

Features of Legal Regulation of Tax Incentives for Small Business in Post-socialist Countries

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Abstract: *Small businesses are one of the main factors of political and social stability of society and national economy in the modern European states. However, small businesses are vulnerable to a number of factors (inflation, expensive costs of credits, instability and complexity of tax law, burdens of public administration and permitting system) and require government support. In the world practice, the state support of small businesses uses a wide range of tools, including targeted government funding, assistance in formation of seed capital, preferential loans, preferential taxation, leasing, franchising, protectionism in investment and export policy, priority subsidies or information. The most effective tools of the state support are financial methods, especially fiscal methods, carried out directly through the tax system. In the following paper, experience in application of instruments of tax incitement in the tax systems of the post-socialist countries has been analysed while three trends of use of instruments of tax regulation have been revealed. The first one is avoiding the use of special tax regimes and a significant reduction of tax preferences. The second one represents limited use of special tax regimes and introduction of the complex of incentive tax preferences aimed at reducing of the tax load at tax system, creating new work places and encouraging research, investment and innovation activities. The third one means wide use of special tax regimes, joined with provision for small business tax preferences. Finally, recommendations about the adaptation of certain foreign tax technologies and tools to the national tax legislation and practice have been proved.*

Key Words: *Tax Law; Tax System; Preferential Taxation; Special Tax Regimes; Small Businesses; Post-socialist Countries; Ukraine.*

Introduction

Small businesses are one of the main factors of political and social stability of society and national economy in the modern European states. At the same time, small businesses are susceptible to a number of factors (inflation, high costs of credit resources, instability and complexity of tax

legislation, burdens of public administration and licensing system) and require state support. In the world practice, the state support of small businesses uses a wide range of tools; among them above all targeted budget financing, assistance in formation of start-up budgets, preferential loans, preferences in taxation, leasing, franchising, protectionism in investment and export policy, priority subsidisation and others. The most effective instruments of the state support are financial methods, primarily fiscal methods of influence, which are implemented directly through the taxation system.

Studying the specifics of the use of tax instruments to stimulate small businesses has led to a significant number of studies written by the both domestic and foreign scientists. Traditionally, more attention is being paid to the analysis of tax practices of the developed European states. At the same time, the experience of tax incentives for small businesses in the post-socialist states remains poorly researched. Special research attention is required by the tax practice of stimulating small businesses in the neighbouring countries which are closer to Ukraine historically and territorially as well as mentally and in terms of the socio-economic development. Such an approach will help us show the specifics of small business taxation and obtain the necessary material for improving the domestic tax system. The theoretical basis of our paper is created by the studies of M. Beblavy, O. V. Muzychenko, M. A. Pozhidaeva, O. R. Radyshyevska and of other scientists. The purpose of the paper is to disclose the current trends in the application of tax incentives for small businesses in the national tax systems of the post-socialist countries in order to improve the simplified taxation system in Ukraine.

Tools of tax regulation

World experience testifies to wide use of various tools of tax regulation and also variants of their combination, with the purpose of creation of favourable conditions for development of small businesses and individual businesses. At the same time, in countries with advanced economies, the use of a complex of tax concessions is more common, combined with simplification of the procedure for registration, record keeping and tax reporting. Small businesses are on a common taxation system and pay all taxes determined by tax legislation. At the same time, they have the right to use incentive and supportive tax incentives established for them. Stimulating incentives encourage taxpayers to act to solve national problems. In turn, supportive benefits reduce the tax burden for small busi-

nesses; they provide tax benefits that are more favourable than for other taxpayers.¹ In countries with economies in transition, preference is given to special tax regimes that improve the functioning of small businesses, providing an opportunity to obtain significant savings by reducing the tax burden and reducing the management costs.

In the most post-socialist countries, tax preferences for small businesses are realised through the provision of tax incentives and the introduction of special tax regimes into tax systems. The only exceptions are Slovakia and Estonia which refused to apply special tax regimes and significantly limited the practice of granting tax benefits. Tax relations in these countries are based on the principles of equality and uniformity of taxation conditions for all categories of taxpayers. In Slovakia, all types and amounts of incomes are taxed at a single rate (19 % for the tax on income of citizens, corporate income tax and value added tax). Almost all exceptions to the general rules of taxation were abolished, which made them simpler and more transparent and which also eliminated the possibility of applying schemes aimed at paying taxes at lower rates.² In Estonia, small businesses pay all taxes on a general basis. The incomes of individuals engaged in business activities are subject to income tax at a general rate of 21 %.³

