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## **THEORETICAL AND LEGAL PROBLEMS OF THE TAX PROCESS**

Raising the question. Recently, in academic circles and among practitioners there are a lot of debates regarding the scope and the content of the tax process. A similar situation should be considered legitimate, taken into account the lack of a single codified act that would outline the legal mechanism of financial and procedural regulations, in general, and especially the implementation of tax and judicial procedures in particular.

Contradictory and discussion certain provisions of the Tax Code, the lack of consistent and systematic theoretical analysis of procedural form of tax law determine the need for further study of the procedural aspects of tax law relating to the implementation of both the security and regulatory functions of regulation. This will avoid different interpretations of the tax process and unify the scientific understanding of its concepts, object and scope.

The purpose of the article. Author has set itself the goal to analyze the main problems of the theory of taxation process, the state of scientific thought in the study of procedural mechanisms tax regulations, their structure and the nature of their elements. Is based on a systematic approach theoretical understanding of legal phenomena data will come close to forming a consensus on the fundamental provisions of the tax process as one of the major categories of science finance.

The degree of scientific development. In modern terms, the tax legislation of our country rapidly develops, and according to the needs of practice, improved. The result of this process was the adoption of the Tax Code of Ukraine, a significant portion of the contents of which are procedural rules. This act regulated the legal application of certain procedural principles in the collection of taxes and fees. In particular, it identified some procedural aspects of the general order of administration of taxes and fees and the procedure of taxation of certain categories of businesses according to special tax regimes. However, the authors ignored this law remained a number of important issues related to the use of procedural shapes in the mechanism of tax regulations. In particular, this applies to both direct taxation process definition in the text PCs Ukraine and coverage of the subject of the proceedings that make up its structure.

A similar situation exists in the theory of tax law. Most of the scientific achievements of science finance related mostly to the substantive aspects of taxation. This situation is understandable, since the regulation of any industry forms, primarily involves developments in substantive law. However, without a thorough study of the

procedural aspects of tax regulation, substantive rules of tax law will remain static, or applied in violation of the interests of subjects of taxation. In this sense, the availability of adequate theoretical basis in determining the content of the taxation process will serve as a prerequisite for the formation of such a procedural mechanism in taxation, which would become the legal guarantee against abuse of officials.

Nevertheless, a number of specific research, both domestic and foreign authors, fragmentary cover procedural issues legal form of substantive rights and obligations of legal entities tax. In particular, the scientific developments of the theory of taxation process reveal the content of its fundamental provisions as "phase process tax", "tax and judicial proceedings", "tax treatment", etc. Further systematic analysis of the elements of the tax process will eventually form a understanding of the theoretical principles, equally common to all procedural phenomena in the collection of taxes and fees.

Formation of legal doctrine taxation process ontologically connected with research in the field of legal theory, the ratio of substantive and procedural law, legal process theory. In this respect, it is interesting scientific concepts that have emerged in 40rr. the last century - the concept of a broad and a narrow understanding of the legal process. Based on the scientific basis for the study of procedural nature of legal phenomena, modern scientists are increasingly self-justifying different types of legal process, and as a result, the formalization of new procedural areas of law. There are some scientific studies on the elaboration of alternative theories, at first glance, varieties of legal process: the process of land, labour process, etc. Further development of scientific concepts become an administrative process in its broadest sense interpretation. The first developments in the study of procedural form given grounds for thinking that the procedural regulation requires not only administrative law and other traditional material industry, not only in terms of jurisdictional activity. In particular, the authors of the book "Registered procedural form. Theory and Practice "by prof. P.E. Nedbaylo and V.M. Horshenov argued that "the procedural form occurs not only in jurisdictional (law enforcement) the scope of the law, but also in other areas. Any branch of substantive law brings to life the relevant procedural rules ... specific procedural rules are needed, such as finance, labour, land, collective and other areas of law [1, p.44] Regarding procedural categories of finance, which include tax process, Galagan I.A. in his book "Procedural norms and relations in the Soviet right" pointed out that the essence of the general concept of the legal process is that the functions of the procedural rights can not be restricted to the regulation or permit enforcement of civil disputes, in addition to criminal and civil processes in the material There are numerous areas of law procedural rules and institutions on which the activities to implement the substantive requirements of any of the branches. According to the researcher, it is important that a total of Finance were fixed terms of financial process and procedural rules finance in order to receive the specification in a particular part of this area of law. As in the general part, and in each of the institutions of special procedural aspect requires special design and the relative separation [2, p.132].

