

TOPICAL SCIENTIFIC ISSUES

DOI <https://doi.org/10.51647/kelm.2021.6.41>

STATUS PRAWNY SPECJALNYCH PODMIOTÓW KONTROLI FISKALNEJ W UKRAINIE

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Adnotacja. Istnieniu nowoczesnego państwa towarzyszy wdrożenie systemu różnych środków zapewniających mechanizmy i potrzeby państwa. Jednym z obszarów takiego zabezpieczenia, które odgrywa niezwykle ważną rolę we współczesnym świecie, jest system finansowego zabezpieczenia władzy publicznej i ochrony socjalnej. Finanse w naszych czasach określają poziom rozwoju kraju, otwierają nowe kierunki rozwoju nauki, technologii, gospodarki, ochrony socjalnej i bezpieczeństwa państwa i jego obywateli. Zdolność państwa do pełnienia funkcji publicznych zależy również od możliwości finansowych danego organu. Aby utrzymać odpowiedni poziom zabezpieczenia finansowego, istnieją mechanizmy finansowe i narzędzia, za których pomocą państwo wypełnia budżety na różnych poziomach. Takie mechanizmy obejmują jeden z rodzajów działalności finansowej państwa – system podatkowy. Administracja publiczna w sferze przewiduje system podmiotów, które ją wykonują. Tak więc wszystkie podmioty poszczególnych dziedzin administracji publicznej można sklasyfikować według specjalizacji ich działalności na ogólne (te, które pośrednio realizują zadania w określonym obszarze) i specjalne (realizacja zadań tego obszaru jest priorytetem, głównym celem).

Słowa kluczowe: kontrola fiskalna, specjalny podmiot kontroli fiskalnej, kontrola podatkowa, kontrola celna, Państwowa Służba Podatkowa, Państwowa Służba Celna.

LEGAL STATUS OF SPECIAL SUBJECTS OF FISCAL CONTROL IN UKRAINE

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Abstract. The existence of a modern state is accompanied by the implementation of a system of various measures to ensure state mechanisms and needs. One of the directions of such provision, which plays an extremely important role in the modern world, is the system of financial provision of state power and social protection. Finances in our time determine the level of development of the country, open new areas of development of science, technology, economy, social protection and security of the state and its citizens. The state's ability to fully implement state functions also depends on the financial capabilities of one or another authority. To maintain the appropriate level of financial support, there are financial mechanisms and tools with which the state fills the budgets of various levels. Such mechanisms include one of the types of financial activity of the state - the taxation system. State management in the field provides for a system of subjects, it is carried out. Thus, all subjects of individual spheres of state administration can be classified according to the specialization of their activities into general (those that indirectly implement tasks in a certain sphere) and special (implementation of tasks in this sphere for which is a priority, main goal).

Key words: fiscal control, special subject of fiscal control, tax control, customs control, State Tax Service, State Customs Service.

ПРАВОВИЙ СТАТУС СПЕЦІАЛЬНИХ СУБ'ЄКТІВ ФІСКАЛЬНОГО КОНТРОЛЮ В УКРАЇНІ

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Анотація. Існування сучасної держави супроводжується здійсненням системи різних заходів забезпечення державних механізмів та потреб. Одним із напрямів такого забезпечення, який відіграє вкрай важливу роль у сучасному світі, взагалі є система фінансового забезпечення державної влади та соціального захисту. Фінанси

в наш час визначають рівень розвитку країни, відкривають нові напрямки розвитку науки, техніки, господарства, соціального захисту та безпеки держави та її громадян. Здатність держави повною мірою реалізовувати державні функції також залежить від фінансових можливостей того чи іншого органу влади. Для підтримки належного рівня фінансового забезпечення є фінансові механізми та інструменти, за допомогою яких держава наповнює бюджети різних рівнів. До таких механізмів належить одним із різновидів фінансової діяльності держави - система оподаткування. Державне управління у сфері передбачає систему суб'єктів, його здійснюють. Так, всіх суб'єктів окремих сфер державного управління можна класифікувати за спеціалізацією їх діяльності на загальних (тих, які опосередковано реалізують завдання у певній сфері) та спеціальні (реалізація завдань даної сфери для яких є пріоритетною, головною метою).

Ключові слова: фіскальний контроль, спеціальний суб'єкт фіскального контролю, податковий контроль, митний контроль, Державна податкова служба, Державна митна служба.

