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TAXATION OF INHERITANCE AND DONATION ACQUISITION IN UKRAINE

Introduction

In connection with the introduction of the reform of the Ukrainian tax system on 1 January 2011, it can be said that the main legal acts regulating this system are:

- Constitution of Ukraine of 28 June 1996[1],
- Law of 2 December 2010 No. 2856-VI (2856-17), Tax Code of Ukraine[2],
- Law of 8 July 2010 on the collection and registration of unified contribution for compulsory state social security[3].

It should be noted, however, that the Law amending the Tax Code of Ukraine[4], which entered into force on 1 January 2015, reduced the number of nationwide taxes from 22 to 11. Thus, the most important among national taxes are corporate income tax, personal income tax, VAT, excise duty, environmental tax, concession tax, and customs duty. Among local taxes: tax on immovable property other than land and flat-rate tax.

This solution directly indicates that Ukraine does not have a separate law on inheritance and donation tax or tax on free acquisition of property and property rights, like Poland. Importantly, the Tax Code of Ukraine regulates not only the taxation of inheritance and donation acquisition (Art. 174), the military fee tem-

[1] Vidomosti Verhownoi Rady Ukrainy 1996, No. 30, Item 141 as amended.

[2] Vidomosti Verhownoi Rady Ukrainy of 8 April 2011, No. 13/13–14, No. 15–16, No. 17, Art. 112, p. 556 – hereinafter referred to as the TCU.

[3] Vidomosti Verhownoi Rady Ukrainy of 21 January 2011, No. 2/2–3, Art. 11, p. 34 – hereinafter referred to as the uniform social security contribution.

[4] Law of 28 December 2014, No. 71 – VIII amending the Tax Code of Ukraine and certain other laws of Ukraine in the field of tax reform, Vidomosti Verhownoi Rady Ukrainy of 20 February 2015, No. 7–8; of 27 February 2015, p. 55, 506, No. p. 410, Art. 55.

porary tax (Section XX of the Tax Code of Ukraine) collected on the acquisition of inheritance and donation, but in terms of taxation of donation only, and only in relation to the employer-employee relationship, a tax called the uniform social security contribution applies.

It is obvious that in the case of inheritance and donation taxation, the provisions of the Civil Code also play an important role due to the principle of uniformity of the legal system of each state, including the Ukrainian state. Ukraine is governed by the Civil Code of Ukraine of 16 January 2003[5].

Taxes in the Constitution of Ukraine

The Ukrainian Constitution devotes several provisions to tax issues, the most important of which are Art. 58, 67, 92(1), and 143.

The text of Art. 67 of the Constitution establishes obligations for everyone, including both residents and non-residents, to pay taxes and debts, which should be understood as tax debts. However, this text has a narrower objective scope than Art. 84 of the Constitution of the Republic of Poland, which uses the broader term "responsibilities and public duties". Moreover, Art. 67, paragraph 2 of this Constitution establishes the obligation of all citizens – so it does not apply to non-residents, unless they have Ukrainian nationality – to submit an annual declaration of their wealth and income in the previous year to the tax authorities in their place of residence. In particular, the obligation to submit tax and income declarations should be emphasized here, as it is not regulated at the constitutional level in Poland. However, it cannot be understood as the only provision imposing such an obligation.

It is also imposed by Art. 92, paragraph 1 and Art. 143 of the Constitution of Ukraine. These provisions should be understood as systemic. It follows from Art. 92, paragraph 1 of the Constitution of Ukraine that the "tax system, taxes and charges (…) are determined exclusively by the laws of Ukraine". However, this provision should be understood more broadly than as simply referring to the establishment of taxes. It seems that this provision should be understood in conjunction with Art. 1 of the Constitution of Ukraine, which indicates that Ukraine is a democratic state under the rule of law. This means that in a democratic state under the rule of law not only the type of taxes but also the individual parts of the tax structure should be regulated by laws (acts)[6]. This provision also requires that the tax system be regulated by laws. This term should be understood as including not only legal regulations concerning tax institutions but also the structure of entities that collect taxes (national and local government), pay them

[5] Vidomosti Verhownoi Rady Ukrainy of 2003, No. 11, Item 461 as amended.

