

# STATE POLICY OF UKRAINE IN TERMS OF IMPLEMENTING LAW ENFORCEMENT FUNCTION OF THE COUNTRY IN THE TAXATION SPHERE

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## ABSTRACT

*The current state of the formation and implementation, as well as tendencies for the development of state policy on ensuring the implementation of the law enforcement function of the country in the taxation sphere have been clarified in this research. The research was aimed at demonstrating that any legislative amendments in the taxation sphere should focus on ensuring the integrity of the tax system and the development of voluntary compliance with the current norms by taxpayers. The authors have analyzed scientific approaches regarding the peculiarities of the formation and implementation of state policy on legal provision of the law enforcement function of the country in the taxation sphere in relation to the involvement of civil society institutions into this activity and strengthening the role of information and analytical forms and methods of its realization.*

*The authors of the article have defined the basic principles of legal entities to implement the law enforcement function of the country in the taxation sphere based on the “good governance” concept: focusing on meeting the needs of taxpayers, which is in the public interest of civil society and the state in the whole; stability and long-term orientation of the tax policy; achieving efficiency, effectiveness, openness, transparency in the activities of state authorities; competence and ethical behavior of their officials.*

**Key words:** State Policy, Tax Policy, Law Enforcement Function of the Country, Taxation, Legal Provision, Civil Society Institutions, Principles of Activity

## INTRODUCTION

The rapid development of scientific ideas about the relationship between society and the state, the tasks of public administration agencies on the formation and implementation of state policy in all spheres of public life, the implementation of internationally recognized requirements for state authorities' activities into national law, digitalization of public management and administration necessitate the relevant scientific development of the problems of legal provision for the realization of state functions.

One of the most acute issues in the modern processes of reforming the system of administration of taxes, fees and charges is the implementation of the law enforcement function of the country in the taxation sphere. The introductions of the anthropocentrism idea, the practical implementation of the rule of law principle in public administration prove the inexpediency of considering the law enforcement function of the country only from the standpoint of power, subordination and coercion. The content of the law enforcement function

of the country in the taxation sphere is much broader, it determines the reorientation of state agencies into ensuring a balance of private and public interests in the tax sphere.

The issues of legal and institutional provision for the implementation of the law enforcement function of the country in the taxation sphere become relevant at the present stage of the development of Ukrainian statehood. We believe that the tasks of scientific research in this direction should be both rethinking the content of this function and revising the established ideas about the correlation of legal means of implementing the state functions, which is extremely relevant for law enforcement function of the country.

The authors of this article have revealed the lack of special branch studies in the existing scientific works of Ukrainian scholars on the analysis of modern state policy in the taxation sphere in general and the peculiarities of exercising the law enforcement function of the country (taking into account the latest tendencies in the formation of administration system of taxes, fees and payments) in particular. The above necessitates a detailed analysis and improvement of the components of the system of legal provision for the implementation of the law enforcement function of the country in the taxation sphere, taking into account best international practices, identifying tendencies in the formation and implementation of the state policy in this area at the level of thorough research.

## **MATERIALS AND METHODS**

The works of experts in the fields of theory of law, administrative law, financial and tax law were the scientific and theoretical basis of this article. The Constitution of Ukraine, international and national regulatory legal acts, which establish the legal basis for the implementation of the law enforcement function of the country in the taxation sphere, became the normative and legal basis of the research. The generalization of the practice of legal entities to implement the law enforcement function of the country in the taxation sphere and courts, reference books, statistics, etc constitute the informational and empirical basis of this research.

The methodological basis of the dissertation research is a set of general scientific and special methods and techniques of scientific cognition, the practical application of which allowed to obtain scientifically sound conclusions. Thus, the dialectical method has assisted to clarify the content of the law enforcement function of the country in the taxation sphere as an object of legal provision. The system and structural method of scientific cognition has been used during the analysis of the peculiarities for the formation and implementation of the state policy on ensuring the law enforcement function of the country in the taxation sphere, interaction between the entities of administrative and legal provision of the law enforcement function in the taxation sphere. Methods of analysis and synthesis have been used while studying the content and system of entities of administrative and legal provision of the law enforcement function of the country in the taxation sphere; the formal and legal method – has been used while studying regulatory legal acts that define their functions and powers. The comparative and legal method has been applied to analyze international experience of administrative and legal provision for the implementation of the law enforcement function of the country in the taxation sphere.