Relevance of the article. The functioning of the state, its bodies, both central and local, local self-government bodies is impossible without «financial activity, through which the state first accumulates and then spends the money necessary to maintain the tasks and functions of the state» (Сидорова, 2017). Such activities are of a security nature, which is manifested in the implementation of a set of actions aimed at meeting financial needs during the functioning of public authorities and local self-government. The ultimate goal of the state's activities in the field of taxation is the creation of proper conditions for the existence of society as part of the state society, and not an ordinary crowd of people. In general, the system of taxation is defined by legal theorists as one of the main features of the state. M. Zwick at one time, along with public authority and territory, separately singles out the taxation system as a sign of the state (Цвік, Петришин, Авраменко, 2009). This indicates that the taxation system is an extremely important element of the public administration system, which requires more perfect understanding using the latest scientific developments.

It is also worth noting that the independent existence of the fiscal system is impossible without the implementation of a set of management actions by the relevant competent authorities. The effectiveness of management activities is ensured by a number of activities, one of the key places among which is control activities. The author's definition of control provided by A. Marmaz. The author focuses on the operationality of control as part of the management system, that is, on the fact that control activities ensure the stability and optimal functioning of the state (Мармаза, 2014). Thus, we can confidently speak about the relevance and necessity of the existence of a system of bodies and services that perform control functions in the process of taxation in Ukraine.

The purpose of the study should be to highlight the tasks, functions, goals, powers, competence, place in the system of public authorities of special subjects endowed with the main powers to exercise fiscal control in Ukraine, that is, the legal status of special subjects of fiscal control.

Presenting main material. Special subjects of fiscal control, in contrast to the general ones, are a set of institutions for which the implementation of fiscal activities in general and fiscal control in particular are priority main functions of activity. It follows that the state bodies that are empowered to directly influence the implementation of fiscal control in Ukraine and are special subjects, due to the presence in them of a set of relevant tasks and functions that correspond to the content of fiscal control.

What bodies are endowed with direct powers to exercise fiscal control, and whose functions mainly consist in its implementation. In accordance with Art. 41 of the Tax Code of Ukraine (Податковий кодекс України, 2010), the regulatory authorities in terms of the formation and implementation of the state tax and customs policy, compliance with tax and customs legislation, as well as those empowered to hold accountable for violations in the field of tax and / or customs affairs are tax and customs authorities. The system of such bodies consists of the State Tax and State Customs Services of Ukraine, including their central and territorial authorities. These bodies were created recently, in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated December 18, 2018 № 1200 (Про утворення Державної податкової служби України та Державної митної служби України: постанова Кабінету Міністрів України, 2018), which currently causes some misunderstandings in terms of the legal framework for their activities. This is manifested in the fact that, according to the aforementioned resolution, the State Fiscal Service of Ukraine was reorganized by dividing it into tax and customs. The regulation on the new formation of the bodies was adopted, but now, in fact, separate divisions of the fiscal service continue to function, and the corresponding resolution of the Cabinet of Ministers of Ukraine «On the State Fiscal Service of Ukraine» dated May 21, 2014 № 236 has not lost its force (Про Державну фіскальну службу України: постанова Кабінету Міністрів України, 2014). Resolution of the Cabinet of Ministers of Ukraine № 1200, although it assumes the existence of the State Fiscal Service until the completion of the implementation of measures to create the State Tax Service and the State Customs Service, there is still no clear normatively defined turning point that should lead to the liquidation of the State Fiscal Service. This situation significantly complicates the process of implementation by tax and customs authorities of activities in the field of fiscal control.

Given the use of terminology in the study, it is worth noting that fiscal control is currently classified into two large groups: tax and customs control. The reform of the tax authorities continues and now also led to the delimitation of the subjects of fiscal control.

Considering the above, we first consider the legal status of the tax authorities of Ukraine, which are defined by the Tax Code as the central executive body implementing the state tax policy, its territorial bodies (Податковий кодекс України, 2010). Such a body in Ukraine is the State Tax Service of Ukraine (hereinafter referred to as the STS) and its territorial bodies (Про утворення територіальних органів Державної податкової служби: постанова Кабінету Міністрів України, 2019). In the system of public authorities, the activities of the traffic police

are coordinated and directed by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine. It is worth noting that the exclusively coordinating powers of the Minister of Finance to manage the traffic police indicate that the body is to a certain extent separated from political forces, and its activities must comply with the requirements of the law, and not with the desire of politicians.

Among the tasks that, as noted above, form the basis of the legal status and determine the content of the activities of the STS as a special body in the field of taxation, it is necessary to highlight: the implementation of state tax policy and making proposals on issues within the competence of the STS for consideration by the Minister of Finance.

