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Проблеми правового регулювання земельного податку в умовах воєнного стану в Україні

АНОТАЦІЯ. У статті проаналізовано особливості справляння земельного податку під час дії правового режиму воєнного стану. Наголошено, що в умовах сьогодення сплата земельного податку відіграє вагому роль при прогнозуванні та формуванні дохідної частини місцевих бюджетів. В даному дослідженні піддається огляду та аналізу такий вид надходжень до місцевого бюджету, як земельний податок. Виняткову увагу зосереджено на змінах податкового законодавства, що були запроваджені під час військовому стану. В статті наголошено на комплексному характері проблематики нарахування та сплати земельного податку в умовах воєнного стану, необхідності раціональних підходів органу законодавчої влади до розв'язання суперечливих проявів законодавчих норм.
КЛЮЧОВІ СЛОВА: *елементи правового механізму; місцеві податки та збори; земельний податок; воєнний стан; пільги зі сплати земельного податку; податки.*

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Problems of legal regulation of land tax under martial law in Ukraine

ABSTRACT. The article analyzes the peculiarities of land tax administration during the martial law regime. It is emphasized that in today's conditions, the payment of land tax has a significant role in forecasting and forming the revenue side of local budgets. In this article, the author reviews and analyzes such type of local budget revenues as land tax. Special attention is paid to the changes in tax legislation implemented during the martial law. The article emphasizes the complex character of the issues related to the calculation and payment of land tax under martial law, and the need for rational approaches of the legislature to resolve contradictory manifestations of legislative provisions.

KEYWORDS: *elements of the legal mechanism of taxation; local taxes and fees; land tax; martial law; land tax exemptions; taxes.*

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Introduction. On 24.02.2022, the armed forces of the Russian Federation, through armed aggression with the use of weapons, military equipment and artillery, with missile and air bomb attacks on military and civilian infrastructure, illegally invaded the territory of Ukraine recognized by the international community across the state borders of Ukraine in Donetsk, Zaporizhzhia, Zhytomyr, Kyiv, Luhansk, Sumy, Kharkiv, Kherson and Chernihiv regions, and carried out an armed attack on state authorities, local governments, enterprises, in Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine" of 24.02.2022, in connection with the military aggression of the Russian Federation against Ukraine, based on the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20 of part one of Article 106 of the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law", introduced martial law in Ukraine from 05:30 a.m. on February 24, 2022 for a period of 30 days[1], which was subsequently extended several times and continues to exist as of today.

The declaration of martial law resulted in significant changes to Ukrainian legislation, which also affected the land tax collection procedure. Thus, it is advisable to analyze the changes in the mechanism of land tax payment and to draw conclusions as to whether the changes to the tax legislation on land tax under martial law can be applied by all subjects of its payment.

Theoretical framework. The land tax under the legal regime of martial law has been studied by such scholars as: V. Andrushchenko, O. Bilenko, Z. Varnalii, N. Husarevych, O. Desyatniuk, O. Dmytryk, T. Yefymenko, T. Kaneva, N. Kostyshyn, V. Korovii, I. Krynytskyi, A. Krysovaty, M. Kucheriavenko, A. Nechyporenko, V. Melnyk, M. Pasichnyi, Y. Rudenko, S. Savchenko, K. Tokarieva, T. Cherniuk, I. Chugunov, T. Shulga, L. Yurchyshena, T. Yakovets. Undoubtedly, the study of land tax payment under the legal regime of martial law and application of tax law provisions in terms of granting land tax benefits to

1 On the introduction of martial law in Ukraine: Decree of the President of Ukraine of 24.02.2022 No. 64/2022: as of August 17. 2023 p. URL: https://zakon.rada.gov.ua/laws/show/64/2022#Text.

individuals and legal entities is relevant today.

Methodology. The methodological basis of the work was the application of a set of general theoretical methods and techniques of scientific cognition, the use of which allowed to study a holistic and comprehensive view of the system of current legislation of Ukraine regulating the payment of land tax in Ukraine under martial law. The author also used the methods of abstraction and generalization, deductive and inductive, structural-functional and formal-logical, which made it possible to process scientific sources and contributed to the formation of the content of the author's scientific position in accordance with the author's task. These methods were used in conjunction with each other and interdependently, which led to the comprehensiveness, completeness and objectivity of the scientific results obtained. Additionally, the research was based on theoretical provisions developed in the fields of legal theory, tax law, administrative law and procedure.

Results. The purpose of the paper is to summarize the exclusivity of land tax collection under the legal regime of martial law, including the study of gaps in tax legislation aimed at improving the system of national taxation. The main task is to analyze the practical application of the current provisions of the tax legislation of Ukraine, according to which no land payments (land tax and rent for state and municipally owned land plots) are charged and paid during the legal regime of martial law, and to propose proposals for resolving the conflict of laws application of these provisions.

