

SECTION 1

THEORY AND HISTORY OF PUBLIC ADMINISTRATION

TAX INFORMATION EXCHANGE AS THE SUBJECT OF SCIENTIFIC ANALYSIS

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The article analyzes the approaches to the definition of "information", "tax information", "exchange of tax information". It is proved that the essence of tax information should be considered in a broad sense. The concept of tax information is not to be limited exclusively as information or data created or obtained by the tax authorities. As the tax information in the article it is proposed to consider any facts, reports or records in any form that may be used to establish the tax liability of taxpayers. As the exchange of tax information in the article it is suggested to consider any actions related to obtaining, processing and subsequent transfer of the tax information from one entity to another.

Key words: information, tax information, classification of tax information, exchange of tax information, international information cooperation.

Formulation of the problem. Ensuring effective economic development is one of the key tasks of the present. Modern conditions for the functioning of the economy require the rapid adoption of managerial decisions and, at the same time, increasing their quality. In order to respond to such challenges, management should recognize the decisive role of information in their activities, consider information as an important strategic asset that allows solving ongoing tasks, critically analyzing past activities, and developing sound plans for future periods.

The last decades have been marked by the rapid development of information and telecommunication technologies, which has become one of the key factors in globalization of the world economy. At the same time, the activities of tax authorities mostly remained limited by national borders. In such circumstances, the exercise of sovereign tax powers, including audit and information collection, is generally limited to persons, information or activities within the territory of a separate jurisdiction. As a result, the national tax authority can only see a small portion of the total activity or investments of a single taxpayer. To bridge the gap in information, countries increasingly rely on the exchange of tax information.

Increasing the role and volume of tax information exchanged between national tax authorities will update the research of the essence of tax information and the exchange of tax information, etc.

Analysis of recent research and publications. A significant contribution to the study of the category of "information" was made by a number of domestic and foreign scholars such as L. Brillouin, N. Winner, V. M. Glushkov, P. Drucker, A. D. Yelyakov, Y. S. Marshak, F. Mihlup, A. Mole, V. B. Nikolayev, M. Porat, D. Stigler, E. Toffler, K. Shannon and others. Among the domestic and foreign researchers who outlined the separate legal

and regulatory aspects of tax information, one can mention such scholars as I. Babin, S. Dukanov, I. Kuchеров, M. Kostenko, O. Mandzyk, K. Proskura, O. Timartsev, O. Shevchuk, K. Yusupov and others.

Selection of previously unsettled parts of the general problem. However, the analysis of scientific literature has shown that certain aspects of international cooperation, and in particular the notion of tax information and procedures for the exchange of tax information, require additional research in view of the importance for each country of the development and strict application of the relevant rules and norms at the level of national tax legislation, and at the level of international treaties.

The purpose of the article. The article seeks to analyze the available in the scientific and ecclesiastical literature and normative legal acts definition of the concept of "information", "tax information", "exchange of tax information" and clarify the content of these categories.

Presenting main material. In the modern world, information is a crucial category and element of legal relations in different spheres. According to UNESCO, information is a universal substance that transcends all spheres of human activity, serves as a guide to knowledge and ideas, a tool for communication, mutual understanding and cooperation, the adoption of stereotypes of thinking and behavior [15]. It is clear that the information has unique properties. Material things are always and everywhere are limited by weight, spatial-temporal parameters. Information in terms of use overcomes all these barriers and acts as a substance that does not have such restrictions. That is why its possibilities are inexhaustible; it turns into a more perfect intellectual product, which humanity used at all times [2].

Since the middle of the twentieth century, information has become the subject of research not only in exact sciences, but also begins to

study law sciences. Each science examines the aspect of information that relates to the subject and methodology of its research. With all the diversity of approaches, it's important to note that "documented or publicly disclosed information" is the most widely used approach to defining and understanding the term "information".

The Law of Ukraine "On Information" in the previous edition contained exactly this meaning of this notion. The current version of the Law of Ukraine "On Information" defines the term "information" as "any information and/or data that can be stored on tangible media or displayed electronically" [8].

In the Ukrainian legislation, the definition of this concept is also contained in the laws of Ukraine "On Scientific and Technical Information", "On Telecommunications", the Civil Code of Ukraine, etc. The Law of Ukraine "On Scientific and Technical Information" defines the notion "scientific and technical information" as any information and/or data on domestic and foreign achievements of science, technology and production obtained during the research, development, design, technological, industrial and public activities that can be stored on tangible media or displayed electronically [11].

In accordance with the Law of Ukraine "On Telecommunications", information is defined as information provided in the form of signals, signs, sounds, moving or still images, or otherwise [12]. In the Civil Code of Ukraine (Part 1, Article 200) it is determined that information is any information and/or data that can be stored on tangible media or displayed electronically [13].

