

SIMPLIFIED TAXATION SYSTEM IN UKRAINE. LEGAL REGULATION VECTORS

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INTRODUCTION

The simplified taxation, accounting and reporting system of small business often became and continues to be the subject of consideration by scholars of law and economics. It often was considered and is still considered in business literature, and it was often criticized at the level of government officials and received completely opposite estimates – from very positive to extremely negative ones.

Various simplified approaches to taxation of small business are widespread in many countries around the world. Classifying the simplified taxation systems available in different countries, M. Lipych includes to them the following ones: systems based on gross turnover (Ukraine, Kazakhstan, Kyrgyzstan, Uzbekistan, Azerbaijan, Romania, Tanzania, Russia), based on indicative values (Spain, Italy, Argentina), based on patenting (Bulgaria, Belarus, Kosovo, Egypt, Czech Republic, Croatia, Hungary, Lithuania, Macedonia, Moldova) and contractual systems (Syria, Israel, Benin)¹. Analysing the domestic and foreign experience of application of the simplified taxation systems, L. Ambryk points out that the European Union (EU) has no simplified taxation, accounting and reporting system similar to the domestic one, while preferences for small and medium-sized businesses exist, but they operate within the limits of the general taxation system. Alternative taxes, as the author mentions, exist in Austria, Luxembourg, Slovakia and Romania².

The simplified taxation, accounting and reporting system of small business appeared in Ukraine in the late 90's, and its availability is

¹ Ліпич М.А. Міжнародний досвід застосування спрощених систем оподаткування. *Моделювання регіональної економіки*. 2012. № 1. С. 334–344. URL: http://nbuv.gov.ua/UJRN/Modre_2012_1_39 (дата звернення: 09.06.2019).

² Амбрик Л.П. Вітчизняний та зарубіжний досвід функціонування спрощених систем оподаткування. // *Інвестиції: Практика та досвід*. 2015. № 15. С. 28–33. URL: http://nbuv.gov.ua/UJRN/ipd_2015_15_8 (дата звернення: 09.06.2019).

reasonably considered one of the main causes of rapid economic growth and formation of a rather tangible "middle class" in Ukraine within the decade 1999 – 2008.

Among the Ukrainian scientists, V. Demydenko and L. Demydenko³, Yu. Kozachenko⁴, P. Kolomiiets⁵, S. Yushko⁶ positively evaluate implementation of the simplified taxation system.

At the same time, development of the simplified system took place in such a way that the state always sought and strives to complicate this simplified system. In this article we **aim** to show the public benefits of actually simplified taxation, accounting and reporting system, the shortcomings of modern approaches to its legal regulation under the tax legislation of Ukraine and the relevant tax administration practice, and to describe main directions for improving public policy in this field. The hypothesis of this article is that the simplified taxation, accounting and reporting system from the state's point of view shall not be considered as something negative; on the contrary, the vector of the state policy shall be its promotion and support, rather than implementation of new and new restrictions every time.

1. History of the Simplified Taxation, Accounting and Reporting System in Ukraine. Two Separated Taxation Systems

What tendencies and approaches are inherent in the development of legal regulation of the simplified taxation, accounting and reporting system in Ukraine?

The simplified taxation system appeared in Ukraine in the form of payment of a single tax in 1998 after delivery of the Decree of the President of Ukraine “On Simplified Taxation, Accounting and Reporting System for Small Business Entities” №727/98 as of July 03,

³ Демиденко Л. М. Демиденко, В. І. Єдиний податок для суб'єктів малого підприємництва: протиріччя та перспективи. *Фінансові услуги*. 2017. № 6. С. 12–15. URL: http://nbuv.gov.ua/UJRN/finu_2017_6_5 (дата звернення: 07.06.2019).

⁴ Козаченко Ю. П. Єдиний податок як фінансова основа наповнення місцевих бюджетів в Україні. *Держава та регіони. Сер. : Державне управління*. 2013. № 4. С. 23–27. URL: http://nbuv.gov.ua/UJRN/drdu_2013_4_7 (дата звернення: 01.06.2019).

⁵ Коломієць П.В. Щодо деяких шляхів удосконалення податкового законодавства. *Бюлетень Міністерства юстиції України*. 2014. № 9. С. 145–151. URL: http://nbuv.gov.ua/UJRN/bmju_2014_9_35 (дата звернення: 07.06.2019).

⁶ Юшко С.В. Спрощена система оподаткування для фізичних осіб – підприємців: історія й перспективи застосування. *Фінанси України*. 2011. № 4. С. 38–46. URL: http://nbuv.gov.ua/UJRN/Fu_2011_4_4 (дата звернення: 07.06.2019).

1998⁷. By Decree of the President №746/99 as of June 28, 1999 this act was published in a new version that remained in force with no further specific amendments till 2012⁸.

Since the tax legislation has not been applied with regard to the entities which paid a single tax, it was presumed that two separate taxation systems existed – general (as the system of rules regulating the system of taxes and charges and the procedure for their payment), and simplified (as a separate system of the relevant rules).

The simplified taxation system envisaged payment of a single tax and exemption from payment of a number of taxes and charges. Namely, Article 6 of the Decree of the President №727/98 envisaged the list of taxes and charges that shall not be paid by single tax payers (not being the payers of such taxes and charges). Such taxes included VAT (unless the legal entity-single tax payer chose the option of paying a single tax with simultaneous payment of VAT), corporate tax, income tax, land tax, etc. Article 2 of the Decree also envisaged that an individual entrepreneur paying single tax, shall be exempted from the obligation to accrue, pay and transfer to the state trust fund the charges, related to payment of salary to the employees, having labour relations with him/her, including members of his or her family.

Pursuant to the Decree of the President №727/98, the simplified taxation, accounting and reporting system was applied with regard to the individual entrepreneurs who during a year had labour relations with not more than 10 persons, including members of their families, and whose total revenue from sale of products (goods, works, services) did not exceed UAH 500 thousand for a year. The simplified system was also applied with regard to legal entities of any legal form of organization and form of ownership, where average number of listed employees did not exceed 50 persons for a year, and total revenue of which from sale of products (goods, works, services) did not exceed UAH 1 million for a year. Such entities could choose to pay a single tax instead of a number of taxes and charges (such entities were exempted from payment thereof).