[6] Seemingly, despite the doctrinal disputes concerning this issue, the parts of the tax structure include the object and subject of taxation, tax base, tax rates, and general categories of tax-exempt entities.

(taxpayers, withholding agents, and collectors), as well as those which determine their amount and terms of payment. This term therefore reinforces the aforementioned understanding of tax regulation by law.

Another provision of the Constitution of Ukraine related to taxes is Art. 143, from which the principle of tax authority of local government follows. It is equivalent to Art. 168 of the Constitution of the Republic of Poland. It introduces the right of local government to not only determine, but also to collect taxes, except that these ranges are specified in laws. However, this provision cannot be interpreted as allowing local government units to establish their own taxes. Such an understanding of it would lead to its contradiction with Art. 92, paragraph 1 of the Constitution of Ukraine. Its point is that local government units may determine, to the extent indicated in a specific law, certain elements of the local tax and fee structure.

Article 58, paragraph 1 of the Constitution of Ukraine (equivalent to Art. 2 of the Constitution of the Republic of Poland to a certain extent) is also significant for tax issues, stating that laws and other normative acts do not have a retroactive effect, except in cases relaxing or waiving individual obligations. It can be said here that it introduces the principle of non-retroactivity, unless the law introduces retroactive legal solutions that are beneficial to citizens. Retroactive relaxation or waiver of obligations is undoubtedly a beneficial action for citizens. Characteristic of the provisions of the Constitution and the Tax Code of Ukraine is the fact that the tax system should be stable, which means that the state undertakes that changes in the applicable tax law for a given tax year may be implemented at the latest six months before the end of the calendar year, while the taxes and fees and the applicable tax rates may not change during the tax year.

It should also be noted whether the Constitution of Ukraine protects the right to property and the right to inheritance. In fact, it contains no explicit provisions stipulating the protection of the right to inheritance. The protection of the right to property is stipulated in Art. 41, paragraphs 1 and 6. They grant everyone the right to own, use and dispose of their property, indicating that the procedure for acquiring private property is determined by laws. Moreover, the use of property shall not cause harm to the rights, freedoms and dignity of citizens, the interests of society, aggravate the ecological situation and the natural qualities of land.

This means that, at the constitutional level, the right to inheritance is a part of the right to protect private property.

Taxation of inheritance and donation acquisition

Taxation of inheritance and donation in Ukraine is regulated by the provisions of the Tax Code of Ukraine in Section IV Individual Income Tax. This means that inheritance acquisition and donation are subject to the rules of taxa-

tion of income earned by natural persons. This position is justified to a certain extent because both inheritance and donation tax and personal income tax are levied on income (revenue), i.e., in fact, economic growth of pure property[7]. There are, of course, differences between them, such as the fact that inheritance and donation tax is levied on the exchange of property, the transfer of property between the existing and the new owner, which, as a one-time action, takes place exclusively free of charge. Thus, in a way, it is a special form, a variant of income tax, except that this tax includes an increase in pure assets obtained over a certain period of time, regardless of whether this increase is obtained from permanent or one-time sources of income. Naturally, in this case, the personal or family relationships existing between the participants in this exchange are irrelevant. If it is taken into account that they do not play a role in taxation, this increase in assets can in fact be taxed with income tax.

