

ADMINISTRATIVE AND LEGAL STATUS OF TAX OFFICIALS

АДМІНІСТРАТИВНО-ПРАВОВОГО СТАТУС ПОСАДОВИХ ОСІБ
ПОДАТКОВИХ ОРГАНІВ

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The article is devoted to the disclosure of the administrative and legal status of tax officials.

The author's own definition of the concept of administrative and legal status of tax officials is proposed, which should be understood as the purpose, tasks, functions, principles, guarantees of activity, a set of rights and obligations of tax officials, which are implemented in the system of legal relations with taxpayers and public authorities related to the performance of functions of tax and fee administration, provision of advice to taxpayers and control.

The author notes that a legal demand of tax authorities' officials as a form of implementation of their administrative and legal status, in our opinion, has the following features 1) in terms of content, it is an oral or written request of tax authorities' officials to taxpayers, local self-government bodies and state bodies with a request to provide information, documents, perform certain actions or refrain from them as provided for by tax legislation; 2) the subject matter of the request is information, documents, actions or inaction; 3) the subjects of such a legal request are tax authorities' officials vested with the relevant rights by law; 4) the purpose is to create guarantees and conditions for the tax authorities to fulfil their tasks and functions; 5) the failure to comply with such a requirement is subject to legal liability.

In view of the above, legal demands of tax officials can be defined as an oral or written request by tax officials to taxpayers or public authorities to provide information, documents, or perform certain actions provided for by tax legislation aimed at creating guarantees for the implementation of their tasks by tax authorities, and for which legal liability is established.

Given the current state and prospects of modernization of the STS and strengthening of their institutional capacity, there is a need for further research in the following scientific papers on the improvement of administrative tort legislation on liability for failure to comply with the lawful requirements of tax officials.

Key words: administrative and legal status, powers, rights, duties, state tax service.

Наукова стаття присвячена розкриттю адміністративно-правового статусу посадових осіб податкових органів.

Запропоновано авторську дефініцію поняття адміністративно-правового статусу посадових осіб податкових органів, під якою слід розуміти визначені нормами податкового та адміністративного законодавства мета, завдання, функції, принципи, гарантії діяльності, сукупність прав і обов'язків посадових осіб податкових органів, які реалізується в системі правовідносин із платниками податків та органами публічної влади, що пов'язані із виконанням функцій з адміністрування податків та зборів, надання консультацій платникам податків та здійснення контрольної діяльності щодо своєчасності подання передбаченої законом звітності, своєчасності, достовірності, повноти нарахування та сплати податків, зборів, платежів, а також порядок набуття, зміни та припинення цього статусу, відповідальність та правила взаємодії з іншими суб'єктами в публічно-правових відносинах.

Звернуто увагу, що законна вимога посадових осіб податкових органів як форма реалізації їх адміністративно-правового статусу, на наш погляд має такі ознаки: 1) за змістом це усне чи письмове звернення посадових осіб податкових органів до платників податків, органів місцевого самоврядування та державних органів із вимогою надати інформацію, документи, вчинити певні дії чи утриматись від них, що передбачені податковим законодавством; 2) предметом вимоги є інформація, документи, дії чи бездіяльність; 3) суб'єктами такої законної вимоги є посадові особи податкових органів, наділені законом відповідними правами; 4) мета – створення гарантій та умов для реалізації податковими органами їх завдань та функцій; 5) за невиконання такої вимоги передбачена юридична відповідальність.

З урахуванням зазначеного законні вимоги посадових осіб податкових органів можна визначити як усне чи письмове звернення посадових осіб податкових органів до платників податків чи органів публічної влади із вимогою надати інформацію, документи, вчинити певні дії, що передбачені податковим законодавством, спрямовані на створення гарантій реалізації податковими органами їх завдань, і за не виконання якої встановлена юридична відповідальність.

З урахуванням сучасного стану та перспектив модернізації ДПС та посилення їхньої інституціональної спроможності є потреба в науковому дослідженні у наступних наукових роботах питань удосконалення адміністративного деліктного законодавства щодо відповідальності за невиконання законних вимог посадових осіб податкових органів.

Ключові слова: адміністративно-правовий статус, повноваження, права, обов'язки, державна податкова служба.