The essence of the scientific novelty of the study is that for the first time at the stage of development of legal science in the field of tax law during the legal regime of martial law, it was proposed to fill in the gaps in the legislation governing the provision of land tax benefits to individuals and legal entities under the legal regime of martial law.

According to Article 10, Article 265 of the Tax Code of Ukraine[2], local taxes and fees include:

1) property tax, which includes tax on real estate other than a land

2 Tax Code of Ukraine: Code of Ukraine dated 02.12.2010 № 2755-VI: as of September 3. 2023 p. URL: https://zakon.rada.gov.ua/laws/show/ 2755-17#Text.

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plot, transport tax, and land fees;

2) a single tax;

3) fee for parking spaces for vehicles;

4) tourist tax. Today, local taxes and fees are among the main significant sources of revenue for local budgets in Ukraine.

An important prerequisite for the socio-economic development of any region and an effective component for protecting the interests of citizens at the level of territorial communities is the proper functioning of the local taxation system and the effective collection of local taxes. The land payment should be emphasized, as it is this type of local tax that accounts for the largest share of all local taxes and fees.

As a land tax and as a mandatory payment in Ukraine, land payment was first introduced in 1992. As a part of the national taxes, the land payment in Ukraine was in place until 2015. However, in accordance with sub-clause 14.1.147 of clause 14.1 of Article 14, sub-clause 265.1.3 of clause 265.1 of Article 265 of the Tax Code of Ukraine, starting from January 1, 2015, the land payment was included in the property tax and classified as a local tax.

It should be emphasized that, based on the definition of land payment set forth in the above articles of the Tax Code of Ukraine, its structure includes two types of payments:

1) land tax, which is paid by owners of land plots and land shares, as well as permanent land users;

2) rent for municipally and state-owned land plots paid by the tenant who uses the respective land plot.

Taxation is one of the main instruments used by local authorities to finance their own functions and programs. Social development and economic growth are guaranteed through the payment of the mandatory payments that are part of the tax system. In our country, the land tax is the third largest source of local budget revenues after the single tax and personal income tax.

In such circumstances, the role of land payment cannot be underestimated. As regulated by clause 10.3 of Article 10 of the Tax Code of Ukraine, local councils, within the powers defined by this Code, resolve

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issues in accordance with the requirements of this Code regarding the establishment of property tax (in terms of tax on real estate other than a land plot) and the establishment of a fee for parking spaces, a tourist fee and a land tax for forest land.

Property tax consists of tax on immovable property other than a land plot; transport tax; and land payment (Article 265 of the Tax Code of Ukraine). From a broader theoretical point of view, land payment plays an inherent dynamizing role in regulating the use of land resources and ensuring the financial stability of local budgets. During the pre-war period, it served as an incentive for investment in various sectors of the economy, contributed to the protection of natural resources, and encouraged the economical use of land resources.

However, during the legal regime of martial law, which was introduced by the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated 24.02.2022, both the national legislation of Ukraine in general and the Tax Code of Ukraine, including the issue of land tax payment, have undergone significant changes.

Since the beginning of the martial law in the country, more than 45 editorial changes have been made to the Tax Code of Ukraine. Moreover, if we conduct a systematic analysis of the grounds for the amendments reflected in the Laws of Ukraine, we can note that 4 of these amendments relate to the payment of land tax to some extent.

The Tax Code of Ukraine was amended in the context of the regulation of land tax in several stages:

1) the version of March 17, 2022, based on the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on the Validity of Provisions for the Period of Martial Law" of March 15, 2022 No. 2120-IX[3];

2) the versions dated May 01, 2022 and July 01, 2022, which were based on the Law of Ukraine "On Amendments to the Tax Code of

3 On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on the Validity of Norms for the Period of Martial Law: Law of Ukraine dated 15.03.2022 No. 2120-IX. URL: https://zakon.rada.gov.ua/laws/show/2120-20#Text.

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Ukraine and Other Legislative Acts of Ukraine on Ensuring the Balance of Budget Revenues" dated November 30, 2021 No. 1914-IX[4];

3) the version of May 06, 2023, based on the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on Exemption from Environmental Tax, Land Payment and Tax on Real Estate Other Than a Land Plot for Destroyed or Damaged Real Estate" of April 11, 2023 No. 3050-IX[5].

Attention should be drawn to the most recent of the above-mentioned wording, which resulted in the addition of subpara. 14 of clause 69 of subsection 10 of Section XX, according to which, for the period from January 1, 2022 to December 31, 2022, no land payment (land tax and rent for land plots of state and municipal property) shall be charged and paid for land plots (land shares) located in the territories of active hostilities or in the territories of Ukraine temporarily occupied by the Russian Federation, and are owned or used, including on lease, by individuals, and for the period from March 1, 2022 to December 31, 2022 - in respect of land plots owned or used, including on lease, by legal entities and individual entrepreneurs.