Article 174 is the most relevant provision of Section IV. It stipulates that income earned by a taxpayer from an inheritance, donation of money, property, real estate or non-property rights is subject to income tax. At the same time Art. 174, paragraph 1, letters a–c of the Law specify enumeratively listed items acquired by way of inheritance/donation that are subject to taxation. Thus, the subject of taxation is not the "acquisition of property and property rights" (a category-specific subject), but strictly defined items and property and non-property rights. These include: 1) real estate; 2) movable property, in particular: antiques or works of art, natural precious stones, precious metals, jewellery of precious metals or natural precious stones, vehicles and their accessories, and other movable property; 3) objects of commercial property, namely securities (other than deposits, savings, mortgage certificates), equity rights, ownership of a business object itself (ownership of an integral property complex), intellectual (industrial) property or the right to obtain income from it, property and non-property rights; 4) amount of insurance indemnities (insurance payments) under insurance contracts, as well as the amount kept respectively on pension deposit account, accumulation pension account, individual pension account of heir – participant of accumulation pension fund scheme; 5) cash money or funds, kept on estate-leaver's (testator's) accounts, opened in bank and non-bank financial institutions, including deposits (savings), mortgage certificates, certificates of real estate transactions fund. Characteristic of this provision is the fact that it does not infringe upon the principle of definiteness of the subject of taxation, with one reservation concerning the list of movable property (Art. 174, paragraph 1, letter b of the TCU), where "other kinds of movable property" are indicated as the subject without any indication of how they should be determined. Moreover, the subject of taxation defined in this manner does not refer to the concept of inheritance. According to Art. 1218 of the Civil Code of Ukraine, "Inheritance shall include all rights and obligations of the testator as of the moment

[7] R. Mastalski, *Prawo podatkowe*, Warszawa 2004, p. 344.

of opening of inheritance that did not terminate in consequence of the testator's death". Those rights and obligations which do not form part of the inheritance are set out in Art. 1219. According to it, "1. The rights and obligations inseparably connected with the testator shall not be included in the inheritance, particularly: 1) personal non-property rights; 2) the right to participation in partnerships and the right to membership in associations of citizens, unless otherwise established by law or the constituent documents thereof; 3) the right to compensation of damages resulting from mutilation or other health disturbance; 4) rights to alimony, pension, aids or other payments established by law; and 5) creditor's or debtor's rights and obligations envisaged by Art. 608 of this Code". It would seem that in the case of Art. 174 of the TCU, the principle of autonomy of tax law applies; however, when comparing Art. 174, paragraph 1, letter c, which levies taxes on, among other things, corporate rights, it should be obvious from the point of view of Art. 1219 of the Civil Code of Ukraine that it is a matter of taxing these rights, when the laws or founding documents stipulate that these rights are included in the inheritance and heirs acquire them. Likewise, "the right to compensation of damages resulting from mutilation or other health disturbance" (Art. 1219, paragraph 3 of the Civil Code of Ukraine) should probably be understood similarly, as not included in the inheritance because it is related to the person of the testator, when it has not been adjudged or paid. Otherwise, it is included in the inheritance and will be taxed as "amount of insurance indemnities (insurance payments) under insurance contracts" or as "cash money" (Art. 174, paragraph 1, letters d and e of the TCU). Pursuant to Art. 174 § 6 of the Code, income in the form of gifts charged (paid, transferred) to the taxpayer by a legal person or an entrepreneur is subject to taxation under the general rules stipulated in Section IV.

The provision of Art. 174 of the TCU does not regulate the tax base of items acquired as a result of inheritance or donation. It also does not indicate the condition used to determine inherited or donated property, nor does it indicate what prices constitute the value of the tax base. This would mean that the general rules for determining the tax base set out in Art. 164, paragraph 1, item 1 of the TCU apply, namely that "Total taxable income consists of incomes, finally taxable during their accrual (payment, provision)". Therefore, in this case, the moment of payment is decisive. In the case of real estate and movable property, the price of the estimate prepared by the authority authorized to make such an estimate is decisive (Art. 172, paragraph 3 of the TCU). It should be noted, however, that Art. 174, paragraph 8 of the TCU stipulates that in the case of inheritance of any assets at a zero rate, no estimated value of the assets shall be determined, as they do not affect the annual tax.