Tax incentives

Tax incentives as a tool of tax credit are characterised by high efficiency and extreme flexibility. The introduction of benefits allows the state to reduce tax burden quite quickly in certain categories of payers or certain types of activities rather than changing the current charging mechanism. Tax benefits can be provided both in the form of exemption from pay-

¹ See MUZYCHENKO, O. V. Tools for Tax Incentives for Small Businesses in the Tax Systems of the Post-socialist Countries of the European Union. *AgroSvit*. 2015, no. 20, p. 58. ISSN 2306-6792 [in the Ukrainian original МУЗИЧЕНКО, О. В. Інструменти податкового стимулювання малого підприємництва в податкових системах постсоціалістичних країн Європейського Союзу. *Агросвіт*. 2015, № 20, с. 58. ISSN 2306-6792].

² See BEBLAVY, M. Reform of Public Administration in Slovakia and Other Central European Countries and Its Importance for Ukraine. In: *The Experience of Central European Countries in Implementing Economic Reforms: Ideas and Recommendations for Ukraine*. Kiev: ICPS, 2005, p. 36 [in the Ukrainian original БЕБЛАВИ, М. Реформа державного управління в Словаччині й інших країнах Центральної Європи та її значення для України. В: *Досвід країн Центральної Європи у здійсненні економічних реформ: ідеї та рекомендації для України*. Київ: МЦПД, 2005, с. 36].

³ See document *Estonian Tax and Customs Board* [online]. 2017 [cit. 2017-10-06]. Available at: <http://www.emta.ee>.

ment of tax on a permanent or temporary basis, or by reducing the base tax rates or by removing individual objects from taxation. The basis for granting such benefits to small businesses are the amount of income, type of activity, creation of new jobs, attraction of foreign investments and so on.

For example, in the Republic of Moldova, the total amount of income tax is determined as follows: a) for individuals and self-employed persons – in the amount of 7 % of annual taxable income not exceeding 31 140 MDL and 18 % of annual taxable income when exceeding 31 140 MDL; b) for corporate entities – in the amount of 12 % of taxable income; c) for peasant (farm) enterprises – in the amount of 7 % of taxable income.⁴

In Poland, tax benefits for individual tax, corporate profit tax and value added tax are established for small businesses, provided that sales for the previous year did not exceed 1 200 000 EUR. Self-employed persons are entitled to apply a reduced rate of personal income tax of 19 %, regardless of income level. Small businesses that are corporate tax payers may annually reduce their tax liabilities by up to 50 % of the costs of the fixed assets acquisition.⁵

In Hungary, small businesses can take advantage of both benefits that are addressed directly to small businesses and general tax incentives. Three groups of general benefits provide tax preferences to business entities in the fields of investment, innovation and scientific research. The first group provides investors with tax rebates for up to 10 years at a rate of 50 % to 100 % of the respective obligations, depending on the volume and location of investments. The greatest benefits are granted for investing in economically backward areas. The second group allows reducing the taxable base by 100 % of the direct costs of scientific development and innovation. The third group strengthens the tax ad-

⁴ See *Tax Code of the Republic of Moldova No. 1163-XIII* [1997-04-24] [online]. 2017 [cit. 2017-10-06]. Available at: http://www.base.spininform.ru/show_doc.fwx?rgn=3834#A000000148 [in the Russian original *Налоговый кодекс Республики Молдова № 1163-XIII* [1997-04-24] [онлайн]. 2017 [цит. 2017-10-06]. Доступно на: http://www.base.spininform.ru/show_doc.fwx?rgn=3834#A000000148].

⁵ See EFIMENKO, T. I., S. L. LONDAR, YU. B. IVANOV, et al. *Development of the Tax System of Ukraine: Transformation of the Simplified Taxation System*. Kiev: DNNU, 2011, p. 228. ISBN 978-966-2380-30-9 [in the Ukrainian original ЄФІМЕНКО, Т. І., С. Л. ЛОНДАР, Ю. Б. ІВАНОВ, та ін. *Розвиток податкової системи України: трансформація спрощеної системи оподаткування*. Київ: ДННУ, 2011, с. 228. ISBN 978-966-2380-30-9].

vantages of those enterprises the locations of which and/or fixed assets are located in priority areas of regional and industrial development. The fourth group of benefits can be used only by small businesses that are allowed to reduce the amount of tax liability by 40 % of the debt owed to financial institutions for payment of interest on loans. The maximum amount of such a benefit is 5 million HUF for one tax year.⁶

In the Czech Republic, small enterprises with small incomes are exempted from paying value added tax. Such enterprises are also allowed to use the mechanism of accelerated depreciation. Tax incentives are also provided for small entrepreneurs who employ persons with disabilities to work.⁷

