to make decisions about expenditures [12].

According to the research provided by Institute on Municipal Finance and Governance on Local Fiscal Autonomy of 8 cities around the world [11] (including London, Toronto, Frankfurt, Paris, Berlin, New York, Madrid, Tokyo) to assess the actual extent of local fiscal autonomy, it is necessary to analyze the characteristics of each tax – which level of government sets the tax rate and the extent to which limits are placed on local tax rate setting. For example, a city may be able to levy a property tax, but if the tax rate is set by the national government (or if the state puts limits on the rate of tax a city can levy), local autonomy is restricted.

In the case of shared taxes, the national or state government determines the tax base, sets the tax rate, and shares the revenues with cities. If the cities do not have the ability to set the tax rate, there is no local autonomy for shared taxes: cities are simply given a share of the revenues [11].

Analysis of the legal regulation of local taxes in Ukraine points to the lack of autonomy of the local authorities over the received tax revenues. Unfortunately, despite the fact that 100% of all funds received from collecting local taxes come to the local budget and are at the disposal of local authorities, the main source of their tax revenue is the shared national taxes, in particular, personal income tax. The main problem of financing local government at the expense of shared tax is that the possibility of its further distribution remains uncertain.

For example, according to the current tax law, 50% of the proceeds from the administration of the excise duty on fuel is directed to the local budgets. However, the law provides the depriving of local authorities of this shared fee from 2020 and directing it to a special fund of the state's budget. Thus, local authorities risk being left with a small amount of local taxes, which constitute a small part of their revenues.

On the other hand, there are states taxes and fees in Ukrainian tax system, that are endowed by their nature of exceptional importance to the local community and hence the local authorities. Of these, it is necessary to highlight, for example, the natural resource payments. As noted by Kostya D. [13: 293], the legislator includes all natural resources payments in the taxation system of Ukraine. The scientist, investigating the legal nature of these payments stresses on the compensating function of natural resources payments and states, that «…their main purpose is to recompense in monetary equivalent certain part of losses of the society in the public natural resources which have been consumed individually by private person in order to provide stable development and welfare of the future generations» [13: 304-5].

Thereby, the public natural resources are relevant to the well-being of the local community. At the same time, despite the fact that the rent as one of the public natural resources is referred to shared taxes, since the income received from its administration is distributed between the state and local budgets, according to the tax law of Ukaine almost 95% of the rent is credited to the general fund revenues of the State Budget of Ukraine. And the rest - is distributed between local budgets of different levels. Thus, the rent can be considered a shared tax only formally, and in fact the local authorities do not receive almost anything from its collecting.

Given that, state government shares the revenues with cities but limits their tax autonomy, therefore, the local governments can't influence on the tax base, tax rate of shared tax, as well as on the responsibilities of the taxpayers. Such a kind of financing of local authorities leads to theirs total fiscal dependence on central government and demonstrates an asymmetric nature of local taxes. As Martinez-Vazquez, McLure and Vaillancourt [14: 21] note, «Subnational governments that lack independent sources of revenue can never truly enjoy fiscal autonomy, because they may be – and probably are – under the financial thumb of the central government».

4. Conclusions

A comparative research of the peculiarities of the legal regulation of local taxes in Ukraine and abroad points out that such an imbalance, asymmetry of state and local taxes is observed in many states and is a characteristic attribute of any tax system. However, the degree of asymmetry, which is actually measured by the number of factors that make decentralized taxation possible, is extremely high in Ukraine.

The analysis of the tax powes of local authorities stipulated by the tax legislation of Ukraine concerning their ability to set taxes and fees, to determine the tax base, to set tax rates, to administer taxes, and to receive income from the collection of taxes and their use for meeting public needs, is outstanding the extremely low level of tax autonomy of these authorities. In our opinion, the actual absence of tax autonomy of local authorities is primarily due to the domination in the science of tax law, Ukrainian legislation and practice of its application of the etatist approach to legal thinking, which justifies the unlimited asymmetric tax authority of the state, which it uses to meet its own needs. The foregoing allows us to argue the provision that along with Ukraine's desire for decentralization, it still remains an extremely centralized state, because it does not provide the local authorities with the necessary amount of tax autonomy. Thereby, the investigation of local taxes in Ukraine confirms the thesis about asymmetry of the tax power of the state and local authorities and the asymmetric nature of state and local taxes.

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