As far as the tax rates are concerned, the basic rate of income tax is 18% (Art. 167, paragraph 1 of the Tax Code of Ukraine), except that for heritage objects they are subject to zero-rate taxation (Art. 174, paragraph 2, item 1 of the Code), if it applies to:

- objects inherited by family members, heirs of the first and second degree of relationship,
- real estate and movables inherited by a person who is a person with disabilities of group I (assigned as such) or has a status of an orphan or a child deprived of parental care,
- real estate and movable property inherited by a disabled child (and thus whether or not it belongs to first- and second-degree heirs),
- money savings, deposited before 2 January 1992 in institutions of the USSR Savings Bank and state insurance, which were effective in the territory of Ukraine, and in state securities, and money savings of citizens of Ukraine, deposited in specific banks during 1992–1994, the redemption of which did not occur.

The taxpayers of personal income tax in Ukraine are natural persons (Art. 162, paragraph 1, item 1 of the Code), i.e. both residents (including foreigners who have registered their business) and non-residents (Art. 162, paragraph 1, item 2 of the Code). According to Ukrainian tax regulations, a foreigner may be considered a resident if they meet one of the following criteria (successively): 1) they a residence in Ukraine; 2) they reside permanently in Ukraine (in case of residence of a given natural person both in Ukraine and outside of Ukraine); 3) they have close personal or economic ties with Ukraine (centre of their interest, in case of permanent residence of a given individual both in Ukraine and outside of Ukraine), and in case it is impossible to determine the aforementioned grounds – they stay in Ukraine for over 183 days in a year (including the day of arrival to and departure from Ukraine). In other cases, a given natural person is considered as a non-resident of Ukraine.

The recognition of an individual as a Ukrainian tax resident means that both income earned in Ukraine and income earned from sources abroad will be taxed for them. Non-recognition as a resident of Ukraine means that only income obtained from Ukrainian sources will be taxed for this person.

In the case of inheritance and donation taxation, the taxpayers are the heirs and beneficiaries regardless of nationality. What's significant is the acquisition of inheritance or donation items located in Ukraine.

Characteristically, the provisions of the Tax Code of Ukraine do not indicate heirs of the first and second degree of kinship. However, given the systemic interpretation and the use of the civil law term in the tax provision (Art. 1261 and 1262 of the Civil Code of Ukraine), it should be assumed that the first degree of kinship includes the testator's children, including those conceived during the testator's lifetime and born after the testator's death, the surviving spouse and their parents, while the second degree of kinship includes the testator's brothers and sisters, the testator's grandmother and grandfather on both father and mother's side. Naturally, these are statutory heirs, and since heirs may also be ap-

pointed to inheritance by will (Art. 1222, paragraphs 1 and 2 of the Civil Code of Ukraine), it should be assumed that the aforementioned heirs of first and second degree of kinship also benefit from the aforementioned tax relief if their appointment is based on a will.

A similar view should be stated in relation to the donation agreement. If the beneficiary is included in the first or second degree of kinship, the rules of taxation of the acquired objects will be the same as in the case of heirs. The provisions of the Tax Code of Ukraine do not define the concept of donation, although they use it. It seems that this term should be understood as in the Civil Code of Ukraine. Article 717, paragraphs 1 and 2 of this Code stipulate that, in a donation agreement, one party (the donor [grantor]) transfers or undertakes to transfer to the other party (the donee [grantee]) the ownership of property (donation [gift]) free of charge (paragraph 1). However, an agreement setting out the obligations of the donee to perform any act, whether financial or not, for the benefit of the donor is not a donation (gift) agreement (paragraph 2). Paragraph 2 refers to the so-called donor's instruction regulated by Art. 893 of the Polish Civil Code. Characteristically, this agreement differs from the donation agreement regulated by Art. 888 of the Civil Code because its subject can only be a transfer of ownership, whereas in Poland the subject can include rights, e.g. limited property rights. The differences also relate to the legal form of the conclusion of the agreement.