## **RESULTS AND DISCUSSION**

Defining the concept of the state policy on ensuring the implementation of the law enforcement function of the country in the taxation sphere, it is necessary to establish the content of its generic concept – “public policy”. The latter is understood in the literature as the direction of the state to define and achieve socially significant goals of society’s development or its individual spheres (Bakumenko & Nadolashnii, 2003), establishing effective relations between the state and society in various spheres of public life (Bezpalo, 2012).

It is known that the state policy includes financial, tax, pricing, investment, policies in the field of labor and employment, social protection, education, science and culture, nature

protection, environmental safety and nature management. In accordance with paragraph 5, Part 1 of the Art. 85 of the Constitution of Ukraine, the definition of the principles of domestic policy belongs to the powers of the Verkhovna Rada of Ukraine, as the only legislative agency in Ukraine.

Understanding the peculiarities of the formation and implementation of the state policy on ensuring the law enforcement function of the country in the taxation sphere requires clarification of the essence of its two components: state policy in law enforcement area and state tax policy.

We support the opinion expressed in the literature that the state policy in the law enforcement area is a purposeful activity of state authorities and the public, regulated by national legislation and aimed at protecting and defending state interests, rights, freedoms and legitimate interests of individuals and legal entities, formation of legal awareness and legal culture of the population, the formation of a positive image of law enforcement agencies (Bezpalova, 2012). At the same time, the state tax policy is a part of state policy based on the existing political ideology, analysis of the economic situation and ways of state's development. It is characterized by the permanent activities of authorized agencies of state power and local self-government on creating an effective mechanism of legal regulation through the adoption of relevant regulatory legal acts and aimed at forming the revenue aspect of the budget, as well as the development and regulation of tax relations (Teremetskyi, 2012).

One of the main tasks of tax policy is the formation of such a model of legal influence on relations arising in the process of establishing, calculating and paying taxes (tax relations), which would balance public and private interests of various participants in economic relations by ensuring the performance of public authorities their legislative functions in the most efficient way and with minimal costs, while reducing interference into the private property right and positively affect the development of economic relations (Teremetskyi, 2012).

Thus, the state policy on ensuring the law enforcement function in the taxation sphere should be defined as the direction of public authorities regulated by the norms of the current legislation on regulatory, institutional and organizational provision for the realization of the rights and obligations of taxpayers, protection of state interests during the mobilization of funds to budgets of different levels and state trust funds, interaction of tax authorities and taxpayers on a partnership basis.

The static status of the state policy on ensuring the law enforcement function in the taxation sphere is reflected in the norms of various regulatory legal acts that enshrine the rules of conduct of the participants in tax legal relations, institutional and organizational conditions for implementing the law enforcement function in the taxation sphere (state policy formation). The dynamic status is reflected in the activities of authorized entities to implement the statutory competence on implementing the law enforcement function of the country in the taxation sphere (state policy implementation) (Dmytrenko, 2021, p.81).

The content of the formation and implementation of the state policy on the law enforcement function of the country in the taxation sphere can be clarified through the analysis of the powers of the Cabinet of Ministers of Ukraine, the Ministry of Finance of Ukraine and the State Tax Service of Ukraine. Thus, the realization of tax policy in accordance with paragraph 3, Part 1 of the Art. 116 of the Constitution of Ukraine is guaranteed by the Cabinet of Ministers of Ukraine, which is the highest agency in the system of executive agencies (Law of Ukraine, 2014). A similar task is assigned to this agency in paragraph 3, clause 1 of the Art. 2 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" (Cabinet of Ministers of Ukraine, 2014). The main agency in the system of central executive agencies on ensuring the formation and implementation of state tax policy is the Ministry of Finance of Ukraine (Cabinet of Ministers of Ukraine, 2019). The specified Ministry in accordance with the assigned tasks develops draft laws and other regulatory legal acts on issues within its competence, namely: carries out regulatory activities in the taxation sphere, the state policy in the field of combating offenses while applying tax legislation etc. The State Tax Service of Ukraine implements state tax policy,

submits propositions to the Minister of Finance on ensuring its formation. In accordance with paragraph 4 of the Regulations on this Service, it develops the drafts and submits propositions to the Minister of Finance to improve the current regulatory legal acts on issues related to its scope of activity.