⁷ Про спрощену систему оподаткування, обліку та звітності суб'єктів малого підприємництва. Указ Президента України від 03.07.1998 №727/98. URL: <https://zakon.rada.gov.ua/laws/show/727/98> (дата звернення: 09.06.2019).

⁸ Про внесення змін до Указу Президента України від 3 липня 1998 року № 727 "Про спрощену систему оподаткування, обліку та звітності суб'єктів малого підприємництва". Указ Президента України від 28.06.1999 № 746/99. URL: <https://zakon.rada.gov.ua/laws/show/746/99> (дата звернення: 09.06.2019).

Since Article 2 of the Decree envisaged direction of a part of a single tax to the Pension fund, the entrepreneurs did not pay pension contribution and other charges for themselves, as well.

For the entrepreneurs the rate of a single tax was monthly set, fixed and depended on business activity area, and could be increased in case of availability of the employees, by 50% for each employee. For some time, the simplified system was actually simplified and basically the single tax payer did not pay any additional taxes and charges and did not file any additional reports.

It is worth mentioning that the above took place at about the same time when the Decree of the President of Ukraine No.652/98 “On Fixed Agricultural Tax” as of June 18, 1998 was delivered⁹. The Decree basically envisaged an alternative (separate) taxation system for its payers, exempting them from payment of a number of other taxes and charges. This Decree was effective only for a short time – in December 1998 the Law of Ukraine “On Fixed Agricultural Tax” (effective since January 01, 1999), envisaging almost the same approaches, was adopted. This Law, unlike the mentioned Decree of the President No.727/98, while being in force (till 2010), has undergone much greater changes and amendments. Further, after adoption of the Tax Code in 2010 (effective in 2011) and introduction of fundamental amendments thereto, the fixed agricultural tax was transformed into one of the groups of a single tax, which gives additional grounds to refer it to the simplified taxation system since its appearance in 1998¹⁰.

Short historical explication why the simplified taxation system was regulated not by the law, but by the Decree of the President, is also worth mentioning. It is related to the constitutional regulation of authorities of the President of Ukraine. Pursuant to Article 25 of the Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on the main principles of organization of the public and local authorities in Ukraine for the period before the adoption of new Constitution of Ukraine as of June 08, 1995, the President was authorized to issue decrees on the issues of economic reform, not

⁹ Про фіксований сільськогосподарський податок. Указ Президента України від 18.06.1998 № 652/98. URL: <https://zakon2.rada.gov.ua/laws/show/652/98> (дата звернення: 09.06.2019).

¹⁰ Податковий кодекс України від 02.12.2010. URL: <https://zakon.rada.gov.ua/laws/show/2755-17> (дата звернення: 09.06.2019).

regulated by the current legislation of Ukraine, which had to be effective till the adoption of the relevant laws¹¹. A bit more specialized standard was stipulated in clause 4 of Chapter XV “Transitional Provisions” of the Constitution of Ukraine, adopted on June 28, 1996. Pursuant to this clause, the President of Ukraine, within three years after entry into force of the Constitution of Ukraine was entitled to issue decrees, approved by the Cabinet of Ministers of Ukraine and signed by the Prime Minister of Ukraine, on economic issues that have not been regulated by the laws, with simultaneous submission of the relevant draft law to the Verkhovna Rada of Ukraine, on accordance with the procedure, stipulated by Article 93 of this Constitution. Such Decree of the President of Ukraine became effective, if within 30 calendar days upon submission of the draft law (except for the days of intersessional period), the Verkhovna Rada of Ukraine failed to adopt the law or reject the submitted draft law by the majority of its constitutional composition, and had to be effective until the law adopted by the Verkhovna Rada of Ukraine on these issues became effective¹². By the level in legal system of Ukraine such decrees are usually referred to regulatory legal acts, having force of the law. Some of such decrees are still effective in Ukraine (as for 2019). The most popular among them is Decree of the President No. 436/95 “On Imposition of Penalties for Breach of Cash Turnover Regulation Standards” as of June 12, 1995¹³. In one of the articles we have mentioned that this document is extremely outdated and it does not meet the terms of doing modern Ukrainian business and its demands; in some cases, it envisages unreasonably severe liability for merely technical or inexistent violations. That is why this Decree shall be annulled¹⁴.

¹¹ Конституційний договір між Верховною Радою України та Президентом України про основні засади організації та функціонування державної влади і місцевого самоврядування в Україні на період до прийняття нової Конституції України від 08.06.1995. URL: <https://zakon.rada.gov.ua/laws/show/1к/95-вр> (дата звернення: 09.06.2019).

¹² Конституція України від 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр> (дата звернення: 29.05.2019).

¹³ Про застосування штрафних санкцій за порушення норм з регулювання обігу готівки. Указ Президента України від 12.06.1995 № 436/95 URL: <https://zakon.rada.gov.ua/laws/show/436/95> (дата звернення: 09.06.2019).

¹⁴ Кравчук О. Фінансово-правове регулювання готівкових касових операцій: (не)сучасні тенденції. *Публічне право*. 2018. №1. С. 93–102. URL: http://nbuv.gov.ua/UJRN/pp_2018_1_14 (дата звернення: 09.06.2019).

Bureaucratic hurdles (historical ones). It could not be said that regulation of the simplified taxation system by the Decree of the President No.727/98 faced no difficult or bureaucratic issues. Thus, for example, under Decree the administrative practice on its application basically envisaged annual filing of the statement on application of the simplified taxation system and receiving the relative certificate of the right to pay a single tax. This annual filing was liquidated only since 2012. For individual entrepreneurs and legal entities separate forms of such certificates and procedures for their issue were approved (orders of the State Tax Administration of Ukraine No.476 as of October 13, 1998¹⁵, No.533 as of November 10, 1998¹⁶), which even at that time complicated the ideas of simplification, set forth in the Decree of the President. These procedures and forms were further repeatedly changed and amended. Only individual entrepreneurs who used the simplified taxation system were exempted from the use of electronic controlling cash registers (unlike legal entities). At the same time, these individual entrepreneurs were obliged to maintain stock accounting and it meant possible questions and problems during tax inspection.

