

ELECTRONIC ADMINISTRATION OF VALUE ADDED TAX: SPECIAL FEATURES OF LEGAL PERSONALITIES OF TAX RELATIONS ENTITIES

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ABSTRACT

Description: The article deals with the study of tax legal personality of the entities of tax relations (tax payers and regulatory authorities). Methodology: Research methods are chosen based on the object, subject, and purpose of the study. The study used general scientific and special methods of legal science. The methodological bases for the study are the following scientific methods: logical method, the analysis and synthesis method, normative-dogmatic method, formal-dogmatic method, the system-structural method and the legal modeling method. The results of the study: Based on the analysis of the norms of current legislation, the authors explore the peculiarities of the tax legal personality of the entities of tax relations (tax payers and regulatory authorities), taking into account the introduction of the electronic administration of value added tax, and draw scientifically grounded conclusions on this range of problems. Practical implications: The concept of legal personality, including tax and legal personality, has not yet been clearly defined. At the same time the development of modern information technologies and their wide implementation in the mechanisms of public management contribute to emergence of new economic and legal relations, including those in the part of levying taxes and fees. The specified also applies to the administration of value added tax in Ukraine. Taking into account the specifics of the tax legal personality, we consider that the problem of its features with respect to the implementation of electronic administration of value added tax is not fully studied at the moment, so our article deals with this very problem. Value/originality. Based on the results of the research, the authors propose to make changes in the current legislation to bridge the gap in terms of legal personality of tax relations entities.

Keywords: Tax Personality, Entities of Tax Relations, Tax Legal Relations, Electronic Administration of Value Added Tax, The Unified Register of Tax Invoices (URTI), Registration of Tax Invoices, System of Monitoring the Criteria of Risk Degree Assessment (SM of CRA).

INTRODUCTION

The development of modern information technologies and their wide implementation in the mechanisms of public management contributes to the emergence of new economic and legal

relations, including those in the part of levying taxes and fees. The specified applies to value added tax administration.

In modern studies the concepts of legal personality (possibility and ability to be a participant of legal relations), including tax legal personality, have not been clearly defined, so in the scientific literature, there are many points of views on the essence of this category. With the introduction of the electronic administration of value added tax, rather significant attention has been paid to this process since its introduction. The above applies to the mandatory registration of tax invoices in the Unified register of tax invoices, monitoring the compliance of tax invoices/adjustment calculations with the criteria of risk degree assessment that are sufficient to stop registration of a tax invoice/calculation of adjustment in the Unified register of tax invoices. Considering the mentioned above, there is a need for further scientific research on the problem of peculiarities of the tax legal personality in the system of electronic tax value administration.

The relevance of the problem of legal personality, including tax legal personality, was considered in the papers of such scientists as Alekseev (2008), Belykh & Vynnytsky (2004), Yevtushenko (2005), Kosiachenko (2017), Kucheriavenko (2002), Perepelytsia (2001), Skakun (2001), who thoroughly researched the theoretical issues of the emergence, change and termination of legal personality, including legal personality of tax, physical and legal entities.

Along with this, taking into account the specifics of tax personality, the problem of its features with respect to the implementation of electronic administration of value added tax is not studied at present.

The major legal problem of the tax sphere is mainly to identify and effectively secure the boundaries of freedom and the necessity in behavior of entities of tax legal relations (their legal personality) through the appropriate legal, legislative regulations, to protect the property rights of individual taxpayers and the interests of the society, which are implemented in the financial and tax activities of the state.

Given constant attention in scientific circles regarding the legal personality of the entities of tax legal relations (ability and possibility to be a participant of legal relations, determining rights and obligations), as well as the fact that in modern studies, the concept of legal personality, in particular, tax personality, has not been clearly defined, and there are a lot of points of view on the essence of this category in the scientific literature, this issue requires further research, given the constant changes in tax legislation, including in the part of the rights and obligations, taking into account the introduction of new forms of relations of the entities of tax relations (tax payers and regulatory authorities).

The purpose of the article is, based on the analysis of the current legislation, to study the peculiarities of the tax personality of participants of tax relations (tax payers and regulatory authorities), with regard to the implementation of electronic administration of value added tax, and to make scientifically grounded conclusions on the outlined issues.

Legal Personality: Tax Legal Personality

The term “*Legal Personality*” is used in the theory of law to characterize a person as an entity of law. It is considered by scientists in different aspects. In legal science, there are different approaches to the definition of the concept of legal personality. At present, there is no unified approach to understanding legal personality.