The dates of the beginning and end of active hostilities or temporary occupation are determined in accordance with the List of territories where hostilities are (were) conducted or temporarily occupied by the russian federation.

The list of territories in which military operations are being (were) conducted or temporarily occupied by the Russian Federation is determined in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

Tax notices-decisions on payment of land payment for land plots that are not subject to taxation in accordance with the procedure specified in

4 On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine to Ensure the Balance of Budget Revenues: Law of Ukraine of 30.11.2021 No. 1914-IX. URL: https://zakon.rada.gov.ua/laws/show/1914-20#Text.

5 On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on Exemption from Environmental Tax, Land Payment and Tax on Real Estate Other Than a Land Plot for Destroyed or Damaged Real Estate: Law of Ukraine dated 11.04.2023 No. 3050-IX. URL: https://zakon.rada.gov.ua/laws/ show/3050-20#Text.

this subparagraph, drawn up and sent (delivered) in 2022 and 2023, are subject to cancellation (withdrawal), and monetary obligations and tax debt determined by the controlling body on land payment are subject to cancellation.

The above regulation of the Tax Code of Ukraine entered into force on May 06, 2023 in accordance with the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on Exemption from Environmental Tax, Land Payment and Tax on Real Estate Other Than a Land Plot for Destroyed or Damaged Real Estate" No. 3050-IX dated April 11, 2023."

Resolution of the Cabinet of Ministers of Ukraine No. 1364 of December 6, 2022 "Some Issues of Forming the List of Territories in which Military Operations are Conducted (Were Conducted) or Temporarily Occupied by the Russian Federation" establishes that the list of territories in which military operations are conducted (were conducted) or temporarily occupied by the Russian Federation is approved by the Ministry for Reintegration of the Temporarily Occupied Territories in the form according to the Annex in agreement with the Ministry of Defense based on proposals of the relevant regional and Kyiv City Military Administrations. The above Resolution entered into force on December 25, 2022.

On the basis of the Resolution of the Cabinet of Ministers of Ukraine No. 1364 of December 06, 2022 "Some Issues of Forming the List of Territories in which Military Operations are (were) Conducted or Temporarily Occupied by the Russian Federation", on December 22, 2022, the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine adopted Order No. 309 "On Approval of the List of Territories in which Military Operations are (were) Conducted or Temporarily Occupied by the Russian Federation", registered with the Ministry of Justice of Ukraine on December 23, 2022 under No. 1668/39004.

At the same time, in practice, the controlling authorities still send tax notices-decisions on payment of land fees to owners of land plots located in the territories of active hostilities or in the territories of Ukraine

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temporarily occupied by the Russian Federation, arguing that the list of taxpayers, object of taxation, tax base, tax exemptions, tax rate, tax period, procedure for calculating the amount of tax, procedure for calculating the amount of tax in case of change of ownership of the object of taxation, procedure for payment of tax, etc. In such circumstances, taxpayers have two ways to resolve the problematic issue - to file a complaint with a higher tax authority or to go to court.

The national administrative courts mostly cancel such tax assessment notices, which is confirmed by the decision of the Chernihiv District Administrative Court of 28 November 2023 in case No. 620/14526/23 (upheld by the decision of the Sixth Administrative Court of Appeal of 18 March 2024), the decision of the Kharkiv District Administrative Court of 17 July 2023 in case No. 520/8451/23 (upheld by the decision of the Second Administrative Court of Appeal of 29 February 2024), the decision of the Kharkiv District Administrative Court on October 10, 2023 in case No. 520/21988/23 (upheld by the decision of the Second Administrative Court of Appeal on February 13, 2024), by the decision of the Kharkiv District Administrative Court on September 18, 2023 in case No. 520/19074/23 (upheld by the decision of the Second Administrative Court of Appeal on January 22, 2024).

Conclusions. Therefore, in order to fill in the gaps in the legislation, we propose to supplement Article 281 and Article 282 of the Tax Code of Ukraine with new paragraphs, stating that individuals and legal entities are exempt from paying land tax under the legal regime of martial law in the cases provided for in subparagraph 69.14 of paragraph 69 of subsection 10 of Section XX "Transitional Provisions" of the Tax Code of Ukraine.

In the future, we plan to continue researching the application of amendments to tax law by identifying problems with the application of the amendments to the legislation in practice and, after conducting scientific research, to propose amendments to the legislation.

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[3] On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on the Validity of Norms for the Period of Martial Law: Law of Ukraine dated 15.03.2022 No. 2120-IX. URL: https://zakon.rada.gov.ua/laws/show/2120-20#Text.

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