Special tax regimes

In turn, special tax regimes are complex instruments of tax regulation that are introduced by the subsystem into the tax system, act as an alternative to the general tax regime, are implemented by a set of financial and regulatory measures for certain categories of taxpayers and are establishing a special procedure for calculating and paying taxes. The introduction of special tax regimes to stimulate small businesses and self-employment is provided for by the tax laws of Belarus, Bulgaria, Latvia, Lithuania, Moldova, Poland, Russia, Romania, Hungary, Ukraine and the Czech Republic. The analysis of special tax regimes provided for by the tax legislation of these countries, in the context of such an element of the legal design of the tax as a “subject of tax”, shows the application of both the taxation regimes for the actual income received and the taxation regimes for the potential income (taxation on external characteristics).

The regime of taxation of actually received income provides for determining tax liabilities of taxpayers on the basis of taxation of the actual results of their activities, such as income or gross revenues. This kind of

⁶ See MELNYK, P. V., L. L. TARANGUL, Z. S. VARNALIY, et al. *Tax Policy of Ukraine: State, Problems and Prospects: Monograph*. Kiev: Knowledge of Ukraine, 2008, p. 73. ISBN 978-966-316-224-9 [in the Ukrainian original МЕЛЬНИК, П. В., Л. Л. ТАРАНГУЛ, З. С. ВАРНАЛІЙ, та ін. *Податкова політика України: стан, проблеми та перспективи: монограф.* Київ: Знання України, 2008, с. 73. ISBN 978-966-316-224-9].

⁷ See MUZYCHENKO, O. V. Tools for Tax Incentives for Small Businesses in the Tax Systems of the Post-socialist Countries of the European Union. *AgroSvit*. 2015, no. 20, p. 60. ISSN 2306-6792 [in the Ukrainian original МУЗИЧЕНКО, О. В. Інструменти податкового стимулювання малого підприємництва в податкових системах постсоціалістичних країн Європейського Союзу. *Агросвіт*. 2015, № 20, с. 60. ISSN 2306-6792].

special tax regime can include tax on microenterprises in Latvia, Moldova and Romania.

The tax on microenterprises in Latvia was introduced in year 2010. The object of taxation is the turnover of the taxpayer. Taxpayers can be limited liability companies, self-employed persons or agricultural and fishing enterprises. To apply a special regime, restrictions are set: 1.) the annual income should not exceed 100 thousand EUR; 2.) the number of employees should not exceed 5; 3.) the monthly income of a microenterprise worker should not exceed 720 EUR; 4.) only individuals should be participants in a limited liability company; and 5.) the members of the board of a limited liability company should only be employees of a microenterprise. The tax rate is 9 %. If the turnover exceeds 7 thousand EUR or the employee's income exceeds 720 EUR per month, then the rate of 20 % applies to the excess amount. If the number of employees during the quarter becomes more than 5 people, then to the rate of 9 % are added 2 % for each additional employed person.⁸

In the Republic of Moldova, since year 2012, there is a taxation of economic entities – subjects of the sector of small and medium-sized enterprises. The subjects of such a taxation regime may be economic entities that are not registered as the value added tax payers, with the exception of peasant (farmer) enterprises and self-employed individuals who, as of December 31st of the tax period preceding the declared tax period, received income from operating activities of up to 600 thousand MDL or did not receive any income at all. The choice of such a special tax regime is carried out by specifying it in the accounting policy of the business entity before April 25th and for new payers by the 25th day of the month following the registration quarter. The tax period for such entities is a calendar year at the end of which the income from operating activities is determined. The object of taxation is the income from operating activities received during the declared tax period. The rate of the approached tax is 3 % of the object of taxation. Calculation of the tax is made annually and payment is quarterly up to the 25th day of the month following the corresponding quarter.⁹

⁸ See *Ministry of Finance of the Republic of Latvia* [online]. 2017 [cit. 2017-10-06]. Available at: <http://www.fm.gov.lv>.