Mytskevych (1962), considers that legal personality has a special major significance for legal regulation of behavior of citizens and organizations, serves as a prerequisite for specific relations between them, and determines the content of the conduct of a person or an organization in different life situations. According to Skakun (2001), legal personality (legal capacity) belongs to the conditions of acquisition of a legal status, because it is the ability of a person to have rights, perform obligations, and bear responsibility. In the view of Kucheriavenko (2002), legal personality performs the functions of legal regulation through the specification of the circle of entities, persons, potentially able to be carriers of some legal rights and duties.

Legal personality is a collective category; it contains such elements as capacity, legal capacity, active capacity and delict capacity. In fact, this is a legal capacity to be a participant of legal relations, provided by the norms of the law.

Alekseiev (2008) emphasizes the existence of several types of legal personality: *general*-describes the ability of a person within a certain political and legal system to be an entity of law; *branch*-the ability of a person to be a participant of legal relations within the respective field of law; *special*-the ability of a person to act as a participant of only certain relations in the framework of the respective field of law.

Disagreeing with the presented position, Kosiachenko (2017) notes that when entering the appropriate legal relations, an entity acquires a specific branch legal personality (general branch, which precedes the emergence of the relevant branch legal status). Within a specific legal field, an entity is given “*sub-branch*” or a special (type) legal personality, i.e., the separation of the total legal personality is impractical.

It is possible to agree with this statement, since each branch determines the range of entities and using legal personality indicates what rights and duties they can possess and how to apply these rights and duties, i.e. what behavior of entities is legally significant. Some scientists pay attention to the branch legal personality as a separate element of legal personality, i.e. the recognition of a person as a potential entity of rights and obligations established by the norms of a particular branch of law.

What is tax legal personality? In the financial and legal doctrine, tax legal personality is regarded as an independent element of the legal status of taxpayers, the main content of which is the duty to pay taxes and fees. In this case, the tax legal personality also consists of such elements as legal capacity, active capacity and delict capacity.

According to Kucheriavenko (2002), the tax legal personality is the ability of individuals to be participants of legal relations regulating the establishment, change, cancellation of tax payments, to have in this regard entities’ rights and duties, provided by tax regulations.

Belykh and Vynnytsky (2004), consider tax personality as one of the types of branch personality, that is why along with the general features, it is characterized by some properties, caused by the specificity of tax legal relations and the legal impact on them: it is the primary step stone of specification of tax and legal norms, which determine the general legal state of the entities of tax law (are put in a certain situation with respect to one another); it is the established by the norms of legal capacity to be the bearer of legal rights and obligations in the field of organizational-property and organizational relations in establishment, introduction, payment of taxes and fees, as well as in other relations, in separately associated with their calculation.

In turn, Yevtushenko (2005) stresses that the tax personality is a kind of sub-branch legal personality. The presented position is based on the concept that tax law is considered as a subfield of financial law.

It is a reasonable position of Perepelytsia (2001) that special legal personality establishes the ability to take part exclusively in a narrow range of relations that are included in the entity of the tax law regulation. Thus, it is possible to separate a special tax legal personality of customs authorities of the State Treasury. Such entities of tax legal relations as tax authorities, taxpayers have the branch legal personality, which depends on the entity of regulation.

In such circumstances, agreeing with the opinion Kosiachenko (2017), the tax legal personality is one of the kinds of sub-branch legal personality, has inherent properties, caused by the specifics of the tax legal relations.

Tax Legal Personality of Tax Payers

Thus, the Tax Code of Ukraine (art. 17 and art. 20) (hereinafter, the TC of Ukraine; Law of Ukraine, 2010) stipulates the rights and responsibilities of the regulatory authorities and taxpayers. When it comes to taxpayers, they have exclusively the rights and obligations on those taxes and fees, the payer of which they are. Not all taxpayers can have the appropriate rights and obligations, such as in the part of levying value added tax, but only those registered as taxpayers. We mean the acquisition by a payer of the status of a participant of specific tax legal relations. In this case there is no taxpayer who would simultaneously use the rights and responsibilities regarding all taxes. The exception is a common duty for all payers to calculate (to determine the tax object and base), to declare (to file a report) and to pay the amount of the corresponding tax.

In this case, it will be appropriate to note that an entity of legal relations in most cases is an entity of law, but at the same time not every entity of law is the entity of relations (Mordovets & Cyniukov, 2005). A taxpayer is an entity to tax law; however, he is not an entity of the entire possible totality of tax legal relations.