The implementation of the state tax policy in the state provides for a number of measures that more fully reveal the content of this task. Among such actions, it is necessary to single out control activities for the receipt of taxes, payments and fees to the budgets and state trust funds; in the production and circulation of alcohol, alcoholic beverages, tobacco products, fuel; timeliness of settlements in foreign currency within the period established by law, compliance with the procedure for conducting cash settlements for goods (services), carrying out settlement transactions, as well as the availability of licenses for the implementation of types of economic activities subject to licensing in accordance with the law; as well as the administration of a single contribution (Про затвердження положень про Державну податкову службу України та Державну митну службу України, 2019). So, the set of actions that determine the main tasks of the State Tax Service, namely the implementation of the state tax policy, is to implement a system of measures for the normal and efficient functioning of the tax system in Ukraine. From a certain point it can be seen that the vast majority of activities of the State Tax Service are characterized by a control orientation. This can be explained as follows. The functioning of the taxation system in general in each country is associated with the demand in favor of the state (authority) of a certain amount of material values of citizens. Naturally, each person is not willing to give away a part of something of his own, which gives rise to cases of concealment or avoidance of taxes and fees. The activities of authorized bodies, such as the State Tax Service, although in general terms, have a socially oriented goal, however, they are mainly associated with the implementation of verification, control measures in relation to citizens for compliance with tax laws. Therefore, we can say that even taking into account the existence of non-control areas of activity of the STS, the latter is a control authority, which is endowed with special powers to monitor compliance with legislation in the field of taxation, as well as implement mechanisms to counter violations. Along with this, the State Tax Service is not deprived of the opportunity to carry out other activities that are covered by the concept of tax policy.

However, Art. 61 of the Tax Code of Ukraine defines tax control as a system of measures taken by regulatory authorities and coordinated by the central executive body, which ensures the formation and implementation of state financial policy, in order to control the correct calculation, completeness and timeliness of payment of taxes and fees, as well as compliance with legislation on issues regulating the circulation of cash, carrying out settlement and cash transactions, patenting, licensing and other legislation, the control over compliance with which is entrusted to the regulatory authorities. So, it should be emphasized that this definition is not exhaustive and tax control can be represented by other forms of traffic police activity. Surprisingly, there is no reference to the fact that control over the production and circulation of alcohol, alcoholic beverages, tobacco products, fuel is also part of the tax control. This may indicate that the legislator does not define this activity as part of tax control. However, in our opinion, given the special «special tax status» of these goods, we can say that this activity is also part of tax control, which is additionally confirmed by the content of the provision on the State Tax Service.

A feature of the legal status of the STS is also worth highlighting a large number of clearly defined and normatively regulated powers of the service, the implementation of which ensures the achievement of the goal of its activities. The set of powers inherent in the STS for a more simplified understanding should be combined into certain groups for their further presentation in the form of STS functions. Thus, the following functions of the STS can be distinguished, each of which is fully correlated with a certain group of powers.

The control function, which, in our opinion, is one of the leading in the activities of the STS and can be directly or indirectly manifested in other opportunities. Predominantly, control activities are related to measures to verify the accuracy of information provided by business entities. Also, control consists in a set of measures aimed at ensuring the filling of the revenue side of all types of budgets (Дюзорець, 2015). It is appropriate to note that it is control activity that is the main form of activity of the State Tax Service, which, unfortunately, requires greater harmonization in relations between the population and tax authorities of Ukraine. In order to determine the STS in the system of government bodies, it must be said that the existence of tax mechanisms and various kinds of tax measures implies constant systematic work to monitor compliance with normatively defined procedures and procedures. This determines the relevance and necessity of the existence of an institution that will ensure proper control over compliance with the provisions that determine the procedure for the implementation of all certain procedures.

The next is the function that can be called auxiliary in relation to control - this is the accounting function. The implementation of this function consists in the proper and complete maintenance of records and keeping them up to date. The data that is recorded is used for the purpose of further control activities, therefore, we are talking about the auxiliary nature of the accounting function.

The rule-making function is characteristic of most bodies of the public administration system, due to the exclusive competence in a clearly defined area. The system of taxation in Ukraine and activities to organize its implementation and provision are entrusted to a special authorized body - the State Tax Service of Ukraine. Therefore, this service, in addition to law enforcement activities, is authorized to take part in the development and improvement of the regulatory framework for its own activities. The presence of this function is understandable due to the fact

that it is the State Tax Service that has the appropriate level of experience and practical experience, which should become a qualitative basis for further regulatory regulation of the taxation sphere in Ukraine. Thus, the State Tax Service can act as an initiator and developer of draft regulatory legal acts and proposals for their improvement, and in the prescribed manner submits them to the Minister of Finance.