Thus, the analysis of the content of the functions of these three executive agencies allows us to argue that the formation of the state policy on ensuring the law enforcement function of the country in the taxation sphere involves the preparation and adoption of regulatory legal acts. The importance of the proper legal provision for the implementation of the law enforcement function of the country has been repeatedly emphasized in the literature (Bezpalova, 2012). Therefore, the priority areas for the implementation of the law enforcement function of the country in the taxation sphere should be created at the regulatory level, the entities responsible for its implementation should be identified, the ways of the interaction between those entities should be outlined, problematic issues related to guaranteeing the implementation the law enforcement function in the taxation sphere should be singled out, and the search for ways to solve them should be carried out (Dmytrenko, 2020).

Unfortunately, the Tax Code of Ukraine is still full of contradictions and conflicts, it contains gaps and norms that can be interpreted ambiguously. There is sometimes even lobbying for narrow interests in terms of expanding tax benefits.

This indicates, first of all, on insufficient level of legislative technique (inconsistencies and contradictions in the presentation of some regulations), which generated a wave of criticism, and secondly, the lack of consultations with specialists (lawyers, auditors, accountants, experts) and the public (entrepreneurs, trade unions, professional associations) before its adoption, and thirdly – the lack of a clear tax policy of the state or the falsity of the existing one, because laws establishing new or changing existing legal relations in the taxation sphere should not be adopted according to current needs in financing the revenue aspect of the budget, while violating the principle of tax stability (Teremetskyi, 2012).

Given the separation of service and law enforcement activities in the taxation sphere between different executive agencies, it is necessary to amend the Tax Code of Ukraine in terms of the interaction and exchange of tax information, notification about tax offenses containing features of a tax crime. It is also necessary to supplement the Tax Code of Ukraine with a separate Section that would define the principles of international cooperation in the taxation sphere, in particular would clarify the procedures of mutual administrative assistance on tax matters, whose implementation into national legislation was adopted by Ukraine by ratifying the Convention on mutual administrative assistance on tax matters (Law of Ukraine, 2008; Convention, 1988). Besides, the legislation of Ukraine should enshrine the principle of building tax policy and the activities of the subjects of authoritative powers, the essence of which is that any amendments in legislation in the taxation sphere should focus on the integrity of the tax system and the development of voluntary compliance with the current norms by taxpayers. At the same time, the authors of the article agree that the willingness of individuals and legal entities to pay taxes is related to tax culture, trust to state authorities, intolerance of corruption, as well as the degree of satisfaction with their provision of state services.

Legal provision of the law enforcement function of the country in the taxation sphere can be divided into two stages: normative, when the formation of the state policy on legal protection of taxation sphere is carried out, and individual, which involves the direct application of administrative and legal means, forms and methods of administrative and legal provision by the authorized subjects. At the same time, an important role in preventing violations of the current tax legislation and ensuring the implementation of the rights and obligations of participants in tax relations is given to administrative and legal means (establishment of regulations, prohibitions and permits, organizational measures of influence, acts of applying and interpreting the law norms, etc.).

Thus, the basis of legal provision for the implementation of the law enforcement function of the country in the taxation sphere in Ukraine are international and national regulatory legal acts of different legal force, aimed at:

- 1) Determining the legal status of the entities implementing the law enforcement function of the country in the taxation sphere
- 2) Establishing interaction relationships between the competent authorities in the field of implementing the law enforcement function of the country in the taxation sphere at the national and international levels
- 3) Determining the procedure for the implementation of certain sub-functions of law enforcement activities in the taxation sphere.