The duty to pay the appropriate tax occurs, changes or terminates at the existence of the grounds determined by the TC of Ukraine. The reason may be the presence of the object of taxation or doing certain actions, which resulted in occurrence of the taxpayer's duty to pay a tax and corresponding rights. Thus, for the acquisition of the status of a payer of value added tax (hereafter-VAT), a person should register himself as a payer of such tax. The TC of Ukraine provides for the voluntary or mandatory registration. It should be noted that for the acquisition of the status of the payer of value added tax, a payer can use the right (voluntary registration) or perform a duty (compulsory registration, in cases foreseen by the law). In this case, to acquire the rights (as derivative), it is possible to use the corresponding right, rather than to perform a duty.

Thus, it can be argued that the entity, using the right or the duty on registration of VAT payer, stipulated by the norms of the TC of Ukraine, and getting the status of such a tax payer, is granted the relevant rights and responsibilities, which are provided for the payers of value added tax. In turn, termination of legal personality in the part of levying value added tax is annulment (cancellation) of the registration and exclusion from the register of taxpayers of this tax (by the statement of a payer or by decision of the regulatory body).

With regard to the above, the tax legal personality of tax payers can be “*general*” (the ability to have rights and obligations under the provisions of the finance law), “*sub-branch*” (the ability to have rights and obligations under the provisions of the tax law), and “*special additional*” (the ability to have and implement the rights and responsibilities of a separate tax the entity pays; to participate exclusively in a narrow circle of relations included in the entity of the

tax law regulation). That is, it is the opportunity to be (to act as) a participant of specific legal relations regarding levying a corresponding tax.

In such circumstances, we can conclude that there are three types of legal personality of a payer of value added tax: general (branch); sub-branch and special (additional). The essence of the latter is that a taxpayer with respect to each tax, the payer of each he is, acquires (uses) certain rights and obligations. Therefore, by registering as a payer of value added tax, a person acquires a special (additional) legal personality, and, accordingly, the possibility to enter (to participate) in the corresponding relations, particularly, in the system of electronic administration of value added tax (hereafter-SEA of VAT) (inclusion in the register of tax payers; opening electronic accounts; registration of tax invoices, etc.).

As it was noted in previous publications (Lohvyn, 2018), one of the characteristics of the legal personality of a payer of value added tax is his rights in the system of electronic administration of value added tax, which form the original principles of their legal status. Thanks to the rights of taxpayers in the system of electronic administration of value added tax, they manifest their interests, activities, and relations with other entities of the SEA of VAT (regulatory authorities in the face of the State fiscal service of Ukraine and the authorities of the State Treasury service of Ukraine).

In this case, characterizing the level of legal regulation of the rights and obligations of a payer of value added tax (and regulatory authorities) in the SEA of VAT, it could be argued that such an integral component of legal personality as active capacity is not sufficiently regulated and has certain gaps. The above, in turn, gives rise to certain questions and controversies regarding the rights of taxpayers.

Thus, the rights of taxpayers include: making entries (availability of information) to the register of payers of value added tax about the registration of such person as a taxpayer; opening an electronic account; obtaining the information about the balance on this account and amount of limit for the registration of tax invoices; topping-up the e-account and timely representation of information about such topping-up in the SEA of VAT; registration of tax invoices/adjustment calculations in the Unified register of tax invoices (hereafter-URTI); submission of explanations and copies of documents in case of termination of registration of tax invoices/calculations of adjustment; appeal against decisions to refuse registration tax invoices/calculation of adjustment; returning overpaid money (Decree of the Cabinet of Ministers of Ukraine, 2018).

The rights of taxpayers in the SEA of VAT can also include, in particular, the opportunity to appeal against unlawful actions of regulatory authority as for adjustment of indicators of electronic accounts of VAT (late display of topping up by a payer and distortion of the data of e-account); decreasing the limit (in particular, arrest of the limit amount on the e-account), as well as technical limitations for the acceptance of electronic documents (blocking the means of electronic communication), and in accordance the limitation of the right to register tax invoices (which also leads to late registration of tax invoices). At the same time, such rights and the corresponding possibility of the further behavior of a payer were not stipulated (were not displayed) in respective legal regulations.

A legislator must foresee the guarantees of the rights of taxpayers, but it is possible to achieve it only on condition of passing normative-legislative acts, which would not foresee the existence of legal collisions, which would lead to contradictions between the controlling organs and tax payers.