⁹ See *Law of the Republic of Moldova on the Introduction of Amendments and Additions to Some Legislative Acts No. 267* [2011-12-23]. Monitor of the Parliament of the Republic of Moldova, 2012, No. 13-14, p. 32 [in the Russian original *Закон Республики Молдова*

From January 1st, 2017, the special tax on microenterprises which operate in Romania has undergone significant changes. Any legal person with an authorised capital of at least 45 000 RON (or earlier it would have been necessary to have a share capital of 25 000 EUR or more) can become its payer. The income threshold at which a legal entity can apply a tax on microenterprises is 500 thousand EUR per year (previously this amount was 100 thousand EUR). The object of taxation is the income received by such an enterprise. Since January 6th, 2017, there are two rates of this tax: 1 % for microenterprises that have at least one employee; 3 % for microenterprises that do not have employees. The right to pay a special tax on microenterprises cannot use the legal entities that: 1.) carry out banking activities; 2.) carry out insurance activities and activities on the securities market, with the exception of legal entities engaged in mediation in these areas; 3.) carry out activities in the field of gambling; and 4.) carry out activities for the exploration, development and operation of oil and natural gas fields.¹⁰

Regimes for the taxation of possible revenues (or taxation on external grounds) are introduced for groups of taxpayers whose activities make practically impossible to determine the actual results. Such problems usually arise when taxing the self-employed individuals. The large number of such taxpayers complicates the sufficient control of their activities. The incomes of such individuals, as a rule, are small. At the same time, they sell their products or provide services almost always for cash, so they have the opportunity to hide actual incomes. To determine the amount of tax liabilities of such persons, tax authorities are forced to use indirect methods of determining the tax liability. That means to evaluate the potential income depending on external characteristics of the activity (type of activity, location, number of employees and so on).¹¹ The experience of applying such a kind of taxation have Bulgaria, Lithuania or the Czech Republic.

O vnesenii izmenenii i dopolnenii v nekotorye zakonodatelnye akty № 267 [2011-12-23]. Монитор Парламента Республики Молдова, 2012, № 13-14, ст. 32].

¹⁰ See *Legea nr. 227/2015 privind Codul fiscal* [online]. 2017 [cit. 2017-10-06]. Available at: https://static.anaf.ro/static/10/Anaf/legislatie/Cod_fiscal_norme_09022017.htm.

¹¹ See BABIN, I. I. *Presumptions and Fictions in Tax Law: Textbook*. Chernivtsi: Ruta, 2009, pp. 255-257. ISBN 978-966-423-009-1 [in the Ukrainian original BABIN, I. I. *Презумпції та фікції в податковому праві: Навчальний посібник*. Чернівці: Рута, 2009, с. 255-257. ISBN 978-966-423-009-1].

It is well-known that the wide application of tax benefits narrows the base of income taxation and reduces revenues to the budget. The introduction of minimum taxes in such cases contributes to the solution of the problem, because it forces enterprises to pay either a normal tax or a minimum tax, and in some cases to refuse excessive use of benefits. The latter is explained by the fact that in case of widespread use of tax preferences, the amount of the usual corporate income tax may be less than the minimum tax amount. At the same time, it is the rule that if the amount of the ordinary tax is exceeded, the taxpayer does not have returned the excess of paid funds.¹²

In Bulgaria, the most representatives of small businesses are payers of the annual (patent) tax. Enterprises engaged in hotel and restaurant business, retail trade, food production, transport services, Internet services or construction (about 50 activities in total) are obliged to switch to such a regime, provided that their turnover in the last 12 months has not exceeded 75 thousand BGL (respectively BGN). The size of the tax is determined on a scale and depends on the locality (city/town or village), the type and parameters of the activity (for example the number of “stars” of the hotel and the number of seats in it, the shopping area of the store, the number of seats in the restaurant, etc.). It is paid once a year in advance with a 5 % discount (until January 31st) or in equal instalments four times a year. The amount of profit does not affect the amount of payment. Taxpayers are exempt from the value added tax, but on a general basis they pay the real estate tax, domestic waste tax, vehicle tax, personal income tax as well as social and pension contributions.¹³

In Lithuania, there is a special regime providing for a license to carry out economic activities the payment for which replaces the payment of personal income tax. All other taxes and fees are paid on a general basis. The licensed regime extends to individual entrepreneurs who do not have employees and are engaged in certain types of activities like indus-

¹² See EFIMENKO, T. I., S. L. LONDAR, YU. B. IVANOV, et al. *Development of the Tax System of Ukraine: Transformation of the Simplified Taxation System*. Kiev: DNNU, 2011, p. 225. ISBN 978-966-2380-30-9 [in the Ukrainian original ЄФИМЕНКО, Т. І., С. Л. ЛОНДАР, Ю. Б. ІВАНОВ, та ін. *Розвиток податкової системи України: трансформація спрощеної системи оподаткування*. Київ: ДННУ, 2011, с. 225. ISBN 978-966-2380-30-9].