The formation of the state policy on the law enforcement function of the country in the taxation sphere is characterized by the following specific feature: gradual involvement of the public into the development and adoption of strategic decisions and draft regulatory legal acts, readiness for the open dialogue with society. Thus, representatives of civil society institutions are included in the staff of the Commission for Corruption Risks Assessment within the State Tax Service of Ukraine (State Tax Service of Ukraine, 2019a), and a communication tax platform with associations representing the interests of taxpayers was formed in accordance with the Order of the State Tax Service of Ukraine dated from June 12, 2020 No. 269 “On cooperation” (State Tax Service of Ukraine, 2020a).

The tax policy of the state reflected in the Tax and Customs Codes of Ukraine should be socially and economically orientated, should differentiate tax and intergovernmental powers, strengthen the position and role of taxpayers, form and intensify their business and social role. The leading direction of modern state policy in the taxation sphere should be the creation conditions for the formation of a strong and numerous middle class, which is a guarantor for stability, decentralization of governance and self-employment. It is the middle class that acts as a social regulator and is the basic for rebuilding qualified labor power, creating market infrastructure, increasing incomes of population and increasing tax revenues, but it also needs clear and transparent “rules of the game” that must be ensured by state tax policy (Teremetskyi, 2012).

The strategic goals of the State Tax Service of Ukraine (State Tax Service of Ukraine, 2019b), Conceptual directions of reforming the system of agencies that implement state tax policy (Cabinet of Ministers of Ukraine, 2018) indicate the state’s efforts to create organizational conditions for taxpayers to properly fulfill their tax obligations. Short-term perspectives provide: the development and implementation of e-services of guaranteeing registration, carrying out electronic payments and updating of taxpayers’ information online; interactive tax calendar, improving the system of feedback with taxpayers, etc. (State Tax Service of Ukraine, 2020b). The List of data sets to be made public (updated) in the form of open data has already been expanded (State Tax Service of Ukraine, 2020c).

Implementation of the state policy on the law enforcement function of the country in the taxation sphere is carried out on the basis and for fulfilling program and regulatory acts of general, departmental and interagency nature of the actual activities of the authorized entities in order to protect the interests of the state during the mobilization of funds to the budgets of different levels and state trust funds, ensuring the compliance with the rights and responsibilities of taxpayers. Such activity is objectified in procedural forms of legal provision: control and supervisory, information and analytical, etc.

Characterizing the implementation of the state policy on the law enforcement function of the country in the taxation sphere one should note its focus on the introduction of international standards and improvement of analytical tools, which is recognized as one of the strategic goals of the State Tax Service of Ukraine (State Tax Service of Ukraine, 2020b). One of the most urgent issues in the implementation of the specified strategic goal is normative regulation of information and analytical activities, providing legal form to the conclusions obtained as a result of its implementation. The existing case law is quite contradictory and in some cases recognizes the conclusions by the results of the processing tax information within the information-analytical provision as illegal ones (Kyiv District Administrative Court, 2019), and in other cases – confirms the existence of grounds for their issuance and further use for management decisions (the Sixth Appealate Administrative Court, 2019). It should be noted that the case law

indicates the need for normative regulation of information and analytical provision issues as the direction of law enforcement activities of the state in the taxation sphere in order to give its results the importance of a legal fact within intra managerial relations.

Therefore, we offer to adopt an interdepartmental Order of the Ministry of Finance of Ukraine and a new agency of financial investigations (the Bureau of Economic Security of Ukraine), which would regulate the grounds, procedures and legal consequences of information and analytical activities of the entities implement in law enforcement function of the country in the taxation sphere.

Guaranteeing for the implementation of the law enforcement function of the country in the taxation sphere is carried out both by subjects, the main activity of which is law enforcement activity and by subjects that do not carry out law enforcement activities, but ensure the implementation of the law enforcement function.