If the property is inherited by other heirs, i.e. not included in the first or second degree of kinship, it is subject to a 5% tax rate. In turn, each item of inheritance (Art. 174, paragraph 2, item 3 of the TCU) and donation (Art. 174, paragraph 6 in connection with Art. 174, paragraph 1 of the TCU) acquired by a non-resident is subject to taxation at the basic rate of 18%. Naturally, in Poland, such a variability in the legal position between resident and non-resident heirs cannot exist in relation to non-resident citizens of Member States of the European Union or Member States of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area – due to the principle of free movement of capital and the principle of prohibition of restrictions on payments under Art. 63(1) and (2) of the Treaty on the Functioning of the European Union of 7 February 1992[8]. This provision also introduces the principle of free movement of capital and the prohibition of any restriction on payments not only between Member States but also between Member States and third countries, with the proviso that:

– Art. 65 of the Treaty allows for the application of the relevant provisions in the Member States of their tax laws treating taxpayers differently, according to their different place of residence or investment of capital,

[8] Dz.U. 2004, No. 90, Item 864/30 as amended.

– Member States may take all measures necessary to prevent the infringement of their laws and regulations, in particular in the area of taxation and in the field of prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures justified on grounds of public policy or public security.

However, the measures and procedures referred to above should not constitute means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments.

Since the principles of non-discrimination in relations not only between Member States, but also between Member States and third countries are similar, the legal situation mentioned in Art. 174, paragraph 2.3 of the TCU, with respect to the tax rate, will be well defined by the view of the CJEU presented in the judgment of 17 October 2013 in Case C 181/12 *Yvon Welte v Finanzamt Velbert*, which reads as follows:

"Articles 56 EC and 58 EC must be interpreted as precluding legislation of a Member State relating to the calculation of inheritance tax which provides that, in the event of inheritance of immovable property in that State, in a case where the deceased and the heir had a permanent residence in a third country, such as the Swiss Confederation, at the time of the death, the tax-free allowance is less than the allowance which would have been applied if at least one of them had been resident in that Member State at that time.

Firstly, that national legislation constitutes a restriction on the free movement of capital within the meaning of Art. 56(1) EC.

Secondly, where, for the purposes of taxing immovable property acquired by inheritance and located in the Member State concerned, national legislation places on the same footing (i) non-resident heirs who have acquired the property from a non-resident deceased and (ii) non-resident or resident heirs who have acquired it from a resident deceased and resident heirs who have acquired it from a non-resident deceased it cannot, without infringing the requirements of EU law, treat those heirs differently in connection with that tax as regards the application of a tax-free allowance in respect of the immovable property. By treating inheritances of those two classes of persons in the same way except in relation to the amount of the allowance which an heir may receive, the national legislature accepted that there was no objective difference between them as regards the detailed rules and conditions of charging inheritance tax which could justify a difference in treatment.

However, just as the status of a taxable person does not in any way depend on the place of residence – the legislation at issue subjecting any acquisition of an immovable property located in that Member State to inheritance tax whether the deceased and heir be resident or non-resident – the aim of partial exemption

of the estate affects all those subject to inheritance tax in the Member State in the same way, whether they be resident or non-resident, since that exemption aims to reduce the total amount of the inheritance".

Although the thesis of the judgment concerns only the tax-free allowance, the principle of non-discrimination should also apply to the variability of tax rates between residents and non-residents.

Thus, from the point of view of Art. 63 and 65 of the Treaty (the equivalent of Art. 56 and 58 EC), the provision of Art. 174, paragraph 2.3 of the TCU would be a provision applying the principle of discrimination between citizens of the Member States of the European Union and those of the Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area. It should be noted here that since the inheritance acquisition or acquisition by donation in Ukraine is subject to personal income tax, i.e. it is covered by Art. 2 of the Convention of 12 January 1993 between the Government of the Republic of Poland and the Government of Ukraine for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains[9], the presented situation related to taxation of non-resident Polish citizens in Art. 174 of the TCU concerning the tax rate also violates the principle of equal treatment set out in Art. 25, paragraph 1 of the Convention.