¹³ See MUZYCHENKO, O. V. Tools for Tax Incentives for Small Businesses in the Tax Systems of the Post-socialist Countries of the European Union. *AgroSvit*. 2015, no. 20, p. 62. ISSN 2306-6792 [in the Ukrainian original МУЗИЧЕНКО, О. В. Інструменти податкового стимулювання малого підприємництва в податкових системах постсоціалістичних країн Європейського Союзу. *Агросвіт*. 2015, № 20, с. 62. ISSN 2306-6792].

trial and commercial activities (25 types of activities, in particular the production and sale of clothing, tourism and handicrafts), trade (6 types of activities, in particular the kiosk trade, trade from carts and in open markets), providing services to the public (13 types of activities, including the hairdressers and photographic services), other types of activities (money transfers or professional sports). The license may specify that one of the members of the family of the self-employed individual who received the license is granted the right to engage in the same activity on his/her behalf and on the basis of a single license. The fixed fee is set separately for each type of activity by the local authorities and must not exceed the limits established by the tax legislation.¹⁴

In the Czech Republic, the minimum income tax was introduced in year 2005 for small businesses that ended the calendar year with losses. Such a measure was one of the forms of combating the income concealment and shadow economy. The base of taxation for calculating the minimum tax was 50 % of the average wage in the national economy. Self-employed individuals who are disabled, retired and students under the age of 26 are exempt from the payment of the minimum tax. Individuals in the first year and in the last year of the business activities do not pay a minimum tax.¹⁵

For the purpose of the most complete coverage of income of tax payers, some states combine the taxation regime of actually received income and the taxation of possible income. In particular, in the Republic of Poland, there are four simplified taxation models that provide for the neutralisation of certain elements of the legal mechanism of taxation – a tax card, a fixed tax on accounting income, tax on profits of clergy and tonnage dues.

A tax card allows paying taxes in certain quotas which do not depend on the amount of actual profits received. The payers of the tax card are individuals who independently carry out economic activities without the formation of a legal entity, public organisations as well as limited, partner, full and simple partnerships the number of employees in which does

¹⁴ See MELNYK, P. V., L. L. TARANGUL, Z. S. VARNALIY, et al. *Tax Policy of Ukraine: State, Problems and Prospects: Monograph*. Kiev: Knowledge of Ukraine, 2008, pp. 72-73. ISBN 978-966-316-224-9 [in the Ukrainian original МЕЛЬНИК, П. В., Л. Л. ТАРАНГУЛ, З. С. ВАРНАЛІЙ, та ін. *Податкова політика України: стан, проблеми та перспективи: монограф.* Київ: Знання України, 2008, с. 72-73. ISBN 978-966-316-224-9].

¹⁵ See *Ministry of Finance of the Czech Republic* [online]. 2017 [cit. 2017-10-06]. Available at: <http://www.mfcr.gov.cz>.

not exceed 5 persons and the profits for the previous tax year do not exceed 10 thousand EUR. The application of this form of tax calculation is possible for persons who develop folk crafts; provide household and transport services, trade in gastronomic products; work non-professionally in the fields of education, health, veterinary, childcare; carry out the production of biogas and electricity in wind and hydroelectric power plants up to 5 thousand kW, etc.¹⁶ The legislation provides for a special procedure for reporting and filing annual tax returns by eliminating the recordkeeping. However, it is necessary to keep a register of the employees and the issued cash receipts to customers by keeping their copies for 5 years as well as to inform the tax authority of changes affecting the determination of the amount of tax. Along with the base rate, especially are applied the reduced or increased rates that take into account the identity of the payer. The calculation and payment of tax are carried out monthly.¹⁷

Fixed tax on accounting profits is paid to the state budget of the Republic of Poland. Taxpayers are individuals who carry out business activities and whose income has not exceeded 150 thousand EUR for the previous tax year as well as producers of agricultural products that carry out unsystematic activities. Pharmacies, pawnshops, funeral homes, currency exchange offices, manufacturers of excisable goods do not have the right to apply such a regime. Tax rates are the interest rates and depend on the type of economic activity (3 %, 5.5 %, 8.5 %, 17 % or 20 %). Fixed tax payers are required to keep records to confirm the enterprise's revenues, to prepare reports and to keep copies of the accounts of purchased goods and services. When paying a fixed tax, it is possible to use the tax privileges provided for the payers of personal income tax, including the reducing the taxable base by the amount of the tax credit. Revenues from

¹⁶ See *Ustawa Rzeczypospolitej Polskiej O zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne* [1998-11-20]. Dziennik Ustaw Rzeczypospolitej Polskiej, 2000, No. 144, poz. 930 ze zm.