However, in general, during the first several years the simplified taxation system was really rather simple, and vector of the economic growth of the decade 1999-2008 is traditionally associated with its introduction. It is generally assumed that those entrepreneurs who worked illegally in the mid-1990s, had no grounds for that anymore, so they actively passed into the legal field, choosing the simplified taxation, accounting and reporting system.

Complication of the simplified procedures. To our mind, the simplified taxation system was mostly hit by the implementation of the compulsory pension contributions since 2004 for single tax payers. After a while, with reforming of the state social insurance, after adoption of the Law No.1058-IV “On Obligatory State Pension Insurance” as of July

¹⁵ Про затвердження Свідоцтва про право сплати єдиного податку суб'єктом малого підприємництва – юридичною особою та Порядку його видачі. Наказ Державної податкової адміністрації України від 13.10.1998 №476. URL: <https://zakon.rada.gov.ua/laws/show/en/z0688-98> (дата звернення: 09.06.2019).

¹⁶ Про затвердження свідоцтва про сплату єдиного податку суб'єктом малого підприємництва – фізичною особою та порядку його видачі. Наказ Державної податкової адміністрації України від 10.11.1998 №533. URL: <https://zakon.rada.gov.ua/laws/show/z0733-98> (дата звернення: 09.06.2019).

09, 2003¹⁷ and other laws on state social insurance, the contribution to obligatory state pension insurance was introduced instead of a duty on obligatory state pension insurance and it was envisaged that this contribution was not included into the taxation system. It has raised a question of separate payment by entrepreneurs and legal entities – single tax payers of the contribution to pension insurance for the employees (and for the entrepreneurs – for themselves, as well) and contributions to other social insurance funds in addition to the amount of a single tax. It led not only to the increase of tax burden (the author considers the relevant contributions as taxes) for single tax payers, but also to the significant increase of the number of different reporting (and the necessity of systematic filing of reporting on different charges has conditioned complication of accounting). For this reason, starting from these years (from the mid-2000s), the most taxpayers could not afford an opportunity to do business without a qualified accountant for maintaining accounting and reporting.

It is worth mentioning that the reason for implementation of such restrictions in literature was namely involvement of the individual entrepreneurs in taxation optimization¹⁸. At the same time, referring to analytical data O. Bondarenko and H. Slipenchuk point out that even under existing circumstances two thirds of the entrepreneurs of Ukraine carry out their business activity on legal grounds only thanks to a single tax. Therefore, according to the authors, liquidation of such kind of taxation system will result in mass shifting of small and medium business entities to shadow economy or will lead to dissolution of businesses¹⁹.

At the same time, complexity of taxation and reporting remained and remains one of the most important problems in modern Ukrainian business²⁰.

¹⁷ Про загальнообов'язкове державне пенсійне страхування. закон від 09.07.2003 №1058-IV. URL: <https://zakon.rada.gov.ua/laws/show/1058-15> (дата звернення: 09.06.2019).

¹⁸ Юшко С.В. Спрощена система оподаткування для фізичних осіб – підприємців: історія й перспективи застосування. *Фінанси України*. 2011. №4. С. 38-46. URL: http://nbuv.gov.ua/UJRN/Fu_2011_4_4 (дата звернення: 09.06.2019).

¹⁹ Бондаренко О.М., Сліпенчук Г.В. Системи оподаткування для малого бізнесу: їх переваги та недоліки. *Проблеми системного підходу в економіці*. 2015. № 53. С. 3–10. URL: http://nbuv.gov.ua/UJRN/PSPE_print_2015_53_3 (дата звернення: 09.06.2019).

²⁰ Вишня Т.В. Вплив оподаткування на діяльність підприємств малого і середнього бізнесу. *Вісник Кам'янець-Подільського національного університету*

Thus, the simplified system ceased to be simplified accounting and reporting system, and it remained only the simplified taxation system. Further (even after the adoption of the Tax Code of Ukraine and its relevant chapter on the simplified taxation system) there were no fundamental changes in relation to simplification of accounting and reporting, and it must be admitted that the simplified system has only simplified taxation, without simplified accounting and reporting.

It is important that in some aspects the simplified taxation system was not and is not simplified to the extent that the entrepreneurs and legal entities were not and are not exempted from payment of income tax while paying revenue to individuals (that is, from performing functions of revenue agent). Despite the fact that the nominal payer of such tax is individual receiver of revenue, the revenue agent is involved in rather complicated procedures of fiscal management, so he/she spends time and money (transaction expenses) for account keeping, maintaining, payment, filing of reporting on this tax.

Besides, for legal entities-single tax payers the issue of withdrawal of the funds from the legal entity (payment of dividends) in favour of its founders was and remains in no way simplified. Establishing a small business as the legal entity paying a single tax, the investors would like to have an opportunity to easily withdraw money from it, but it is prohibited and restricted by the necessity to apply the same procedures for working with cash which are typical for big business. Thus, payment of dividends to the investors by legal entity-single tax payer was and is subject to income tax, and spending of money for financing personal needs of individuals involves collection of such tax by the legal entity itself.

Are simplified taxpayers optimizers? The next approach typical for regulation of the simplified system is its estimation by the state as a means of tax optimization. The state nearly always considered the availability of the simplified system as the legal means to minimize taxation. Moreover, such estimation was made (and is often made) in extremely negative context. As if large business frequently splits into small ones in order to be entitled to use the simplified system. Also, as if

імені Івана Огієнка. Економічні науки. 2012. Вип. 6. С. 345–349. URL: http://nbuv.gov.ua/UJRN/vkrnuen_2012_6_90 (дата звернення: 09.06.2019).; Бузак Н.І. Актуальні аспекти організації обліку суб'єктів малого підприємництва. *Проблеми теорії та методології бухгалтерського обліку, контролю і аналізу.* 2013. Вип. 2 (26). URL: <http://pbo.ztu.edu.ua/article/view/30613> (дата звернення: 09.06.2019).

large enterprises frequently used and use entrepreneurs-simplified tax payers to withdraw cash.