Heirs and donees have a tax obligation due to the acquisition of an inheritance or donation, and income from these items must be shown in the annual tax return. Non-residents, on the other hand, are obligated to pay purchase tax upon notarial registration of a monument (in rural areas upon registration by an authorized officer of a competent local government body, at the place where the inheritance is opened). Notaries and authorized officers of competent local government bodies are obligated to provide the controlling body with information about issued certificates of succession or information about certification of donation agreements (Art. 174, paragraphs 3 and 4 of the TCU). The same entities issue documents to heirs and donees for the payment of inheritance and donation tax. Similar obligations apply to insurance agents (Art. 174, paragraph 5 of the Code).

These considerations, which refer to the regulation of inheritance and donation taxation in Ukraine, lead to the conclusion that since the tax rate depends to a large extent on the taxpayer's affiliation with a given kinship group, this undoubtedly distorts the inclusion of these subjects of taxation as subject to income tax and not inheritance and donation tax. Another significant fact is that Art. 174, paragraph 4 of the Code also explicitly refers to inheritance tax and, in the context of Art. 174, paragraph 6 of the Code, we can also speak of inheritance and donation tax. Moreover, this view is supported by the fact that the principles of taxation of inheritances and donations are in fact normatively separated in a single editorial unit.

[9] Dz.U. 1994, No. 63, Item 269 as amended.

Military fee

According to Art. 16[1] sub-section 10 (Other transitional provisions) of Section XX (Transitional Provisions) of the Tax Code of Ukraine, until the entry into force of the Resolution of the Verkhovna Rada of Ukraine on the completion of the reform of the Armed Forces of Ukraine, personal income tax subjects are subject to a military fee (lump-sum military tax), amounting to 1.5% of the acquired assets. The taxpayers of the military fee are both residents and non-residents (Art. 162, paragraph 1, items 1 and 2, and Art. 162, paragraph 3 of the Code). The tax base for residents is salaries and wages taxed at the time of accrual, income taxed at the time of accrual from sources of income originating in Ukraine, foreign income, and thus income obtained from sources located outside Ukraine (Art. 163, paragraph 1, items 1–3 of the Code), and in the case of non-residents, the subject of taxation is the total monthly (annual) income from sources originating in Ukraine and income from sources of Ukrainian origin taxed at the time of accrual (Art. 163, paragraph 2, items 1 and 2 of the Code).

The military fee is also paid by the heirs and the donees (Art. 171 in conjunction with Art. 163 of the TCU). Pursuant to Art. 164 of the TCU, income from an inheritance or donation is included in the general taxable income, which means that it is covered by the general tax base for the entire fiscal year. Similar status is also given to other revenue indicated in Art. 170 of the TCU: revenue from rent, investments, deposits, dividends, prizes, material aid, revenue from life and health insurance, etc.; in Art. 172 of the TCU: revenue from the sale of real estate; in Art. 173 of the TCU: revenue from the sale of cars.

Persons responsible for the accrual (payment) and payment (transfer) of tax (military charge) are the employer who pays the employee's income, and on other income: the tax agent – in the case of income from a source originating in Ukraine – and the taxpayer for foreign income whose source of payment belongs to persons exempt from the obligation to charge, accrue or transfer the tax to the budget (Art. 171 of the Code in conjunction with Art. 16[1], paragraph 1, item 6 of the Transitional Provisions).

Uniform social security contribution

According to Art. 7 of the Uniform Contribution Law, its purpose is to secure the pension fund. It is paid by the employer and calculated on the income earned by the employees. Payment of this contribution by employers is treated as a donation to employees. The contribution rate is 22%. It is included in each payment, i.e. remuneration in cash: basic and additional, incentive and compensation benefits paid, as well as benefits in kind granted on the basis of the Law

on remuneration and remuneration of natural persons for the performance of works (provision of services) under civil law contracts. It should be noted that the Resolution of 22 December 2010 No. 1170 of the Cabinet of Ministers of Ukraine contains a list of different types of payments, made at the expense of employers, which are not covered by the unified contribution to state social security. The maximum level of taxation of all benefits cannot exceed 25 times the minimum wage.