Relevance of the topic. Today, the system of bodies implementing the State tax policy is undergoing another stage of reform, which is associated with the need to ensure the institutional capacity of this service. Order of the State Tax Service of Ukraine (STS) No. 205 dated 10.12.2019 approved the mission and strategic goals of the STS. Thus, the mission of the STS states that it effectively administers taxes, fees and payments, provides quality and convenient services to taxpayers and, as a result, ensures budget revenues for the economic and social well-being of the country [1]. The strategic objectives of the STS until 2022 are as follows: 1) creation of a single legal entity and effective management of activities; 2) effective administration of taxes, fees, payments; 3) formation of the image of the STS as a European-style service with a high level of public trust; 4) counteraction to tax evasion by introducing international standards and improving

analytical tools; 5) formation of a qualified, efficient and motivated team [2]. Thus, we observe trends according to which the STS is gradually reducing its control functions and changing the vector of its activities to administration and consulting. At the same time, changes in the legal status of the STS also affect administrative tort legislation, as it requires clarification of the provisions of the Code of Ukraine on Administrative Offences (CUAO), which provide for liability for tax offences and failure to comply with the legal requirements of STS officials.

The state of the problem. The legal status and administrative and legal status of individuals and legal entities as legal categories, their content and structure have been studied by such scholars as V.B. Averyanov, D. Bakhrakh, Y. Bytyak, V. Galunko, T. Kolomoyets, N. Lebid, S. Lopatin, P. Liutikov, T. Matselik, A. Stetsenko, O. Sikorsky, O. Yarmolenko. Such

scholars as S.M. Aksyukov and P.P. Kiskoreskiy devoted their works to the issues of the legal status of tax authorities: S.M. Aksyukov, O.O. Bandurka, O.O. Bryganets, A.V. Holovach, S.M. Popova and others.

The **main purpose of the article** is to clarify the content of the category of administrative and legal status of tax authorities and their officials and its correlation with the concept of legal status.

In order to achieve this goal, the following **tasks** need to be addressed: to clarify the legal framework determining the status of tax authorities and their officials; to determine the place and content of a lawful demand of tax officials as part of their administrative and legal status; and to formulate a proposal for prospective improvement of administrative tort legislation in terms of liability for failure to comply with lawful demands of tax authorities.

Summary of the main material. The Tax Code of Ukraine defines the categories included in the structure of the administrative and legal status of the authorized central executive body for revenues and duties as functions of the state tax service authorities and their duties, issues of service of their officials, certain issues of responsibility of officials of tax and customs authorities, cancellation and appeal of decisions of these authorities, etc. The functions of the state tax authorities and their basic list are established in Article 19 of the Tax Code of Ukraine [4]. According to S.M. Aksyukov, the legislator includes various types of control in the field of administration of taxes and fees, ensuring registration activities, providing various services to taxpayers, ensuring the activities of its own units and other public authorities, and Article 20 of the Tax Code of Ukraine grants the authorized central executive body for the implementation of the state tax policy a number of rights to conduct inspections of taxpayers, to demand elimination of violations, to apply to the court, etc. The Regulation on the State Tax Service of Ukraine, approved on 6.03.2019 by the Resolution of the Cabinet of Ministers of Ukraine No. 227, contains an even wider range of control powers of this service [5].

According to S. Aksyukov, the Tax Code of Ukraine also regulates some specific issues that also affect the content and peculiarities of the administrative and legal status of the authorized central executive body for revenues and duties. As an example, it may be noted that it regulates the issues of service in the state tax service, certain issues of liability of officials of tax and customs authorities, cancellation and appeal of decisions of these authorities, etc. [3].

From the above, it can be concluded that scholars who have studied the legal status of tax authorities and their officials have taken different approaches to determining their administrative and legal status and, accordingly, the content of such form of its implementation as legal requirements.

The problems of legal status as a legal category are reflected in the works of various scholars. Considering the original concept of "status" as a legal category, O. Yarmolenko points out the need to use its lexical meaning as the basis for legal definitions, namely, in Latin it is understood as "state" and "position", denoting in its original meaning both the general position of an individual in society and the totality of all his/her legal rights and obligations [6, p. 129].

The legal status of the STS officials, their rights and obligations are determined by the Constitution of Ukraine, the Tax Code, and in the part not regulated by it, by the Law of Ukraine "On Civil Service" and other laws [4].