Consequently, the state policy on regulation of the simplified taxation system was and obviously is focused on complication and restriction of its use. Thus, particularly, corporation of legal entities with individual single tax payers paying fixed amount of tax was restricted (procurement of services was prohibited, procurement of goods was only allowed). In addition, the cases where single tax payers are allowed not to use the cash registers (cash-register machines, etc.) are restricted (and restrictions continue to be implemented). It is clear that the use of such cash registers for small business is unwanted not only because it allows avoiding full taxation of revenue, but also because the procedures, with the help of which the process of use of cash registers is administered, are extremely complicated and are never free of charge for the entrepreneurs and enterprises. It is about the same transaction expenses. In one of the articles we analysed this issue in detail, we pointed out that the use of cash registers for business means extremely high complexity of accounting and reporting, high risk of penalties (including high penalties for minor technical violations)²¹. That is why having cash registers, the enterprise or entrepreneur should involve a qualified accountant under the terms of almost daily work (it is required by the necessity to program each item name, train personnel or the entrepreneur itself, who work with cash registers, systematic control of its use). And payment of systematic work of a qualified accountant, along with the cost of a cash register itself, exceeds the transaction expenses by several thousands (and sometimes several dozens of thousands) UAH for a month.

2. Current State of the Simplified System

The current state of legal regulation of the simplified taxation, accounting and reporting system of small business entities is based on the provisions of Chapter 1 of the Tax Code of Ukraine, contained in Section XIV “Special Tax Regimes”. After inclusion of this Chapter into the original version of the Tax Code of Ukraine, adopted in November

²¹ Кравчук О. Проблеми фінансово-правового регулювання відносин у сфері застосування реєстраторів розрахункових операцій. *Підприємництво, господарство і право*. 2017. № 8. С. 139–144. URL: <http://pgp-journal.kiev.ua/archive/2017/8/30.pdf> (дата звернення: 09.06.2019).

2010, a number of protest actions took place, which resulted in imposition of veto to the Code by the President of Ukraine in December 2010²². The Code was re-adopted by the Parliament with suggestions of the President in December 2010 not to include this Chapter, and as a result the President signed it²³.

It is interesting that while the Parliament was re-adopting the Code, the chapters and articles numbering had not been changed, and the original official version of the Code (effective since January 01, 2011) mentioned as follows: “Chapter 1 is excluded”. That is, it was envisaged that sooner or later it would appear there. And in a year, a new version of Chapter 1 of Section XIV was included to the Code by Law No. 4014-VI as of November 04, 2011²⁴.

This Chapter on the simplified system became effective on January 01, 2012. Further it was repeatedly amended and currently it stipulates four groups of a single tax. Moreover, the third and fourth groups have several options for its payment.

Nowadays, the maximum amount of revenue giving the ground for being registered as a single tax payer (the third group) is UAH 5 mln. However, for the first and second groups such amount of revenue is even more limited. For the first group it equals to UAH 0.3 mln., and for the second group – UAH 1.5 mln. A number of restrictions in the right to use the simplified system is envisaged for each group.

Pursuant to clause 177.10 of the Tax Code of Ukraine, individual entrepreneurs should maintain income and expenditure ledger and have supporting documentation on the origin of goods. The form of income and expenditure ledger and the procedure for its maintenance are approved by the Order of the Ministry of Revenue and Duties of Ukraine No.481 as of September 16, 2013²⁵. However, this ledger (we shall call

²² Лавренюк С. Президент накладає вето. *Голос України*. 2010. URL: <http://www.golos.com.ua/article/121898>

²³ Картка законопроекту № 7101-1: Податковий кодекс України. Верховна Рада України. Офіційний веб-портал. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=38590 (дата звернення: 09.06.2019).

²⁴ Про внесення змін до Податкового кодексу України та деяких інших законодавчих актів України щодо спрощеної системи оподаткування, обліку та звітності. Закон України від 04.11.2011 №4014-VI. URL: <https://zakon.rada.gov.ua/laws/show/4014-17> (дата звернення: 09.06.2019).

²⁵ Про затвердження форми Книги обліку доходів і витрат, яку ведуть фізичні особи – підприємці, крім осіб, що обрали спрощену систему оподаткування, і фізичні особи, які провадять незалежну професійну діяльність, та Порядку її ведення. Наказ

it Ledger No.1) is referred only to the entrepreneurs, who do not use the simplified taxation system. For the entrepreneurs, who use the simplified taxation system, two income and expenditure ledgers are already approved (the first one (we shall call it Ledger No.2) is for the entrepreneurs, who are VAT taxpayers, and the second one (we shall call it Ledger No.3) is for those who are not VAT taxpayers). Their forms and procedures for their maintenance are determined by the Order of the Ministry of Revenue and Duties of Ukraine No.579 as of June 19, 2015²⁶. The regulatory body is obviously sure that when the system itself is simplified, something should be complicated therein, and the entrepreneur, starting to work or use the simplified system, should initially decide which ledger to choose.

Moreover, pursuant to clause 177.10 of the Tax Code of Ukraine, ledgers of all forms are subject to registration with tax authority. For registration of income and expenditure ledger individual entrepreneurs shall file the example of the Ledger to the regulatory body at the place of registration in case of choosing the form of maintaining the Ledger in hard copy.

Use of cash-register machines. The mentioned clause of the Tax Code also envisages that individual entrepreneurs shall use cash registers according to the Law of Ukraine “On Use of Cash Registers in Trade, Catering and Services Field”²⁷.