In the tax area, information relations are regulated by the Constitution of Ukraine, the Tax Code of Ukraine, the Law of Ukraine "On Protection of Personal Data" [10], the Law of Ukraine "On Access to Public Information" [7].

Previously, the Law of Ukraine "On Information" did not contain the definition of this type of information as tax information. Only with the adoption of the Tax Code of Ukraine was introduced a number of amendments and additions, according to which, along with information on the individual, reference and encyclopedic nature, the state of the environment (environmental information), the product (work, service), scientific and technical information, legal, statistical and sociological information, and tax information appeared [4].

According to Art. 16 of the Law of Ukraine "On Information", tax information is a collection of information and data created or received by the subjects of information relations in the process of current activity and necessary for the implementation of tasks and functions entrusted to the supervisory bodies in the manner prescribed by

the Tax Code of Ukraine. The same definition is also enshrined in the Tax Code of Ukraine [6].

At the same time, somewhat different interpretations of tax information are found in the scientific literature. Thus, O. Mandzyuk proposes the following definition: tax information is socially significant information and/or data that can be stored on tangible media or displayed electronically, created or received by the tax authorities within the limits of powers not provided by law in order to ensure effective functioning of the taxation system. The investigator also proposed the typology of tax information:

1) open tax information – it is information of the tax authorities, as well as their structural units, which is informative and is used to improve the implementation of their service functions;

2) tax information with restricted access – it is publicly significant information and/or data that can be stored on tangible media or electronically displayed, created or received by the tax authorities within the limits of the powers stipulated by law, in order to ensure effective the functioning of the taxation system, the access to which is restricted by them in accordance with the legislation of Ukraine in connection with the special value for their owners or conscientious users or in connection with official necessity;

3) tax secrecy – it is publicly significant information and/or data that can be stored on tangible media or displayed in electronic form, created or received by the tax authorities within the powers provided for by law, in order to ensure the effective functioning of the taxation system, access to which limited to them in accordance with the legislation of Ukraine in connection with the special value for their owners or conscientious users;

4) business tax information – it is socially significant information and/or data that can be stored on tangible media or displayed in electronic form, created or received by the tax authorities within the powers provided for by law in order to ensure the effective functioning of the taxation system, access to which are limited to them in accordance with the legislation of Ukraine in connection with official necessity [4].

Analyzing the considered approach, it should be noted that O. Mandzyuk focuses on the information and / or data created or received by the tax authorities. Thus, the information or data that is at the disposal of other authorities or taxpayers and may be used for tax purposes remain outside the attention. Similarly, the typology of tax information proposed by O. Mandzyuk implies its distribution, depending on the degree of openness of information available to tax authorities.

In turn, G. Dolmatova and Y. Chmir offer the following definition of tax information: "tax infor-

mation is documented or publicly disclosed information relating to the administration or implementation of domestic tax legislation" [1, p. 93]. Such an approach, in our opinion, also reduces the amount of tax information, especially in the context of the international tax information exchange, as it only emphasizes the use of information for the enforcement of domestic tax legislation. Information relating to the performance by taxpayers of their obligations to tax authorities of other countries, or information that is available to tax authorities of other countries and can be used for tax purposes by domestic tax authorities, also fall outside this definition.

In our opinion, the most general definition of tax information, especially taking into account the processes of international tax information exchange, is that enshrined in the Agreement on Exchange of Information on Tax Matters of the Organization for Economic Cooperation and Development. In particular, it is provided that for the purposes of the Agreement, the term "information" means any facts, reports or records in any form. As stated in the agreement itself, this is a rather broad definition. Therefore, the commentary to the Agreement provides additional explanations as understood by the term "records": the records include, but are not limited to: an account, a contract, a book, a chart, a table, a chart, a form, an image, an invoice, a letter, a card, a memorandum, plan, declaration, telegram and voucher. The term "record" is not limited to information that is in paper form, but also includes information contained electronically [14].

It is also important to note that the definition given does not limit information solely to the taxpayer. The term "information" is defined in a broad sense and may include, for example, legal circumstances, relevant economic criteria and risk analysis tools, etc.

In view of the rapid development of information and communication technologies, the emergence of new types of business, the conversion of ordinary business processes into electronic format (e-commerce, e-auctions, e-banking, etc.), the use of a more general approach to the definition of information, and in particular tax information, in our opinion, is justified. Similarly, it is not necessary to limit the range of entities that act as owners or managers of tax information, only by tax authorities. But, on the other hand, the definition contained in the Agreement on the exchange of information on tax issues does not indicate the scope of information - taxation. In our view, it is necessary to emphasize this aspect by providing the definition of tax information.

