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ADVISORY AND CONSULTING SERVICES AS A MECHANISM FOR PROTECTING THE RIGHTS OF TAXPAYERS

Лілія Фокша, Марина Іванова. КОНСУЛЬТАТИВНО-РОЗ'ЯСНЮВАЛЬНІ ПОСЛУГИ ЯК МЕХАНІЗМ ЗАХИСТУ ПРАВ ПЛАТНИКІВ ПОДАТКІВ. Розглянуто сутність, значення та види консультативно-роз'яснювальних послуг як інструменту захисту прав платників податків.

Визначено що податкове консультування ставить на меті гармонізацію взаємовідносин між контролюючими органами і платниками податків, підвищення рівня податкової дисципліни та забезпечення участі громадськості у формуванні та реалізації податкової політики тощо.

Проаналізовано міжнародну практику надання консультативно-роз'яснювальних послуг фіскальними органами і визначено, що вони базуються, перш за все, на партнерських відносинах між контролюючими органами і платниками податків.

Визначено основні види консультативно-роз'яснювальних послуг контролюючих органів. Досліджено правовий зміст податкової консультації, принципи надання консультаційних послуг контролюючими органами. Податкові консультації є практичною допомогою платнику податків при виконанні ним податкового обов'язку. Розглянуто передбачену чинним законодавством процедуру оскарження податкової консультації платниками податків. Визначено що податкова консультація не є рішенням суб'єкта владних повноважень чи нормативно-правовим актом, а лише форма офіційного трактування правових норм, що не породжує для платника податків жодних правових наслідків, оскільки не впливає на його права і обов'язки, та містить лише рекомендації для виконання.

Зазначено, що перспективним механізмом захисту прав і свобод платників податків є запровадження інституту податкового консультування в Україні і практики податкової медіації. Проаналізовано фактори що стримують розвиток податкового консультування в Україні.

Ключові слова: консультативно-роз'яснювальна робота, податкова консультація, контролюючі органи, платники податків, податкова медіація, інститут податкового консультування.

Relevance of the study. The current system of taxation in Ukraine is characterized by instability, complexity and ambiguity in the interpretation of tax legislation, which leads to restraint of business development, increasing the number of tax offenses and reducing potential tax revenues to budgets at all levels.

Under these conditions, there is a need for professional legal support of tax payments, which is entrusted to tax authorities.

Consideration of appeals of individuals and legal entities is one of the important activities of tax authorities, aimed at protecting the constitutional rights and freedoms. Article 40 of the Constitution of Ukraine enshrines the right to lodge individual or corporate appeals in written or personally apply to public authorities, local governments and officials of these bodies

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that are obliged to consider the appeal and provide a reasoned response within the statutory period [1].

The rights of taxpayers to receive information on tax liability are also enshrined in the Tax Code of Ukraine.

Recent publications review. Issues related to the organization of advisory services were investigated by: R.Ye. Voloshchuk, O.A. Zhuravsky, M.K. Zolotariova, O.O. Dolgyi, K.P. Proskura, V.I. Teremetskyi, F.P. Tkachyk and others. However, a comprehensive study of the legal basis of advisory and explanatory services from tax authorities, as a mechanism for protecting the rights of taxpayers, has not been carried out in Ukraine so far.

The article's objective is to determine the basic principles of providing advisory and explanatory services as a mechanism for protecting the rights of taxpayers; outline promising areas for improving the mechanism of tax consulting in Ukraine.

Discussion. Tax consulting is an important component of the modern system of tax administration. Tax consulting, or tax advice has the following objectives: harmonizing the relationships between tax authorities and taxpayers; improving the tax discipline; ensuring the due tax receipts to the budgets of all levels; ensuring the participation of public in the formation and implementation of the tax policy; preventing tax offenses; implementation of transparent and effective tax administration.

The practice of advisory and explanatory service rendering by regulatory authorities to taxpayers is widely spread in developed countries. For example, in the United States, the Internal Revenue Service has established the Office of the Taxpayer Advocate and the Office of Information and Coordination, which conduct large-scale explanatory work among taxpayers. The hotline, which is used by millions of taxpayers, is in high demand in the United States. The IRS also provides assistance to taxpayers through emergency consulting centres. In France, in addition to individual consultations, tax authorities provide advisory services through a network of telephone helplines; they also widely practise television broadcasts in which tax officials answer questions from taxpayers. In the UK, individual consultations are provided to taxpayers through the unified national telephone service or via the Internet; in Sweden, advisory and explanatory work is carried out mainly through electronic means [2, p. 39; 3].