The subjects of implementing the law enforcement function of the country in the taxation sphere are both state entities (including state authorities) and non-governmental entities that carry out activities for the formation and implementation of the state policy in this area. The subjects of implementing the law enforcement function of the country in the taxation sphere should include: legislative agency (The Verkhovna Rada of Ukraine); executive agencies; territorial communities represented by ceremonial agencies (local self-government agencies), which exercise the authority to establish, collect local taxes and fees, determine their rates; taxpayers; persons who contribute to the payment of taxes and fees (tax agents, banks, collectors of taxes and fees, civil society institutions, etc.) (Teremetskyi, 2011).

Thus, the system of subjects of legal provision for the implementation of the law enforcement function of the country in the taxation sphere is a set of both interconnected and independent from each other state authorities, which form a holistic unity in the formation and implementation of the state policy aimed at protecting human and civil rights, freedoms and legitimate interests, ensuring economic security, strengthening law and order in the taxation sphere through legal means. The effectiveness of the interaction of the subjects of legal provision for the implementation of the law enforcement function of the country in the taxation sphere depends on the rationality of management relations both vertically and horizontally.

The main problems of the interaction of the subjects of administrative and legal ensuring the implementation of the law enforcement function of the country in the taxation sphere are: the lack of qualitative regulatory provision, existence of a large number of subjects of interaction, whose powers are duplicated, the lack of legal certainty in understanding the concept of interaction, in particular regarding its complex nature, insufficient operative information and the feedback between the subjects of interaction, etc. Therefore the ways of solving those problems are: improvement of regulatory provision, enshrinment of the interaction principles at the legislative level, consolidation of the principles of interaction at the level of legislation, optimization of the executive agencies' activities, which are systematically interconnected and in the complex can be an integral part of the modern model of public administration, digitalization of the interaction process, determining the degree of influence of interaction on the effectiveness of each participant of such interaction.

The law enforcement function of the country in the taxation sphere is one of the activities of the state, which is aimed at ensuring the stability and inviolability of tax legal relations and is implemented through the system of such elements as purpose, legal means, legal outcome.

The law enforcement function of the country in the taxation sphere as an object of legal provision is implemented in the following types of legal activities:

- 1) Application of measures of administrative caution
- 2) Interpretation of tax law norms for the purpose of their equal application by taxpayers and tax agencies
- 3) Control and supervisory activities
- 4) State financial monitoring
- 5) Information and analytical activities of tax agencies

- 6) Case-handling on taxpayers' complaints within administrative and court proceedings
- 7) Disciplinary proceedings against officials of tax agencies
- 8) Proceedings in cases on administrative offenses
- 9) Court enforcement proceedings.

The law enforcement function of the country in the taxation sphere in terms of its content has a polystructural nature, which includes both the activities of state agencies in the taxation sphere and the types of legal activities, where they are carried out. The content of the law enforcement function of the state is not only security (protective) activity of the state, but also activities of the authorized law entities oriented on the creation of conditions for proper activity of legal institutions, realization of the rights and performance of duties by the participants of protected relations. The content of the law enforcement function of the state in the taxation sphere should be understood as the list of sub functions structured according to a certain algorithm, where the object of legal provision is

- 1) Prevention of offenses in the taxation sphere
- 2) Prosecution of the perpetrators within administrative and disciplinary liability
- 3) Ensuring the execution of decisions of the authorized entities
- 4) Realization of the guarantees of taxpayers' rights.

The authors of the article while studying international experience have revealed common features of legal provision for the implementation of the law enforcement function of the country in the taxation sphere, namely: the burden of the tax system, instability of tax legislation, tax reforms, the desire to create a favorable environment for taxpayers, close cooperation between state agencies that implement the law enforcement function in the taxation sphere. We believe that the areas for improving the current tax legislation of Ukraine should be the simplification of tax legislation, ensuring stability, the introduction of such norms, whose requirements are easy and those that can be difficult to avoid. To accomplish this task, Ukraine should borrow positive international experience on: the transformation of state authorities that implement tax policy from controllers into service providers, which are created to provide assistance to taxpayers (the experience of the United States, Denmark, New Zealand, Sweden); introduce a transparent and consistent process of implementing tax policy oriented on increasing voluntary compliance with tax legislation (the experience of Sweden, New Zealand); introduce a new electronic service for the interaction between taxpayers and state authorities, the essence of which is to obtain an assessment of tax discipline and the state of tax affairs, which ensures the establishment of trusting cooperation with business entities (the experience of Estonia); accessibility of the tax agency (Swedish experience); Provide information on tax evaders, who have been prosecuted for tax evasion by court decisions (experience of Denmark, New Zealand); form a high tax culture (experience of Denmark, New Zealand, Sweden); introduce the information reporting system (Danish experience); control over the compliance with recently amended tax norms (Irish experience); simplify constantly the tax legislation (New Zealand experience) (Dmytrenko, 2021).