¹⁷ See RADYSHEVSKA, O. R. Simplified Taxation Systems for Individual Entrepreneurs (under the Legislation of the Republic of Poland). *Small and Medium Business (Law, State, Economy)*. 2011, no. 3-4, pp. 59-60 [in the Ukrainian original РАДИШЕВСЬКА, О. Р. Спрощені системи оподаткування фізичних осіб підприємців (за законодавством Республіки Польща). *Малий і середній бізнес (право, держава, економіка)*. 2011, № 3-4, с. 59-60].

renting hotel-type premises in rural areas and financial assistance received from international organizations are exempt from taxation.¹⁸

The income tax for clerics is paid by official representatives of registered denominations and religions that receive income from pastoral activities. The size of the tax rate depends on the functions of the person in the church, the number of residents in the parish and the size of the commune where the religious center is located, and can be reduced by the decision of the tax authority if the number of believers is noticeably less than by other confessions on the parish territory. The tax is paid once a quarter. Profits of clergymen received from other sources as well as property belonging to them on the right of private property are taxed in accordance with general practices.¹⁹

Tonnage tax is a special regime for alternative income taxation in the field of merchant shipping. The subjects of taxation are the owners of sea vessels that perform international transport. The basis of taxation is the income of the ship owner derived from certain types of economic activities (loading, unloading and repair of sea vessels, management of passenger terminals, activities of marine agents, brokers as well as leasing and chartering). Calculation of the amount of taxable income is carried out by the payer independently by the estimated method using the formula: the daily rate of income multiplied by the number of days of operation of the vessel per month, taking into account the division of vessels into groups. The tax rate is 19 %, as well as when taxing incomes of legal entities.²⁰

Alternative system of taxation

Specifically, R. A. Havrylyuk states that “the philosophy and the doctrine of tax and legal regulations in Ukraine have undergone profound qualitative changes. One of the natural consequences of this was the profound

¹⁸ See *Ustawa Rzeczypospolitej Polskiej O zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne* [1998-11-20]. Dziennik Ustaw Rzeczypospolitej Polskiej, 2000, No. 144, poz. 930 ze zm.

¹⁹ See RADYSHEVSKA, O. R. Simplified Taxation Systems for Individual Entrepreneurs (under the Legislation of the Republic of Poland). *Small and Medium Business (Law, State, Economy)*. 2011, no. 3-4, p. 61 [in the Ukrainian original РАДИШЕВСЬКА, О. Р. Спрощені системи оподаткування фізичних осіб підприємців (за законодавством Республіки Польща). *Малій і середній бізнес (право, держава, економіка)*. 2011, № 3-4, с. 61].

²⁰ See *Ustawa Rzeczypospolitej Polskiej O podatku tonażowym* [2006-08-24]. Dziennik Ustaw Rzeczypospolitej Polskiej, 2006, No. 183, poz. 1353 ze zm.

transformation of all preferential instruments of the state and its legal foundations, the activation of the search for adequate legal structures for the legal provision of creation and use of legitimate “positive” and “negative” incentives for business entities, which is dictated by the economic nature of the market and the new strategic goals of social development”.²¹ The peculiarity of the tax legislation of Ukraine, with regard to the tax incentives for small businesses, is not only the simplification of administration and the reduction of income tax rates, but also the introduction of an alternative system of taxation by the possible replacement of payment of all or the majority of taxes and fees paid by small businesses by a single tax. Such a simplified taxation system which provides for the possibility of paying a single tax was later borrowed by some Commonwealth of Independent States Members (Azerbaijan, Belarus, Kyrgyzstan and Russia).

Founded by the Decree of the President of Ukraine “On the Simplified System of Taxation, Accounting and Reporting of Small Businesses”, the simplified taxation system at the first stages of its existence ensured dynamic development of small businesses, stable revenues to the budget and at the top of its development (in year 2009) covered more than 1.3 million single tax payers. But after the tax reforms in years 2014 – 2016, the simplified taxation system became less attractive for business entities and the number of single tax payers began to decrease steadily.²²

The principles of the single taxation are: a) simplicity of calculating and paying taxes; b) minimization of tax reporting; c) harmonization of accounting and tax accounting; d) minimizing the number of penalties; and e) reduction of administrative expenses.²³ The essence of a single tax

²¹ See HAVRYLYUK, R. A. *Anthroposociocultural Code of Tax Law: Monograph: Book 2: Tax Law Constant*. Chernivtsi: Yuriy Fedkovych Chernivtsi National University Press, 2014, p. 115. ISBN 978-966-423-317-7 [in the Russian original ГАВРИЛЮК, Р. А. *Антропосоцикультурный код налогового права: монография: Книга 2: Константы налогового права*. Черновцы: Черновицкий национальный университет имени Юрия Федьковича, 2014, с. 115. ISBN 978-966-423-317-7].