The main principle of providing advisory and explanatory services by fiscal authorities in developed countries is ensuring partnership relations between government agencies and taxpayers, which allows them to move from purely fiscal and administrative activities to constructive communication with taxpayers.

In Ukraine, the advisory and explanatory functions of the tax authorities, according to the Tax Code, include: the provision of individual tax advice; information and reference services on tax legislation and other laws within the authority of the taxation bodies; ensuring the public awareness about the implementation of state tax policy; advising taxpayers on the use of information and telecommunication systems in the payment of taxes and fees (Article 19.1 of the Tax Code of Ukraine) [4].

The legal status of tax consulting is currently enshrined in Chapter 3 of the Tax Code of Ukraine (hereinafter TCU). Under Article 14 clause 1 para. 172 of TCU, tax consulting may be individual or generalizing.

Individual tax consultations should be understood as a clarification provided to a taxpayer by the taxation body regarding the practical application of certain norms of tax legislation or other laws within the authority of the taxation body and registered in the unified register of individual tax consultations (Article 14 clause 1 para. 172.1 of TCU) [4].

Along with individual tax consultations, the tax legislation provides general tax consultations by tax authorities, which are interpreted as promulgation of the position of the central executive body that ensures the formation and implementation of the state financial policy, on the practical application of certain rules of tax legislation and other laws within the authority of the taxation bodies; this position may be formed as a result of generalization of individual tax consultations provided to taxpayers by taxation bodies, and / or in case of detecting circumstances that indicate ambiguity of any individual norms of the legislation (Article 14 clause 1 para. 173 of TCU) [4].

As rightly noted by V.I. Teremetsky, tax advice is one of the tools to protect the taxpayer, which gives him the opportunity to find out in advance the position of the tax authority and avoid mistakes in tax accounting, and thus avoid possible problems [2, p. 45].

In general, the advisory and explanatory activities of administering authorities provide a preventive impact on tax offenses, and are aimed at improving the level of tax awareness and

tax culture of the population, ensuring a proper understanding of tax legislation by taxpayers.

Tax consultations are provided free of charge upon apply of taxpayers regarding the practical application of certain provisions of tax law [4]. At the option of the taxpayer, the consultation may be provided verbally, in writing or electronically.

Tax advice by its legal nature is in fact the answer of the taxation body to the taxpayer's question, which should contain specific clarification of the taxpayer's practical form and / or model of his behaviour within a certain range of legal tax relations. The legislator, in turn, requires that the taxpayer, who seeks individual tax advice, correctly formulates the questions, which should be in essence, clearly and intelligibly articulated, and should describe the individual situation [5].

When providing tax advice, the taxation body does not establish (change or terminate) the corresponding norm of the legislation, but only provides clarification on its practical application.

Advisory services from regulatory authorities should be based on certain rules or principles. The general principles of providing consulting services should include: the rule of law, legality, accessibility, validity and motivation, competence, a unified approach to all taxpayers, timeliness, avoidance of conflicts of interest, and so on.

The results of an online survey conducted among legal entities and individual entrepreneurs on the SFS web portal in May 2019, within the Ukrainian-German technical cooperation project GIZ, show that the clarity of advice on problematic issues provided electronically was assessed in 4.23 points out of 6, by mail – in 4.06 points out of 6, and by telephone – in 4 points out of 6. The main requests of taxpayers about the organization of advisory and explanatory work of regulatory authorities are: improving the communication culture and competence of their staff, customer orientation, and clarity of advice [6].

The advisory and explanatory services of regulatory bodies should also include the organization of seminars, meetings of representatives of taxation bodies with taxpayers and the public, radio and television addresses, publications on various issues of taxation, other types of advertising, etc. [7, p. 46].

The TCU contains a rule according to which a taxpayer (both an individual and a legal entity) cannot be held liable, including financial penalties and / or fines, if he acted in accordance with the individual tax advice provided to him in writing, or general tax advice, for an act that contains signs of a tax offense, in particular on the grounds that further on the said tax advice was changed or cancelled [4].

If a taxpayer considers that the written, electronic or general tax advice provided by the regulatory body contradicts the current legislation, establishes new legal norms that are not provided by the current legislation, or creates obstacles for him to conduct business, he may appeal to the court for approval of the general tax consultations or individual tax advice provided to him in paper or electronic form as a legal act of individual action [4].