Pursuant to clause 296.10 of the Tax Code of Ukraine, the cash registers shall not be used by single tax payers of the first group and payers of the second-fourth groups (individual entrepreneurs), notwithstanding the chosen business activity, the total revenue from which does not exceed UAH 1 mln. during a calendar year. In the event that the total revenue exceeds UAH 1 mln. during a calendar year, the use of the cash register for such single tax payer is obligatory. The use of the cash register shall begin from the first day of the month of the quarter, following the occurrence of such excess, and shall last in all

Міністерства доходів і зборів України від 16.09.2013 № 481. URL: <https://zakon.rada.gov.ua/laws/show/z1686-13> (дата звернення: 09.06.2019).

²⁶ Про затвердження форм книги обліку доходів і книги обліку доходів і витрат та порядків їх ведення. Наказ Міністерства фінансів України від 19.06.2015 № 579. URL: <https://zakon.rada.gov.ua/laws/show/z0800-15> (дата звернення: 09.06.2019).

²⁷ Про застосування реєстраторів розрахункових операцій у сфері торгівлі, громадського харчування та послуг. Закон України від 06.07.1995 № 265/95-ВР. URL: <https://zakon.rada.gov.ua/rada/show/265/95-вр> (дата звернення: 09.06.2019).

following fiscal periods during registration of business entity as a single tax payer. The Law No.1791-VIII as of December 20, 2016 has amended clause 296.10 of the Tax Code of Ukraine with the provision, according to which the provisions of this clause shall not cover single tax payers, who sell technically complex household goods, which are subject to warranty repair. Such individual entrepreneurs were forced to start using the cash register after the Resolution of the Cabinet of Ministers of Ukraine No.231 as of March 16 2017 approved the List of groups of technically complex household goods, which are subject to warranty repair (service) or warranty replacement for the purpose of use of the cash registers. This List included enormously wide number of goods which, at first sight, are not considered household²⁸.

Revenue or not revenue – what is the question? Pursuant to the Tax Code, legal regulation of the simplified taxation system has also special procedure for the revenue recognition. Pursuant to clause 292.6 of the Tax Code of Ukraine, revenue of single tax payers shall be recognized by the cash method (not at the date of shipment of goods but at the date of receiving money). There is also a list of revenue which are not considered as the revenue subject to taxation with a single tax (clause 292.11 of the Tax Code of Ukraine).

The amount of revenue is important for single tax payer because of two aspects. The first one is that it serves as a limit for using the simplified taxation system. Having exceeded this limit (depending on the group of payer) such payer shall lose the right to use the simplified taxation system. The second aspect is the amount of a single tax (for the payers of the third group) to be paid. Since the third group payers shall pay a single tax at the rate of 3% (plus VAT) or 5% (net of VAT) of the amount of revenue (clause 293.2 of the Tax Code of Ukraine). There is a number of clarifications (for example, letter of the Main Department of the State Fiscal Service of Ukraine in Kyiv as of March 25, 2016 No.2516/K/26-15-13-02-15) and the administrative practice, pursuant to which the revenue of a single tax payer shall include personal funds of

²⁸ Про затвердження переліку груп технічно складних побутових товарів, які підлягають гарантійному ремонту (обслуговуванню) або гарантійній заміні, в цілях застосування реєстраторів розрахункових операцій. Постанова Кабінету Міністрів України від 16.03.2017 № 231. URL: <https://zakon.rada.gov.ua/laws/show/231-2017-п> (дата звернення: 09.06.2019).

the entrepreneur deposited to the bank account²⁹. At first sight it is nonsense but the regulatory bodies explain their position with the fact that the list of types of revenues, not included to the composition of revenue, stipulated by law, doesn't include such transaction as depositing personal funds. Therefore, if the individual entrepreneur must pay off the debt (for example, to the counteragent or even to the budget) and deposits personal funds to the bank account, it will result in the fact that during the inspection it will be charged with additional 5% of this amount as a single tax. There are also attempts to recognize the cases of transfer of the funds from one banking account of a person to its another banking account as revenue of the entrepreneur.

The judicial practice on this issue is ambiguous. In general, a single tax payer stands a good chance to carry his/her point but only in the court (for example, Resolution of the Supreme Administrative Court of Ukraine as of January 24, 2017 in case No. 810/4627/13-a³⁰). For this purpose, he/she will have to spend time and funds for legal assistance in two or even three court instances. Having no intention to argue with the tax inspectors and litigate in court, the entrepreneurs search for the alternative methods. Frequently, in order to conceal these transactions, they conclude false agreements – loan agreements, due to which someone of relatives or friends borrowed them these funds. Since, according to the law the borrowed funds (reimbursable financial assistance) shall not be included into the composition of revenue of a single tax payer if it is reimbursed within a year (sub-clause 3 of clause 292.11 of the Tax Code of Ukraine). There are also other methods, the majority of which are false, since they do not reflect the real content of business transaction. Basically, the entrepreneurs are incentivized by the state to such falsifications.

Evaluating rather negatively the mentioned restrictive administrative practice we should emphasize that personal funds deposited by the owner of business, from the economic point of view,

²⁹ Лист ГУ ДФС у м. Києві від 25.03.2016 №2516/К/26-15-13-02-15. Територіальні органи ДФС у м. Києві. Офіційний портал. URL: <http://kyiv.sfs.gov.ua/baner/podatkovyi-konsultatsii/konsultatsii-dlya-fizichnih-osib/67453.html> (дата звернення: 09.06.2019).

³⁰ Ухвала Вищого адміністративного суду України від 24.01.2017 у справі № 810/4627/13-а. URL: <http://www.reyestr.court.gov.ua/Review/64293183> (дата звернення: 09.06.2019).

are not and may never be recognized as the revenue or income, since it is direct investments. If the legislator had such purpose, he/she would have equated such funds with revenue, having clearly set it in the law. And currently we have only a restrictive administrative practice which restrains development of investments. Even having “alternate routes”, the entrepreneurs (small business in general) receive a signal. This signal consists in restriction by the state of direct investments into own business. Undoubtedly, declaring the course on increase of the investment attractiveness of the Ukrainian economy, the state should stop this practice.