The organizational and regulatory function is characterized by the presence of powers in the field of ensuring the functioning of the taxation system, clear mechanisms and the existence of state-power institutions designed to ensure this activity. The formation of a clear order and rules for the implementation of activities in the field of taxation is a clear manifestation of the regulatory impact on social relations in the field of taxation.

The function of licensing certain types of activities. The activity of issuing licenses to engage in economic activities in the production and sale of tobacco and alcohol products, alcohol and fuel is also the exclusive competence of the State Tax Service. In addition, the State Tax Service has the right to check the availability of other types of licenses to engage in economic activities and issue them in accordance with the procedure established by law and in accordance with normative outstanding conditions.

It is also appropriate to highlight the law enforcement function, which is manifested in two types of activities: firstly, it is the identification of violations of tax legislation and the imposition of appropriate penalties under the current administrative and tax legislation; secondly, the identification of facts that may indicate other offenses not under the jurisdiction of the State Tax Service, namely the legalization (laundering) of proceeds from crime or the financing of terrorism. Consequently, the implementation of the law enforcement function, manifested in the identification of violations, their fixation and, in cases established by law, prosecution is one of the activities of the State Tax Service. It should be emphasized that in accordance with the Code of Administrative Offenses of Ukraine, tax authorities, and as we already know, these are the bodies of the State Tax Service, have the right to draw up administrative protocols in case of detection of violations provided for in Articles 51-2, 155-1, 162-1, 163-1 - 163-4, 163-12, parts two and three of Article 163-17, Article 164, 164-5, 164-16, 166-16, 166-17, 177-2, 204-3 of the Code of Administrative Offenses, as well as to consider cases on administrative offences. STS jurisdictional offenses related to violation of the procedure for accepting cash for its subsequent transfer (Article 163-13 of the Code of Administrative Offenses), violation of the procedure for cash settlements and settlements using electronic means of payment for goods (services) (Article 163-15 of the Code of Administrative Offenses), evasion from submitting a declaration on income (Article 164-1 of the Code of Administrative Offenses), violation of the law on the collection and accounting of a single contribution for obligatory state social insurance (Article 165-1 of the Code of Administrative Offenses), violation of the procedure for terminating a legal entity (part three - six of Article 166-6 of the Code of Administrative Offenses), an obstacle authorized persons of the tax authorities in conducting inspections (Article 188-23 of the Code of Administrative Offenses). Varto note that the current Instruction on the preparation by the revenue and collection authorities of materials on administrative offenses (Про затвердження Інструкції з оформлення органами доходів і зборів матеріалів про адміністративні правопорушення, 2016), which determines the procedure for bringing offenders to justice for acts provided for by a special part of the Code of Administrative Offenses, which are listed above. However, in the sense of this Instruction, concepts of organs are used that do not currently exist. Thus, the name itself indicates a terminological conflict, and may be the basis for possible litigation.

In addition, the Tax Code of Ukraine in Chapter 11 defines the general procedure, the subjects of liability, the grounds for bringing to responsibility and the procedure for applying penalties for violation of tax laws (Податковий кодекс України, 2010). Summing up the analysis of the law enforcement function, I would like to note that the authority to apply administrative penalties requires clear regulatory regulation, however, the current legislation, containing conflicts and gaps, although it cannot be quickly updated taking into account the constant reforms of the sphere under study, but should be adjusted at least in those issues in which there is the greatest number of disputes and conflict situations with the population. It is the person who is the main value. which is emphasized by the Constitution of Ukraine, therefore the activities of the State Tax Service should be based on the principles of ensuring its rights. And cases of restriction of rights (imposition of penalties and prosecution) should be clearly regulated by regulations to avoid arbitrariness and lynching.

The next is to highlight the function of providing administrative services. In the context of the service areas of modern public authorities and the State Tax Service, it has the authority to provide services for servicing taxpayers, information and reference services on tax legislation, organizes the production of electronic services for business entities, and also takes part in the provision of electronic trust services of electronic identification.

And again, in confirmation of the service orientation of the service and greater openness to the public, the traffic police systematically interacts with the public in various forms. This is the last but no less important function of interaction with the population.

If we turn to the analysis of the rights of the State Tax Service, a certain provision, then we can generally characterize them as a set of opportunities that provide an appropriate level of control, inspections, and obtaining the information necessary for professional activities. This once again confirms that control activity is one of the main activities of the State Tax Service.

It is also worth noting that both the list of powers and the list of rights of the State Tax Service is not exhaustive, which can significantly expand their range by adopting a relevant law.

The main feature that clearly defines the position of the STS in the system of government is that only this service has the right to conduct tax audits of business entities. None of the currently existing services or bodies is authorized to do this, but is only authorized to assist the STS in this type of activity.