Scientists define the administrative and legal status of subjects in different ways: a set of subjective rights and obligations exercised within the framework of both administrative legal relations and outside them [7, p. 64]; as a set of rights, obligations and guarantees of their implementation, which are defined in regulations [8, p. 90]; a set of specifically defined subjective rights and obligations of a person established by law and other legal acts that guarantee his or her participa-

tion in the management of public affairs and satisfaction of public and personal interests through the activities of public authorities and local self-government bodies [9, p. 67–68]; a set of specifically defined subjective rights and obligations assigned to the relevant subject by the norms of administrative law [10, p. 194]; a set of rights, obligations and guarantees of their implementation enshrined in the norms of administrative law.

For better illustration of the differences between the categories of legal status and administrative and legal status, it is necessary to cite the features of the latter which were specified by T.O. Matselyk, namely: 1) regulation by administrative and legal norms; 2) determination of the boundaries of the subject's activity in relation to other persons; 3) determination of the scope of its implementation within the following blocks of legal relations: public administration; relations of administrative services; relations of responsibility of public administration for unlawful acts or omissions; relations of responsibility of subjects of society (individual and collective) for violation of the order and rules established by public administration; 4) structuredness [11, p. 78].

Another urgent problem in this area is the lack of coherence of scientific positions on the elemental composition of administrative and legal status. O.L. Chernetskiy reasonably notes that the most problematic in the legal literature is the definition of the elemental composition of legal status [12, p. 573].

Y.P. Bytyak formulates in detail the main features of a public authority which may be considered as components of its status. He emphasizes that each public authority, acting on behalf of and on behalf of the State, has a certain legal status, and is the bearer of the relevant legal and administrative powers, the exercise of which ensures that it achieves the purpose of executive and administrative activities. Each public authority has an official name and is authorized to use various attributes with state symbols (stamp, letterheads with official names, etc.). In exercising their competence, implementing the provisions of laws and legal acts of other state bodies, executive authorities have the authority to issue orders on specific issues and adopt bylaws [6].

Thus, in the process of executive and administrative activities, governing bodies act in a legally authoritative manner, using various legal means of rulemaking, operational and executive (administrative) and jurisdictional (law enforcement) nature. As part of the state apparatus, executive authorities have their own internal structure and staff. An executive body is an organization – a team of people – civil servants – formed by their appointment or competitive selection for a position to carry out specific executive and administrative activities in a legally binding form. Within the team of this body, powers and responsibility for the assigned case are distributed among structural units and employees, and various organizational and legal relations are established and developed [13, p. 59–60; 6].

The main difference between the structure of the administrative and legal status of individual and collective subjects of law, according to T. Matselyk, is that the latter have a somewhat more complex legal status, which is due to the peculiarities of their formation and functioning. In particular, the administrative and legal status of collective legal entities also includes administrative competence, i.e., the legally established range of powers of such an entity. Thus, the legal status of legal entities is determined through their competence, i.e. the rights and obligations of these entities enshrined in the current legislation. T.O. Matselyk speaks of state bodies, enterprises, institutions and organizations whose legal status is reflected in a concentrated form in laws, regulations, charters and other legal acts on these entities. The effectiveness of a legal entity depends on the completeness of legal fixation of powers [11, p. 117].

The special legal status of officials of the State Tax Service is enshrined in Articles 341-347 of Section XVIII of the Tax

Code of Ukraine, which regulate some fundamental provisions on determining the legal and social status of officials of the State Tax Service of Ukraine, says O. Yarmolenko. In particular, the legislator has defined the understanding of service in the tax authorities as a professional activity of the citizens of Ukraine, who are fit for it by health, educational level and age, related to the preparation of proposals for the formation of a unified state tax policy and policy in the field of control over the production and circulation of alcohol, alcoholic beverages and tobacco products, ensuring their implementation, as well as monitoring compliance with tax and other legislation, control over which is entrusted to the State Tax Service of Ukraine. An equally important provision, according to O. Yarmolenko, is contained in Article 342 of the commented legislative act, which defines the concept of an official of the State Tax Service, which includes persons who have a specialized education and meet the qualification requirements established by the central executive body that implements the state tax policy [4; 6, p. 131].