State statistical classifiers as quasi laws. Talking about bureaucratic restrictions which remained in regulation of the simplified taxation system according to the current Tax Code of Ukraine, we shall also dwell on long-standing fascination of the authors of the text of the Ukrainian laws with diverse state classifiers.

In late February 2019, the draft law No.10094 was published on the website of the Verkhovna Rada of Ukraine. It envisaged implementation of the fifth group of a single tax for individual entrepreneurs carrying out activity only in the field of information technology. Such entrepreneurs included: activity on production of computer games and other software, computer programming services, consulting and related activities, data processing, publishing of information on the websites and related activities, as well as web portals (with the respective references to codes of economic activity (Classifications of economic activity according to the State Classifier 009:2010³¹). The terms for being in such group of taxation are going to be the following: such entrepreneurs shall not use labour of employees, and their total revenue during a year shall not exceed UAH 7.5 mln. Moreover, it is planned that such individual entrepreneurs during and for the purpose of carrying out the abovementioned activity may use for a certain fee or free of charge technical and/or software utilities, information systems and any other tools of production (including premises), which belong to individual entrepreneurs or legal entities, in favour of which such activity is being carried out.

³¹ Національний класифікатор України. Класифікація видів економічної діяльності ДК 009:2010. Наказ Державного комітету України з питань технічного регулювання та споживчої політики від 11.10.2010 № 457. URL: <https://zakon.rada.gov.ua/rada/show/vb457609-10> (дата звернення: 09.06.2019).

Does the Classifier of economic activities regulate economic activity? Talking about inclusion of the references to codes of economic activities into the text of the mentioned draft law, we should mention that it is not the first draft law where such codes are mentioned. The legislator a long time ago has envisaged dependence of the right to use the simplified taxation system on the types of economic activity. But he made it in rather specific way. If earlier we spoke about cancellation of certain bureaucratic elements of a single tax in the development of legislation on the simplified taxation system, we mentioned the fact that the procedure of annual filing of statement on using the simplified taxation system and receiving the certificate of the right to pay a single tax was liquidated. Instead the Register of Single Tax Payers remained. Why we need this separate register if there is open register – the Unified State Register of Legal Entities and Individual Entrepreneurs, where it was enough to make a respective mark (since there are marks on registration of legal entity or individual entrepreneur with regulatory bodies as the taxpayer and payer of unified social contribution). Thus, the legislator envisages the obligation to make entries on legal entities and individual entrepreneurs not only in the Unified State Register, but also in the Register of Single Tax Payers (for this purpose in certain cases filing of a separate application is required by subclause 4 of clause 298.3.1 of Tax Code). Moreover, in case of receiving revenue from carrying out activity, the codes of which are not included into the Register of Single Tax Payers, the entrepreneur shall lose the right to tax this income within the simplified taxation system (subclause 3 of clause 293.5, subclause 7 of clause 298.2.3 of Tax Code).

Consequently, the Classification of economic activities, being only the statistical book, shall not be deemed the regulatory legal act, and it a priori may not regulate social relations, and it acquires the notion of quasi regulatory legal act. Recently, in one of the article we wrote that the state should not indirectly give regulatory importance to the documents, which do not have elements of regulatory legal acts (not accepted by the competent body and according to proper procedure (without required appraisals), not published according to the provided procedure, not registered with the Ministry of Justice)³². The situation

³² Кравчук О. О. Проблеми формулювання найменування посади як істотної умови трудового договору в контексті реалізації громадянами конституційного права на працю. *Бюлетень Міністерства юстиції України*. 2013. № 4. С. 44–51. URL: http://nbuv.gov.ua/UJRN/bmju_2013_4_9 (дата звернення: 09.06.2019).

when the rules of law are contained in the state classifier means lack of proper legal certainty. Many kinds of activity may be with any certainty referred simultaneously to different codes of economic activity. It is explained by the fact that the classifier is structured in such a way that its positions are ambiguous, duplicative. In many cases their use requires statistical methodology, and not only formal logics. Certainly, the state is not entitled to require and expect from each entrepreneur (business entity) to know perfectly statistical methodology.

As a result of a situation concerned, the entrepreneur, instead of carrying out business, providing employment opportunities and finally added value, should at first estimate whether this activity meet the codes, specified with regard to him/her in the Register of Single Tax Payers. Since in case if such revenue is received, the entrepreneur will have to either set higher price (since taxes on such revenue will be quite different), or at first make changes in the Register of Single Tax Payers or refuse from relations with this counteragent. Moreover, an entrepreneur and a legal entity-single tax payer should create and keep records on all their revenues (about every contract) to have a proof of correspondence between revenue and those statistical codes.

Pursuant to subclause 7 of clause 291.6 of the Tax Code of Ukraine, in case of carrying out the activity not mentioned in the Register of Single Tax Payers, – from the first day of the month, following the fiscal period, when such activity was carried out, the single tax payers should shift to payment of other taxes and charges, provided for by this Code that is, in case of receiving income from the activity not mentioned in the Register, an individual shall lose his/her right to use the simplified taxation, accounting and reporting system. This rule also creates the situation of uncertainty, since if receipt of income from other activities for example in June 2019 is revealed during the inspection in July 2020, the fiscal body would affirm that since July 01, 2019 and till the moment of inspection the single tax payer was not entitled to use it, and it will charge him/her with additional taxes and charges for this year in full. In general, such situation may destroy someone's specific business. Especially considering the following.

The situation when the entrepreneur believes that his/her economic activity is classified according to certain statistical code (in general or in certain contract) and the tax inspector will affirm the contrary, that this

entrepreneur received revenue from the activity according to another code of economic activity, is quite possible.