Taxpayers need more accurate and comprehensive rules defending their rights, especially

when the level of the taxation increases, tax legislation becomes more complicated and technical facilities are imperfect, new facilities of obtaining and comparing the information from different sources need appropriate processing.

In this case, it should be noted about the chapter of the publication of the Organization of Economic Cooperation and Development of Law and the duties of a taxpayer (Centre for Tax Policy and Administration, 1990), which considers a number of principles, related to the defense of the rights of tax payers, in particular:

The Right to be Informed Assisted and Heard

Taxpayers are entitled to have the information on the operation of the tax system and the way in which they tax is assessed. Besides, they have the right to be informed on their rights, including the right of appeal.

The Right of Appeal

The right of appeal against any decision of the tax authorities applies to all taxpayers, and to almost all decisions made by the tax authorities, whether as regards the application or interpretation of the law or of administrative rulings, provided the taxpayer is directly concerned.

The Right to Pay no More than the Correct Amount of Tax

Taxpayers should pay no more tax than is required by the tax legislation, they also are entitled to assistance of the tax service on the specified matters, including the ensuring the right for tax benefits.

The Right of Certainty

Taxpayers also have the right to have a high degree of certainty as to the tax consequences of their actions. Of course, it is not always possible to provide complete certainty. For example, taxpayers may not always know in advance the rules that depend on particular facts and circumstances. A high level of certainty of taxpayers can be provided only on condition of a careful development of tax legislation that is understandable for taxpayers. When designing the new legislation, its initiators can consult the representatives of taxpayers.

The opinion of Professor Philip Baker (2001) will be reasonable:

“Some would say that taxation and human rights is an oxymoron. I personally that human rights are a fundamental aspect of taxation. Human rights are a tool that limits what governments can do to their citizens-to people affected by their decisions... I think at the moment we are at a very exciting stage, where we are seeing the extension of the basic principles of the system of protection of fundamental human rights into the tax field”.

Personality of Controlling Authorities

Turning to legal personality of controlling authorities (SFS of Ukraine), it should be noted that the regulatory authority, speaking on behalf of the State, is given certain powers. Characterizing the entities of power (regulatory authorities) in the tax legal relations, it is

necessary to pay attention to the notion of competence. Competence is a kind of legal personality (first link of specification of prescriptions, legal norms at the stage of legal relations) and plays the same role. Its content is determined by the volume of the respective rights and obligations which are laid on the entity of power on the basis of the relevant regulatory act. Since the regulatory authority is given certain rights and duties, it must operate exclusively within such competence.

At the same time, as noted above, normative-legal regulation of the rights and duties of the regulatory authorities in the SEA of VAT has certain gaps, which creates inconveniences and leads to contradictions between them and taxpayers.

Returning to legal regulation (Decree No. 117) (as of 01.11.2018) of the issues related to the termination of the registration of tax invoices/calculation of adjustment in the Unified register of tax invoices, now in the part of the rights and duties of regulatory authorities, we should pay attention to the following. The Commission of the regional level may take a decision on refusal of registration of a tax invoice/calculation of adjustment for the reason of: *“not submitting the copies of documents by a tax payer”*. Specifying the reasons for such refusal, during the adoption of the corresponding decision, the officer of controlling authority can and should indicate what documents exactly from the enumeration list were not submitted. In this case, it is stated in the decision that the documents that were not submitted should be underlined. However, the form of decision does not provide the technical ability to underline the documents which were not submitted, but only to put a mark opposite the selected list of documents, which were not submitted.

Thus, it is essential to introduce changes to the relevant legislative-regulatory acts (Decree No. 117) regarding the form of the decision to register or the refusal to register a tax invoice/calculation of adjustment in the Unified register of tax invoices. These changes should stipulate that in case such decision was made for the reason of *“not submitting the copies of documents by a tax payer”*, it is necessary either to make a mark opposite the list of non-submitted documents, determined by the form of the decision, or to underline non-submitted documents from the presented list. In this case, it is important to provide the appropriate technical possibility to carry out such actions. It is also appropriate to determine clearly whether or not the specification of documents is foreseen (additional specification in the decision of the list of documents, which, in the opinion of the regulatory authority, were not submitted).

There is a similar situation, when a regulatory authority made the decision on refusal of registration of a tax invoice/calculation of adjustment for the reason of *“submission by a taxpayer of the copies of documents drawn up in violation of the law”*. Judicial authorities also indicate the need to specify what documents exactly were drawn up in violation of the legislation.