With regard to the content of the rights of officials of the State Tax Service of Ukraine, the authors of the scientific and practical commentary to the Tax Code of Ukraine note that they are divided into two blocks: 1) rights granted to officials of the State Tax Service; 2) rights granted to heads of state tax administrations, heads of state tax inspections and their deputies. The basis for the division of rights into such blocks is the regime of exercising the powers of the State Tax Service: directly during tax control, clarification of various circumstances in the process of communication with the payer (due to the actions of officials) and implementation of representative functions in the activities of the State Tax Service, when the rights of these bodies go beyond the relationship with the payer or when the tax authorities take coercive measures [14, p. 93; 6].

The purpose and tasks of any state body are specified and disclosed through its functions. Therefore, we can agree with A.V. Holovach that legal relations arising in the field of collection of taxes and fees are implemented through the functions of the State Tax Service [15, p. 200; 16].

O.S. Yarmolenko believes that the peculiarity of the administrative and legal status of employees of the State Tax Service is that: a) their rights and duties are established within the competence of the bodies in which they are in the civil service; b) the activities of a civil servant of the State Tax Service are subordinated to the performance of tasks assigned to the relevant unit or service and are official in nature; c) service rights and duties are characterized by unity, the peculiarity of which is that their rights are simultaneously obligations. O.S. Yarmolenko notes that the above-mentioned statuses, namely constitutional, general, special and individual, do not exist separately from each other, they are in constant interaction and are indivisible. This scholar believes that the legal status of an employee of the State Tax Service should be considered as a combination of constitutional, general, special and individual statuses [6].

As we can see, the positions of scholars on the issue under study are heterogeneous. The analysis of the above points of view of scientists allows us to conclude that the vast majority of scientists consider the elements of the legal status of an employee to be his/her duties and rights, which are conditioned by the tasks assigned to them [6].

Thus, it can be concluded that the main elements of the administrative and legal status of tax authorities and their officials are their rights and obligations stipulated by

the tasks assigned to them, which are implemented through the legal requirements imposed by them on taxpayers – individuals and legal entities of all forms of ownership.

The tasks assigned to the State Tax Service of Ukraine indicate a change in its legal status, which leads to the specification of its legal requirements to taxpayers and legal guarantees of their fulfilment. However, without improvement of administrative tort legislation providing for administrative liability for failure to comply with the legal requirements of the tax authorities, most of the reform measures of this service in terms of modernization of its functions will not have appropriate guarantees and expected results.

Given the above, we can distinguish the features of the administrative and legal status of tax authorities' officials: 1) in terms of content, it is a set of their rights, duties and responsibilities established by tax and administrative legislation; 2) it is implemented in the system of legal relations related to the performance of functions by tax authorities under Article 19.1 of the Tax Code of Ukraine, which are implemented in the areas of administration of taxes and fees, provision of advice to taxpayers and control activities regarding the timeliness of submission of statutory reporting, timeliness, accuracy, completeness of calculation and payment of taxes and fees,

Conclusions. Thus, we propose to understand the administrative and legal status of tax officials as the purpose, tasks, functions, principles, guarantees of activity, a set of rights and obligations of tax officials, which are implemented in the system of legal relations with taxpayers and public authorities related to the performance of functions of tax and fee administration, provision of consultations to taxpayers and controlling the timely submission of statutory reporting, timeliness, accuracy, completeness of the calculation and payment of taxes, fees, charges, as well as the procedure for acquiring, changing and terminating this status, responsibility and rules of interaction with other entities in public law relations.

In our opinion, a legitimate demand of the tax authorities' officials as a form of realization of their administrative and legal status has the following features: 1) the content is an oral or written appeal of tax authorities' officials to taxpayers, local self-government bodies and state bodies with a request to provide information, documents, perform certain actions or refrain from them, as provided for by tax legislation; 2) the subject of the request is information, documents, actions or inaction; 3) the subjects of such a legal request are tax authorities' officials vested with the relevant rights by law; 4) the purpose is to create guarantees and conditions for the implementation by tax authorities of their tasks and functions; 5) the failure to comply with such a requirement is subject to legal liability.

In view of the above, legal demands of tax authorities' officials can be defined as an oral or written appeal of tax authorities' officials to taxpayers or public authorities with a request to provide information, documents, perform certain actions provided for by tax legislation, aimed at creating guarantees for the implementation of their tasks by tax authorities, and for failure to fulfil which legal liability is established [17; 18].

Given the current state and prospects of modernization of the STS and strengthening of their institutional capacity, there is a need for further research in the following scientific papers on the issues of improvement of administrative tort legislation on liability for failure to comply with the lawful requirements of tax officials.

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