²² See BABIN, I. I. Modern System of Local Taxes and Fees in Ukraine. *Societas et iurisprudentia*. 2016, vol. 4, no. 3, p. 31. ISSN 1339-5467 [in the Russian original БАБИН, И. И. Современная система местных налогов и сборов Украины. *Societas et iurisprudentia*. 2016, vol. 4, no. 3, с. 31. ISSN 1339-5467].

²³ See BABIN, I. I. *Tax Law of Ukraine: Textbook*. Chernivtsi: Yuriy Fedkovych Chernivtsi National University Press, 2012, p. 478. ISBN 978-966-423-190-6 [in the Ukrainian original БАБИН, І. І. *Податкове право України: Навчальний посібник*. Чернівці: Чернівецький національний університет імені Юрія Федьковича, 2012, с. 478. ISBN 978-966-423-190-6].

is disclosed through its characteristics: 1.) consistency; 2.) alternative-ness; 3.) voluntariness of choice of its payment; as well as 4.) scope of application.

The consistent nature of the single tax is manifested through the internal connection of a certain set of mandatory payments the collection of which is provided by the current tax legislation. Thus, Article 297 of the Tax Code of Ukraine provides for the exemption of single tax payers from the obligations to charge, to pay and to submit tax reports on such taxes and fees as follows: 1.) corporate profit tax; 2.) tax on personal income; 3.) value added tax (except for payers of group III who choose a 3 % tax rate and payers of group IV); 4.) land tax; and 5.) rent for special use of water by payers of group IV. Previously, the list of tax payments the payment of which was replaced by a single tax was much broader and included also a single contribution to the compulsory state social insurance, which made the system of simplified taxation for small businesses significantly more attractive.

The alternativeness of a single tax means that it is an alternative to a certain set of existing mandatory payments from which the payer of the single tax is exempt; the taxpayer can choose the mechanism for taxing his/her income from business activities either by paying one (single) tax or in accordance with general practice.²⁴ In addition, the payers of the single tax of the group III have the right to choose the tax rate.

The voluntariness of choosing the single tax payment means that the legislator grants to subjects of small business in the presence of corresponding bases independently to choose the single tax payment, with the purpose of simplification of the taxation of their incomes from the business activities. On the basis of this right, there arises the obligation to pay a single tax. This tax becomes mandatory only after the small business entity voluntarily takes the responsibility for paying it.

The scope of application of the single tax is determined by a limited range of small business entities. One of the fundamentally new norms for determining restrictions for the application of a simplified taxation system is the inability to apply it to non-residents. Such a prohibition con-

²⁴ See POZHIDAIEVA, M. A. *Legal Regulation of a Single Tax for Small Business Entities*. Kiev: NAS of Ukraine, Institute of State and Law of the V. M. Koretsky, 2005, p. 28 [in the Ukrainian original ПОЖИДАЄВА, М. А. *Правове регулювання єдиного податку для суб'єктів малого підприємництва*. Київ: НАН України, Інститут держави і права ім. В. М. Корецького, 2005, с. 28].

tradicts the basic principles of the tax legislation enshrined in the Article 4 of the Tax Code of Ukraine, in particular the principle of the equality of all payers before the law and the prevention of any manifestations of tax discrimination. The prohibition of choice of the simplified taxation system by the non-residents which is contained in the Article 291 of the Tax Code of Ukraine may be regarded as a discrimination of legal entities and individual non-residents by nationality or citizenship of an individual. The impossibility of choosing the simplified system of taxation for non-residents discourages the flow of foreign investment into the economy and the entry of foreign companies to domestic markets which is constrained by the complexity of applying the general taxation system.²⁵

The subjects of small business must meet three types of requirements to have the choice of simplified taxation system available. The combination of all these three requirements (type of activity, amount of income and number of employees) allows determining the right of the tax payer to pay a single tax while using a particular group.²⁶ In addition, an important condition for the transition to single tax means the absence of tax debt in the previous reporting (tax) period.