Basically, in such situation we have the rule envisaging the sanction which establishes punishment (forfeiture of the right to use the simplified taxation system) for carrying out activity by the entrepreneur perhaps even on legal grounds and receiving income from such activity. Only such bureaucratic hurdle as lack of certain code in the Register of Single Tax Payers, or different estimation of any economic activity by an entrepreneur or a tax inspector may result in extremely negative legal consequences for the entrepreneur. This position may be considered disputing, someone may believe that it is referred not to the sanction, but only to the change of procedure for income taxation. Although such change of procedure for income taxation results in forfeiture (deprivation) of the right to be a single tax payer. We believe that any deprivation of the right as a result of performing some legally significant acts is a common sanction. In such case it should be understood that the state considers receiving by the entrepreneur of revenue from another activity than the one mentioned in the Register of Single Tax Payers as legal offence. What is the social danger or damage from such legal offence? It is a mystery. Consequently, it is rather difficult to answer the question about the purpose pursued by the legislator, establishing liability for it, as there is no object of legal relations. That is why we think that in absolute majority of cases the activities of the entrepreneur-single tax payer have no legitimate significance, except for creation of bureaucratic hurdles for the development of business.

Receiving of income by the entrepreneur from other activity may have legal significance only in the cases when the local government body established different rates of a single tax for different economic activities (first or second group of single tax payers). And in our opinion, receiving of such income should result only in additional charge of a single tax of higher rate. If it is referred to the individual entrepreneur, whose type of activity does not influence the rate of a single tax (the third group of single tax payers), the types of activity should make no difference.

3. Actual Content of the State Policy

As seen from the above, the main approaches in the state policy on regulation of the simplified taxation system is its complication,

restriction of use, extension of obligation of use of cash registers, as well as lack of significant simplification of accounting and reporting.

We believe that such approaches do not contribute to the development of business. We think that the state policy in regulation of the simplified taxation system should consider the following approaches.

Single tax shall actually be single. The idea of a single tax (for which it was implemented in Ukraine in late 90s) should be maintained to the full extent. Even if the state for a certain reason does not consider the unified social fee as the tax (with what the author disagrees), for the purposes of actual simplification of carrying out business it is quite efficient to develop the simplified taxation system in such a way that small business could have the only tax, which would be calculated under actually simplified procedure (on the basis of one rather simple criteria), including each and all taxes and charges (as well as contributions), provided for by the law.

Actual simplification of accounting and reporting. The mentioned one tax (single tax) shall provide for submission of only one rather simple report which shall be rather clear so as to be drawn up by a person without any special training (having no accounting education and/or experience). Single tax payer should be exempted from any other forms of obligatory reporting that shall be clearly set forth in the law. In any case, single tax payer should not file any reporting more frequently than once a year.

Procedures for the work with cash should also be dramatically simplified – legal entity-single tax payer should be exempted from using the obligatory forms of cash documents (cash receipts, cash books, etc.). It is worth mentioning that in one of the articles we considered the outdated nature of such obligatory forms of cash documents, and pointed out the necessity to cancel them for all legal entities, and not only for the simplified payers³³.

Simplification of use of cash registers by small business Talking about simplification of work with cash, we cannot avoid the issue of use of the cash registers. Current state policy on this issue envisages extension of the scope of use of cash registers. However, it is necessary to work

³³ Кравчук О. Фінансово-правове регулювання готівкових касових операцій: (не)сучасні тенденції. *Публічне право*. 2018. № 1. С. 93–102. URL: http://nbuv.gov.ua/UJRN/pp_2018_1_14 (дата звернення: 09.06.2019).

seriously over decrease of number of technical standards, their simplification, reform of penalties for their violation, cancellation of different forms of books and reports. Namely, it is appropriate to allow single tax payers to use previous programming of items names by groups (without programming of each item name). Moreover, in case of extension of the scope of use of cash registers, it is necessary to think over the state programs of compensation of their cost to the entrepreneurs.

The necessity to work in this direction was emphasized in the scientific literature. Thus, for example, the necessity to actively implement the complex of measures, which would incite business to voluntarily use cash registers, decrease their cost in any possible ways – both organizational and technical, implement online services is emphasized by L.P. Tkachyk and O.Ia. Beshko³⁴.

For the entrepreneurs, using cash registers, it is necessary to cancel obligatory use of income and expenditure ledgers and their obligatory registration with tax offices.

Popularization and incentives to use the simplified system. It is obvious that the state should stop considering the simplified taxation system as some threat to economic legal order. It is appropriate to presume that the simplified taxation system is useful not only for the taxpayers themselves, but it results in a large number of positive impact for society and economy in general. We will explain why.

First of all, it is clear that adhering to the above mentioned approaches, according to which small business shall be charged with taxes very easy (single tax is actually single, and accounting and reporting are actually simplified, as well), should shape the understanding in existing and potential business entities that it is easy not only to pay taxes, but also to carry out business. Such understanding certainly results in the increase of the investment activity both owing to national and foreign sources. Increase of the investment activity will result in typical increase of economic activity in general, and potential increase of tax revenue owing to increase of the number of taxpayers (both those who use and those who do not use the simplified system), as well as owing to increase of volumes of their activity. Moreover, even if

³⁴ Ткачик Л.П., Бешко О.Я. Спрощена система оподаткування як інструмент агресивного податкового планування. *Молодий вчений*. 2018. № 2. С. 758–763. URL: http://nbuv.gov.ua/UJRN/molv_2018_2%282%29__75 (дата звернення: 09.06.2019).

a part of single tax payers is really involved in the schemes of taxation optimization, it is necessary to understand that the relevant funds have been received in a lawful way, and while being spent they also get into the economic system, and are charged with taxes on other stages of goods turnover, resulting finally in certain increase of GDP. That is why the opportunity to use the simplified taxation system as the optimization scheme has positive features.

Saving on transaction expenses. Next, the state should understand that in case if a single tax is actually single, not only business saves on transaction expenses, but the state itself. Since the single tax payers basically shall not be controlled (with some exceptions). Consequently, the state saves on the procedures for administration of taxes, on the procedures for processing forms of excessive numerous reporting, in-house and on-site fiscal inspections. And the last, the need of the state in certain number of personnel of regulatory bodies is decreased (both performers – tax inspectors, and the relevant number of managerial personnel).