## CONCLUSION

The taxation sphere plays an important role in the social, economic and political life of any state. The basis for ensuring the implementation of the law enforcement function of the country in the taxation sphere is the tax system, which creates a favorable tax environment that minimizes violations in the taxation sphere or, conversely, unfavorable tax environment resulting in numerous violations of tax law.

The main problem of legal provision for the implementation of the law enforcement function of the country in the taxation sphere in Ukraine is the existence of ineffective tax policy implemented by state authorities and local self-government agencies. It leads to instability of tax legislation, permanence of reforms, constant structural changes of state authorities, etc., which

becomes the basis for unfavorable tax environment, the development of the shadow economy, tax evasion, high level of corruption and, consequently, lack of public and economic entities confidence to the subjects of public administration in the taxation sphere.

Summing up the study of the formation and implementation of the state policy on ensuring the law enforcement function of the country in the taxation sphere, we can point to the following specific features:

1. Focus on ensuring the balance of public and private interest in the taxation sphere
2. Involvement of civil society institutions in making managerial decisions on the formation of the state policy on the implementation of the law enforcement function of the country in the taxation sphere
3. The predominant use of analytical methods to identify violations of tax legislation
4. Creation of organizational conditions for proper performance of taxpayers' obligations in the taxation sphere
5. Reduction of the share of "interfering" proceedings simultaneously with the increase in the number of internal procedures during the implementation of the law enforcement function of the country in the taxation sphere.

The main areas of improving administrative and legal provision of the law enforcement function of the country in the taxation sphere in Ukraine should be: formation and implementation of effective integrated tax policy aimed at meeting private interests of individuals and legal entities, focused on encouraging voluntary compliance with legal norms by introducing modern methods for supporting taxpayers, introducing the feedback of taxpayers with state authorities, ensuring the stability of tax legislation to reduce corruption level and the shadow economy, fulfilling the activities by state authorities that ensure the realization of the law enforcement function of the country in the taxation sphere on the good governance principles, the restoration of taxpayers' trust in the subjects that realize the law enforcement function in the taxation sphere.

The main principles of legal provision of implementing the law enforcement function of the country in the taxation sphere taking into account the "good governance" concept, should focus on meeting the needs of taxpayers, which constitutes the public interest of civil society and the state in the whole, sustainability and long-term orientation of tax policy, efficiency, effectiveness, openness, transparency in the activities of state authorities, competence and ethical behavior of their officials. It is currently important to restore the trust of taxpayers in the subjects of ensuring the implementation of the law enforcement function of the country in the taxation sphere, since it is one of the determining factors in the effectiveness of their activities.

The authors of the article have offered:

1. To regulate the issue of identifying tax risks, as well as providing the obtained information with the status of a legal fact for further application of the forms and methods of implementing the law enforcement function of the country in the taxation sphere
2. To adopt a by-law, which should determine the grounds, procedures and legal consequences of information and analytical activities of the subjects of implementing the law enforcement function of the country in the taxation sphere
3. To improve the legal regulation for the realization of the law enforcement function of the country in the taxation sphere by developing and adopting departmental regulatory legal act of the state tax service of Ukraine on administrative procedures and related analytical measures used to identify tax evasion schemes both at national and international levels.

The authors have supported the idea of Ukrainian scholars on the necessity of reforming the subjects of legal provision for the realization of the law enforcement function of the country in the taxation sphere, in particular by creating a single agency of financial investigations – the Bureau of Economic Security of Ukraine.

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