In our opinion, the system of subjects of fiscal control, given that fiscal control can be considered as a combination of tax and customs control, should also include customs authorities. The Customs Code defines this concept from a combination of such elements as the central executive body implementing the state customs policy, customs and customs posts (Митний кодекс України, 2012). That is, unlike the wording about tax authorities, customs authorities are only listed without reference to their system and subordination, although this list lists the vertical system of the central authority.

The central body, which is called upon to implement the customs policy in the state, is the State Customs Service of Ukraine (hereinafter referred to as the SCS), which has territorial boundaries - customs, and they, in turn, contain customs posts in their structure. The SCS of Ukraine has a fairly long history of existence in Ukraine, however, at the end of 2019, in the light of the reform of the fiscal authorities, a new SCS was created, which must meet all the requirements of European standards. However, the reform process has both positive and negative aspects. The latter should include the imperfection of the normative regulation of the activities of bodies, which is manifested in differences in the provisions of regulatory legal acts. This situation not only affects the effectiveness of the process of the SCS, but also leaves the administrative and legal status of the service uncertain, is an important basis in terms of forming the image of the new structure and further scientific development in the field of improving the activities of the SCS.

It is worth immediately substantiating our point of view regarding the relationship of customs control to fiscal control. Fiscal control provided for the implementation of control activities over the order and timeliness (in general terms) of paying taxes. According to the Tax Code of Ukraine (Article 9), the duty refers as a variety to national taxes, and therefore the collection of duties in favor of the state can be considered as an activity related not only to the customs sphere, but also to the tax one. Because of this, it becomes appropriate to analyze the legal status of customs authorities as subjects of fiscal control.

When studying the regulatory material on the status of hydraulic structures, a large number of questions arise, which, perhaps, are not of great importance from a practical point of view, however, further regulatory and scientific development becomes more complicated. Thus, the provisions of the Customs Code determine that the State Customs Service, as the central executive body implementing the state customs policy, directs, coordinates and controls the activities of customs, exercises other powers provided for by the Customs Code and other laws of Ukraine, within its powers issues orders, organizes and controls their implementation (Митний кодекс України, 2012). However, based on the content of the disposition of Art. 546 of the same code, the implementation of the tasks of customs authorities is mainly entrusted to customs, which is a structural subdivision of the State Customs Service. Based on this, the State Customs Service of Ukraine itself, as the central authority, performs an exclusively organizing and controlling role in the implementation of the state customs policy.

At the same time, the Regulation on the State Customs Service of Ukraine among the tasks of the State Customs Service defines: 1) ensuring the implementation of the state customs policy, in particular, ensuring customs security and protecting the customs interests of Ukraine and creating favorable conditions for the development of foreign economic activity, maintaining an appropriate balance between customs control and simplification of legitimate trade; 2) ensuring the implementation of state policy in the field of combating offenses in the application of legislation on customs matters, preventing and combating smuggling, combating violations of customs rules; 3) submission of proposals to ensure the formation of the state customs policy for consideration by the Minister of Finance (Про затвердження положень про Державну податкову службу України та Державну митну службу України, 2019). So, the above indicates certain conflicts of the current legislation in the field of customs. However, it is worth noting that the Regulations on the State Customs Service of Ukraine more fully and in detail regulate the powers of the service, from which it can be concluded that it is necessary to amend the Customs Code. These changes should be as follows: Article 545 shall be amended as follows: «The central executive body implementing the state customs policy ensures the implementation of the tasks of the customs authorities, coordinates and controls the activities of customs, exercises other powers provided for by this Code and other laws of Ukraine, in issues orders, organizes and controls their implementation within the limits of his powers».

Defining the functions of the SCS, we can talk about their similarity in comparison with the functions of the State Tax Service of Ukraine, with the exception of licensing activities, which are not in their pure form in the SCS. The Service issues certain permits to engage in certain activities or perform certain actions, but this should not be considered as a separate function. The status of the SCS is characterized by a greater focus on the implementation and implementation of law enforcement activities related to smuggling. And yet, the State Customs Service does not have the authority to fix and consider cases of administrative offenses. Also, it is vicious to note that the control activity for the STS, as well as for the State Tax Service, is one of the leading functions.

Summing up the above, it should be emphasized that the administrative and legal status of special subjects of fiscal control is characterized by their focus on the implementation of tax and customs policy. Control powers and functions are among the leading among all the elements presented. It is also worth noting that modern reformatory changes in the system of tax and customs authorities have led to both positive and negative aspects. Concentrating the activities of legislators on the latter will contribute to a faster and more effective leveling of gaps and shortcomings in a certain area.

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