To select or to transit to the simplified taxation system, the business entity submits an application to the fiscal service body. In the case of compliance with the established requirements, legal entities and self-employed individuals are registered as single tax payers. Single tax payers are divided into four groups:

1.) self-employed individuals who do not use the labour of hired persons, who exclusively sell retail goods from trading places in the markets and/or carry out economic activities by providing personal services to population and whose income during the calendar year does not exceed 300 thousand UAH;

2.) self-employed individuals engaged in economic activities by providing services, including households, to single tax payers and/or population, production and/or sale of goods, activities in restaurant in-

²⁵ See MARIKHIN, K. V. Legal Regulation of the Simplified Taxation, Accounting and Reporting System. *State and Regions: Law*. 2015, no. 4, p. 18. ISSN 1813-3401 [in the Ukrainian original МАРИХІН, К. В. Правове регулювання спрощеної системи оподаткування, обліку та звітності. *Держава та регіони: Право*. 2015, № 4, с. 18. ISSN 1813-3401].

²⁶ See DANIYELIAN, S. A. Taxation of Single Tax Payers of the First Group. *Law and Public Administration*. 2013, no. 4, p. 26. ISSN 1813-341X [in the Ukrainian original ДАНІЄЛЯН, С. А. Оподаткування платників єдиного податку першої групи. *Право та державне управління*. 2013, № 4, с. 26. ISSN 1813-341X].

dustry, provided that within a calendar year they meet the following criteria: a) do not use the labour of hired persons or the number of persons in their labour relationships does not exceed 10 people at the same time; b) the amount of their income does not exceed 1 500 thousand UAH;

3.) self-employed individuals who do not use the labour of hired persons or the number of persons in their labour relationships is unlimited, and legal entities of any organisational and legal form in which, within a calendar year, the volume of income does not exceed 5 million UAH;

4.) agriculture goods producers having the share of agricultural production for the previous tax year equal to or exceeding 75 %. The legislator has retained for this group all the positive features of taxing the agricultural producers by fixed agricultural tax: the procedure of paying taxes takes into account the seasonality of the agricultural production; the right of payers to implement any type of business activity permitted by law is not restricted; activities are not limited; a special form of tax accounting which minimizes the need for its management is provided.

The single tax rates for payers from groups I and II are established by local governments within up to 10 % of the minimum wage for group I and up to 20 % of the minimum wage for group II. Therefore, local governments, within their powers, have a flexible tax tool that they can use to develop small businesses on their territory.²⁷ For group III of the tax payers, the rate is 3 % of income in the case of paying the value added tax and 5 % of income if the value added tax is included in the single tax. The size of the tax for payers from group IV is set as a percentage of the normative monetary assessment of agricultural land and depends on the category of land and type of activity (from 0.16 % to 5.4 %).

The tax period for the payers of the single tax is by groups I, II and IV calendar year and for group III calendar quarter. Payers from groups I and II pay a single tax by realising an advance payment no later than on the 20th day of the current month and by group III within 10 calendar days after the deadline for filling a tax return for the tax quarter. Pay-

²⁷ See document *In Chernivtsi for Entrepreneurs the Rates of the Single Tax Have Been Reduced by Half* [online]. 2017 [cit. 2017-10-06]. Available at: <http://chernivtsy.eu/portal/4/u-chernivtsyah-dlya-pidpryyemtsiv-stavky-yedynogo-podatku-zmenschly-udvichi-95372.html> [in the Ukrainian original *У Чернівцях для підприємців ставки єдиного податку зменшили удвічі* [онлайн]. 2017 [цит. 2017-10-06]. Доступно на: <http://chernivtsy.eu/portal/4/u-chernivtsyah-dlya-pidpryyemtsiv-stavky-yedynogo-podatku-zmenschly-udvichi-95372.html>].

ment of the tax by the payers from group IV is carried out quarterly with-
in 30 calendar days following the last calendar day of the tax quarter in
the following amounts: in the first quarter 10 %; in the second quarter
10 %; in the third quarter 50 %; and in the fourth quarter 30 %.

Conclusions

Summarising the above-mentioned, it should be noted that in the post-
socialist countries special attention is paid to the issue of tax incentives
for small businesses. Each country has its own tax incentive system
which makes it possible to apply one or another type of tax instruments
as well as various options for combining them. The analysis allows us to
draw the following main tendencies in relationships between the post-
socialist countries and small business entities operating on their territo-
ries: 1.) establishment of the principle of equality and uniformity of taxa-
tion conditions for all categories of taxpayers which excludes the exist-
ence of special tax regimes and tax incentives; 2.) establishment of pref-
erences for small and medium-sized businesses within the general taxa-
tion system; 3.) wide use of special tax regimes in combination with
granting of tax privileges to small businesses. In Ukraine, at the present
stage of development of domestic tax legal relations between the state
and small business entities, the most optimal model is the preservation of
special tax regimes and tax incentives for small businesses, while im-
proving the content of such regimes in order to prevent tax evasion and
avoidance of the tax law, as well as forms and methods of the control ac-
tivities of fiscal bodies.

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