However, it should be borne in mind that tax advice is not a decision of the subject of authority or a normative legal act, but only a form of official interpretation of legal norms, which does not generate any legal consequences for the taxpayer, as it does not affect his rights and obligations, and only contains recommendations for implementation.

As for appealing tax consultations, the TCU provides exclusively for court proceedings. Administrative appeal of tax consultations is not provided by law. We agree with the point of view of O.A. Zhuravsky that this state of matter, firstly, does not give the tax authorities the opportunity to promptly correct their possible faults in consulting, and provide new, high-quality tax advice that would comply with applicable law; secondly, it limits taxpayers in choosing the method of appeal [8].

Tax mediation is a promising area for resolving disputes between regulatory authorities and taxpayers. Unlike judicial or arbitral settlement of tax disputes, where the parties mainly seek to resolve the dispute in their favour, while judges / arbitrators spare no effort to make such a decision, in the mediation process the parties look for a mutually acceptable (compromise) settlement, while the mediator competently and professionally assists the parties in finding such a solution [9, p. 196].

Thus, tax mediation is a process of competent, voluntary, and legal settlement of a dispute on the basis of mutual respect and equality of the parties through a specially authorized competent person – a mediator, who helps the parties to reach a mutually acceptable solution.

The process of introducing the practice of tax mediation in Ukraine is inextricably

linked with the introduction of the institution of independent tax consultants, which will serve to improve legal aid and legal education of taxpayers, protection of their rights.

Researchers distinguish two models of tax advice in European countries:

1. The system of "state regulation" (legislation, uniform standards, measures of responsibility of the tax consultant) involves the adoption of a special law on tax advice and the existence of a professional association of tax consultants (membership required). The professional association is created and operated on the basis of the above law and it supports and monitors the implementation of the law. The countries representing this system in Europe are: Austria, Hungary, Germany, Italy, Poland, Slovakia, France, Croatia and the Czech Republic. Luxembourg and Portugal also belong to this group; however, membership in a professional organization in these countries is voluntary.

2. The system of "self-regulation", which involves the creation of a self-regulatory professional organization (where rules and standards of professional activity are mandatory for all members of the organization). Countries that have a system of "self-regulation" include, for example: Belgium, Great Britain, the Netherlands, Ireland, Spain, Finland and Switzerland [9, p. 185].

The legal status of tax consulting in Ukraine is not enshrined in law. The draft Law "On Tax Consulting in Ukraine" No. 2745 of July 10, 2008 has been developed. However, no legislative act regulating this area has been adopted so far.

In Ukraine, the institute of tax consulting is at the start of development. The Union of Tax Consultants of Ukraine (SPKU) and the Chamber of Tax Consultants of Ukraine (PPKU) were established in 2001 and in 2013, respectively. However, it is too early to speak about a system, level of development and significance of the institute in Ukraine.

Factors hindering the development of tax consulting in Ukraine are:

1) the lack of a proper regulatory framework that would regulate the legal status of independent tax advice;

2) relatively low skill of domestic specialists;

3) low income of both citizens and businesses, which makes it difficult for them to pay for consulting services;

4) psychological unwillingness to trust independent consultants.

It is worth noting that the introduction of the institute of tax consulting in Ukraine should take place in conjunction with the purposeful work on the improvement of legal awareness of taxpayers. In particular, large-scale public information work with taxpayers, formation of tax culture and discipline should be carried out. And this, in turn, will allow the state to save money on other levels of tax administration.

Conclusions. An important direction in the modernization of the tax system should be the formation of a fundamentally new type of relationships between tax authorities and taxpayers, which would be built on a partnership basis and take into account the interests of the government, business and public. The opportunity of obtaining qualified, accessible and prompt information helps to increase tax discipline and prevents illegal actions of taxpayers.

A promising mechanism for protecting the rights and freedoms of taxpayers is the introduction of the institution of tax consulting in Ukraine and the practice of tax mediation, which will allow to reconcile public and private interests, to form a new tax culture.

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Abstract

The article considers the essence, meaning and types of advisory and explanatory services as a tool of protecting the rights of taxpayers. The article puts emphasis on the preventive nature of advisory and explanatory work on the part of tax authorities, which allows increasing the tax discipline of taxpayers. The procedure for appealing tax advice by taxpayers under the current legislation has been considered. It has been pointed out that a promising mechanism for protecting the rights and freedoms of taxpayers in Ukraine is the introduction of the institute of tax consulting and the practice of tax mediation.

Keywords: *advisory and explanatory work, tax consulting, tax authorities, taxpayers, tax mediation, institute of tax consulting.*