An important understanding of the current processes of international cooperation on tax issues

is the consideration of the concept of "exchange of tax information", because this aspect is today the main part of international tax cooperation. In this context, it should be noted that the definition of the concept of "exchange of tax information" is not legally defined in Ukraine. Although at the bilateral level, the basis for the development of Ukraine's cooperation with other states in the area of exchange of tax information is the relevant articles of the treaties on avoiding double taxation of income and property, and the provisions on information exchange are contained in all, without exception, the treaties of avoidance of double taxation [5]. However, none of them contains a clear definition of the concept itself.

In Ukraine, the exchange of information in accordance with all tax treaties is carried out in accordance with the Procedure for the exchange of information by special written requests with the competent authorities of foreign countries, approved by the order of the Ministry of Finance of Ukraine dated November 30, 2012 No. 1247 [9]. This document was developed on the initiative of the tax service of Ukraine in order to ensure the effective exchange of tax information with the competent authorities of other countries on special written requests for the correct application of tax legislation and the fight against tax evasion. The legal grounds for the development of the order were the provisions of Chapter I of Chapter III of the Convention on Mutual Administrative Assistance in Tax Matters, provisions on the exchange of tax information on double tax treaties [3] and Articles 72-74 of the Tax Code of Ukraine.

The order was developed in order to effectively perform the functions of the competent authority of the state tax service in accordance with international treaties on the avoidance of double taxation and the implementation of the fight against tax evasion. The mechanism of implementation, provided by the order, is to organize the effective exchange of tax information by special written requests with the competent authorities of foreign countries. The provisions of the Order provide for the preparation and execution of documents on the exchange of tax information in the framework of relevant international agreements with the competent authorities of foreign countries, namely: preparation and submission of a special request to the competent authorities of foreign countries; consideration, execution of a request received from the competent authorities of foreign countries; processing a response to a special request received from the competent authorities of foreign countries.

Also, this document provides the terms for providing information, the grounds for the preparation of requests, etc. According to this order, considerable amount of information exchange is

carried out annually between Ukraine and a considerable number of other countries. At the same time, the rules of this order, approved in 2012, must be revised today. One of the reasons for this is that the act does not contain a clear definition of the concept of "exchange of tax information".

The need for a clear definition of the "tax information exchange" category is due to the fact that understanding the goals and content of the tax information exchange allows to standardize the relevant procedures both within the tax authority and internationally. Such standardized procedures create a platform that can accelerate the exchange of information, combat tax evasion, and formulate appropriate tax policies.

In the most general form, the exchange of tax information is any action for the receipt or transfer of tax information from one entity to another. In the context of the international tax information exchange, it is a question of collecting, processing and transferring tax information from one side to another, that is, from the authorized tax authority of one country to an authorized tax authority of another country or several countries. The exchange of tax information involves coordinating requests for information from specific taxpayers both from outside (that is, from an initiative of a foreign partner) and independently initiated (that is, on the initiative of the authorized tax authority). As a rule, the information requested relates to consideration, investigation of circumstances or investigation of a taxpayer's tax liability during a certain tax period. Most queries relate to the outcome of a particular tax return, although requests may also arise in matters of collection, criminal investigations or other tax administrative procedures, as provided for in international tax information exchange agreements.

Thus, the notion of "exchange of tax information" covers a large number of internal and external procedures for the interaction of tax authorities of different jurisdictions, tax authorities and other authorities within the same jurisdiction. The complex set of such procedures requires their structuring and a clear definition of the powers and responsibilities of each body involved in the process of exchanging tax information.

Conclusions and suggestions. In recent decades there has been an unprecedented liberalization and globalization of national economies. More and more countries eliminate or reduce control over foreign investment and weaken or eliminate foreign exchange controls. While tax authorities continue to operate within national jurisdictions, taxpayers operate on a global market. This imbalance and differences in national tax systems have led internationally to begin to combat harmful tax practices by enhancing coopera-

tion between the relevant tax authorities, in particular through the exchange of tax information.

Based on the analysis, it is proved that the essence of tax information is expedient in the broad sense, not to limit it solely to the information or data created or received by the tax authorities. The most appropriate approach is to use a more general approach, under which tax information refers to any facts, reports or records in any form that can be used to establish taxpayers' tax liabilities. Under the exchange of tax information, the article proposes to consider any actions related to the receipt, processing and subsequent transfer of tax information from one entity to another. Given the complexity of the "tax information exchange" category, further research needs to focus on structuring tax information exchange procedures, defining the functions and powers of all actors involved in the relevant procedures.

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