Conclusion

Acquisition of goods and property rights by inheritance and donation in Ukraine is subject to personal income tax, military fee and, with respect to acquisition by donation made by an entrepreneur for the benefit of employees, also to a uniform social security contribution. However, the taxation of inheritance and donation acquisition for the family of the testator or donor is subject to a 0% tax rate and, as no valuation of the property acquired in this way is made, this translates to a tax exemption for the testator's family. However, these persons pay tax in the form of a military fee (amounting to 1.5% of the acquired property) on such acquisition of goods and property rights (described in detail). On the other hand, donations made by employers to employees are subject to the so-called uniform 22% contribution to the mandatory state social security (uniform contribution).

As a consequence of the taxation of inheritance and donation acquisition in Ukraine with personal income tax, the diversified 18% tax rate which discriminates Polish citizens (non-residents) violates the principle of equal treatment under Art. 25(1) of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, concluded on 12 January 1993 between the Republic of Poland and Ukraine.

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Summary

The main objective of this article is to introduce the rules of taxation of inheritance and donation acquisition in Ukraine. Its side objective is to demonstrate certain differences between Poland and Ukraine in this respect. The article utilizes a critical analysis of the texts of the Constitution of Ukraine and Ukrainian tax laws as a research method.

The article emphasizes such beneficial solutions for Ukrainian taxpayers as those concerning the deadlines for introducing changes in tax regulations (*vacatio legis*) – substantially longer than in Poland, the impossibility of introducing changes in these regulations during the fiscal year to the disadvantage of taxpayers, and the admissibility of introducing beneficial changes. Discriminatory taxation of Polish citizens (non-residents) with respect to inheritance and donation acquisition in Ukraine is demonstrated.

Keywords: taxation of inheritance and donation acquisition in Ukraine, principle of equal treatment in taxation of inheritance and donation acquisition by non-residents in Poland and Ukraine, military fee (tax), uniform contribution to mandatory state social security in Ukraine, non-discrimination principle

OPODATKOWANIE NABYCIA SPADKU I DAROWIZNY NA UKRAINIE

Streszczenie

Nabycie w drodze spadku i w drodze darowizny rzeczy i praw majątkowych na Ukrainie podlega podatkowi dochodowemu od osób fizycznych, opłacie wojskowej, a w odniesieniu do nabycia w drodze darowizny uczynionej przez przedsiębiorcę na rzecz pracowników – także ujednoliconej składkce na ubezpieczenie społeczne. Jednak opodatkowanie nabycia spadku i darowizny dla osób najbliższych spadkodawcy czy darczyńcy jest objęte stawką podatku wynoszącą 0% a przez to, że nie dokonuje się oszacowania majątku nabytego w tej drodze, to oznacza to zwolnienie z podatku osób najbliższych. Osoby te jednak od takiego nabycia własności rzeczy i praw majątkowych (szczegółowo opisanych) płacą opłatę wojskową (wynoszącą 1,5% majątku nabytego), która jest podatkiem. Z kolei od darowizn przekazywanych pracownikom przez pracodawców pobierana jest tzw. jednolita składka na obowiązkowe państwowe ubezpieczenie społeczne wynosząca 22%.

Konsekwencją opodatkowania na Ukrainie nabycia spadku i darowizny podatkiem dochodowym od osób fizycznych jest to, że zróżnicowana, dyskryminująca obywateli polskich (nierezydentów) 18-procentowa stawka podatku narusza zasadę równego traktowania z art. 25 ust. 1 Konwencji w sprawie unikania podwójnego opodatkowania i zapobiegania uchylaniu się od opodatkowania w zakresie podatku od dochodu i majątku zawartej 12 stycznia 1993 r. między Rzecząpospolitą Polską a Ukrainą.

Słowa kluczowe: opodatkowanie nabycia spadku i darowizny na Ukrainie, zasada równego traktowania w opodatkowaniu nabycia spadku i darowizny przez nierezydentów w Polsce i na Ukrainie, opłata wojskowa (podatek), jednolita składka na obowiązkowe państwowe ubezpieczenie społeczne na Ukrainie, zasada niedyskryminacji