Consequently, such two dependences will be observed: direct dependence: the simpler the simplified taxation, accounting and reporting system is, the less the state spends on administration of taxes. The inverse dependence will also be correct: the greater number of single tax payers, the less number of tax inspectors are needed, and the less the state spends on administration of taxes.

Given this, the state should not complicate and restrict the use of the simplified taxation, accounting and reporting system, but simplify it and popularize its use among the entrepreneurs.

Recently, in one of the articles we wrote that it is appropriate to provide for the opportunity to use the simplified taxation system not only by the entrepreneurs, but also by other self-employed persons – including notaries, lawyers, insolvency receivers³⁵.

Moreover, it was mentioned in literature (Iu. Kozachenko) that a single tax is significant source of revenue for local budgets³⁶.

³⁵ Кравчук О. О. Три види правового статусу фізичної особи. *Вісник НТУУ «КПІ».* Політологія. Соціологія. Право : збірник наукових праць. 2017. № 1/2 (33/34). С. 194–200. URL: <http://ela.kpi.ua/handle/123456789/25226> (дата звернення: 09.06.2019).

³⁶ Козаченко Ю. П. Єдиний податок як фінансова основа наповнення місцевих бюджетів в Україні. *Держава та регіони. Сер.: Державне управління.* 2013. № 4. С. 23–27. URL: http://nbuv.gov.ua/UJRN/drdu_2013_4_7 (дата звернення: 09.06.2019).

V. Demydenko and L. Demydenko mention that in 9 years the specific weight of a single tax in revenue of local budgets (not including inter-budget transfers) has increased from 2.2% in 2008 to 10.1% in 2016, first of all, owing to increase of revenue from individual private entrepreneurs and inclusion of fixed agricultural tax to a single tax in 2015³⁷. A. Tomashevskaya evaluates existing simplified taxation system in Ukraine as giving unlimited possibilities for investors³⁸. So there are no reasons for restrictions or cancellation of such a system. We'd better to develop it and to make it more and more simplified.

CONCLUSIONS

The legislation of Ukraine, starting from 1998, envisages the simplified taxation, accounting and reporting system of small business in the form of payment of a single tax for the purpose of exemption from payment of some other taxes and charges. At the same time, this tax is not basically single (it is only called so). The payer of this tax in fact pays a lot of other taxes, charges and contributions, on each of which he/she should keep accounting and file reporting. One of the main features of the simplified taxation system is that single tax payers are not exempted from charging and payment of income tax while paying revenue to individuals (that is, from performing of the functions of revenue agent). He/she shall accrue and pay unified social contribution for the salaries of employees. In addition, an individual entrepreneur shall pay unified social contribution for himself (as for the person insured according to the obligatory state social insurance). So, the simplified system basically has only partially simplified taxation, without simplified accounting and reporting.

Actually, the vector of the Ukrainian state policy as regards the simplified taxation, accounting and reporting system is its restriction and complication, up to cancellation. The legislator restricts activities, giving the ground for payment of a single tax, establishes obligation of use cash-register machines for retail trade, administration of which is very complicated and expensive. Payment of dividends by legal entity-single

³⁷ Демиденко Л. М., Демиденко В.І. Єдиний податок для суб'єктів малого підприємництва: протиріччя та перспективи. *Финансовые услуги*. 2017. № 6. С. 12–15. URL: http://nbuv.gov.ua/UJRN/finu_2017_6_5 (дата звернення: 09.06.2019).

³⁸ Tomashevskaya A. The country of unlimited possibilities. URL: <http://kievbusinesscentre.com.ua/accounting/faq/3233/> (дата звернення: 11.06.2019).

tax payer to its members is complicated. As a result, transaction expenses of single tax payers (both individual entrepreneurs and legal entities) are unreasonably increasing and carrying out this type of activity in some cases becomes unprofitable for the entrepreneur.

The state should stop considering the simplified taxation system as some threat to economic legal order. It is appropriate to presume that the simplified taxation system is useful not only for the taxpayers themselves, but it results in a large number of positive impact for society and economy in general. First of all, it is clear that adhering to the above-mentioned approaches, according to which small business shall be charged with taxes very easy (single tax is actually single, and accounting and reporting are actually simplified, as well), should shape the understanding in existing and potential business entities that it is easy not only to pay taxes, but also to carry out business. For the purposes of actual simplification of carrying out business it is quite efficient to develop the simplified taxation system in such a way that small business could have the only tax, which would be calculated under actually simplified procedure (on the basis of one rather simple criteria), including each and all taxes and charges (as well as contributions), provided for by the law.

There were a lot of specific directions to improve the legal regulation of simplified taxation system in Ukraine pointed out above.

SUMMARY

Nowadays the vector of the Ukrainian state policy as regards the simplified taxation, accounting and reporting system is its restriction and complication, up to cancellation. The legislator restricts activities, giving the ground for payment of a single tax, establishes obligation of use cash-register machines for retail trade, administration of which is very complicated and expensive. Payment of dividends by legal entity-single tax payer to its members is complicated. As a result, transaction expenses of single tax payers (both individual entrepreneurs and legal entities) are unreasonably increasing and carrying out this type of activity in some cases becomes unprofitable for the entrepreneur.

The state should stop considering the simplified taxation system as some threat to economic legal order. It is appropriate to presume that the simplified taxation system is useful not only for the taxpayers themselves, but it results in a large number of positive impact for society

and economy in general. First of all, it is clear that adhering to the above-mentioned approaches, according to which small business shall be charged with taxes very easy (single tax is actually single, and accounting and reporting are actually simplified, as well), should shape the understanding in existing and potential business entities that it is easy not only to pay taxes, but also to carry out business. For the purposes of actual simplification of carrying out business it is quite efficient to develop the simplified taxation system in such a way that small business could have the only tax, which would be calculated under actually simplified procedure (on the basis of one rather simple criteria), including each and all taxes and charges (as well as contributions), provided for by the law.

A lot of specific directions to improve the legal regulation of simplified taxation system in Ukraine are pointed out by the author.

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