There are cases when explanations and copies of documents, submitted by a payer electronically, which are necessary to make a decision about the registration of a tax invoice/calculation of adjustment, do not open (are damaged or for other technical reasons) for a review in the relevant information systems of the regulatory authority. That is, the Commission of the regional level can neither confirm nor refute the existence and reliability of such documents, and, accordingly, take a reasoned decision. However, given the impossibility of studying the submitted documents, due to their inaccessibility for viewing, controlling authority still adopt the decision on refusal of registration of a tax invoice/calculation of adjustment. This situation is explained by the fact that the regulatory authority acting in the way and manner

determined by the law, and in the absence of legislatively stipulated right of administrative discretion, is deprived of an opportunity to consider this circumstance (not opening of documents) in favor of a payer and, accordingly, to make a decision about registration of a tax invoice/ calculation of correction.

The above also leads to the cancellation of such decisions in court on formal grounds.

CONCLUSION

According to the results of the performed analysis:

1. Legal personality of a taxpayer in the system of the electronic administration of value added tax is special (additional), has its own properties, caused by the specifics of relations that occur in the regard to levying value added tax. In this case, unlike the general tax-payers' legal personality, for which the main content is the responsibilities of a person, and as a derivative from them, the acquisition by a person of relevant rights concerning levying value added tax, the person (a taxpayer) can make use of the relevant law, rather than perform the duty.
2. A taxpayer is an entity to tax law (sub-branch legal personality), but is not an entity of the entire possible totality of tax legal relations. By registering as a value added tax payer, a taxpayer acquires a special (additional) legal personality, which is the ability to have and implement the rights and responsibilities, to enter corresponding relations, particularly, in the system of electronic administration of value added tax (inclusion in the register of taxpayers; opening electronic accounts; registration of tax invoices, etc.). In such circumstances, value added tax payers have the following types of legal personality: general (branch); sub-branch and special (additional).
3. Characterizing the level of legal regulation by the regulatory acts of the rights and obligations of taxpayers and regulatory authorities (DFS of Ukraine) during levying value added tax (e-administration of VAT), it is possible to argue that such an integral component of legal personality as active capacity is not sufficiently regulated and has some gaps. The above, in turn, gives rise to some questions and controversies regarding the rights and obligations of tax payers and regulatory authorities.
4. Legal personality of the regulatory authority (the DFS of Ukraine) on the issues related to the termination of the registration of a tax invoice/calculation of adjustment in the Unified register of tax invoices is limited by the corresponding regulations. In turn, this affects the objectivity of making relevant decisions. The above is related to the fact that making by the controlling authority of the actions, which are not provided (not regulated) by corresponding regulations, may be regarded both by the controlling authority of a higher level, and other competent State authorities as improper performance of office duties, abuse of authority or official position and harm to the state interests.
5. It is essential to introduce changes to the relevant regulations (the TC of Ukraine) to bridge the gaps as for legal personality of both tax payers and regulatory agencies, which were considered above, in particular:
 1. The appeal of a tax payer against unlawful actions of the controlling authority, on distortion of indicators of electronic VAT accounts (limit; topping-up);
 2. Notification of a taxpayer about entering him to the risk list;
 3. The procedure (the limits of necessary/ possible behavior) of both a taxpayer, and the regulatory authority, in case of violation of terms of submission of explanation and copies of the documents to confirm the registration of tax invoices/ calculations of adjustments (which in this case are considered to be not registered);
 4. The procedure (the limits of necessary/possible behavior) for a taxpayer, and the regulatory authority in the case of the registration of calculation of adjustment to the tax invoice, the registration of which was terminated and it was refused to register it, and the corresponding decision of the regulatory authority about the refusal to register is challenged in court;
 5. The procedure (the limits of necessary/possible behavior) for a taxpayer, and the regulatory authority if the explanations and copies of documents, necessary to make a decision about the registration of a tax invoice/ calculation of adjustment, submitted electronically by a taxpayer, do

- not open (are damaged or for other technical reasons) for review in their respective information systems of the regulatory authority;
6. The forms of a decision of the regulatory authority on the registration or refusal to register a tax invoice/calculation of adjustments in the Unified register of tax invoices (making a tick opposite the presented list or still underlining non-submitted documents; the necessity to specify additionally non-submitted (missing) documents or not).

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