Working hours of the theory of taxation process at this point is a study of its contents from the standpoint of both broad and narrow (jurisdictional) legal process. Key issues around which develops scientific controversy were questions about the concept and limits the spread of procedural form of tax law and the relationship

between the concepts "process" and "proceeding." One group of scholars tend to deny the use of procedural shapes for positive activities of tax law, the other - rejects this possibility, justifying this by saying that "the procedural law - a legal right; suit - a lawsuit Justice "[3, 15]. According to proponents of this theory correlation between "process" and "procedure" as equivalent in effect dilute the legal significance of the legal process. To address this issue advocates the concept of jurisdictional legal process was proposed to use the term "process" as a generic term, and the term "suit" considered equivalent to the concept of "procedural process." Thus they reject the opportunity to regard any procedure legally significant actions procedural form. One of the biggest proponents of this concept can be considered D.V. Vinnitskoho that reviewed the tax process as a kind of tax procedure, which aims to regulate relations on the application of tax measures, law enforcement and to resolving tax disputes [4, p.89]

Some scholars explore the essential characteristics of the taxation process, making a comparative analysis of tax and budget processes. For example, Nogina O.A. notes that tax and budget processes differ in the nature of the "procedural". For tax process as an activity authorized government (tax and customs) is characterized by external direction, i.e. tax or customs authorities carry out their activities within the taxation process is not always about organizational subordinate and dependent persons - taxpayers, tax agents, banks, etc. ., taking in the course of business different individual acts (decisions, decisions, etc..) While activities the competent authorities within the budget process is extremely varied and can not always be precisely procedural in nature, but rather refers to the procedural activity of state bodies [ 5, p.89]. This is confirmed by other scientists thought that the procedural proceedings has resulted in the use of coercive measures, as a rule has no mandatory requirement to conduct a legal assessment of the individual and in most cases is the nature of office work [6, p.123]. At the same time, F.H .Banhayeva determines the tax process as regulated by the law of the budget process, which is an activity of state authorities, local authorities and members of the tax determination process concept formation, structure and scope of government revenue, adjusting current system of taxes and duties, development and implementation of tax plans revenue and extra-budgetary funds, and to monitor the implementation and compliance with tax laws [7, p.16].

Some research generally related to the analysis of the taxation process as part of the financial process, along with such variations as the last exchange process, budgeting, etc. For example, S. Zapolsky highlights look quite original thesis that the finance industry is procedural.

A special place in the theory of taxation process is scientific statement that the tax process is implemented within the administrative process. In particular, considering H.V. Petrova tax process as a state-management activities in a variety of its manifestations, as a set, the action taken by the tax authorities (their officials) to implement their tasks and functions [8, p.11].

The main material. Differentiation of legal phenomena in the material and procedural long time has not carried out as a general theoretical position and at the sectoral level. As necessary research procedural form in tax law, it is stressed by many researchers, rightly arguing that procedural forms in tax law - not a new phenomenon, but a little research. In particular, Orlyuk A.P. said: "Unfortunately, not all financial regulations are characterized by a high level of development and strict

adherence to the rules of behaviour that often complicates the ability to meet financial interests. In practice, often there are situations, especially in the area of tax administration, when current conflicts in regulatory instruments or unclear rules of behaviour entail problems in the application of financial and legal norms of the participants "[9, p.44].

Logical justification for the contents of the tax process as a form of legal process, in our opinion, is the disclosure of the essential characteristics latter. Among the main features of the legal process given below:

- It is a set of consistently applied by legally significant actions;
- Governed by the relevant procedural rules;
- Carried out only by competent entities, endowed with appropriate powers;
- Procedural issues the implementation of substantive rights and obligations of the relevant actors;
- Consists of stages, each of which actors place legal actions and reached a legally significant result;
- Related to the imposition of enforcement acts;
- Is a form of activity that objective needs to procedural regulation.

Combination of these traits legal process suggests their full inherency tax process as the phenomenon of legal validity, which is implemented in terms of direct and inverse relationships between the entities.

In our opinion, the interpretation of the tax process as a legal category associated exclusively with the realization of the security features of the tax law, leaving aside such an important area of tax-procedural relations as of tax control. As a kind of financial controls, tax management, primarily finds its manifestation in the implementation of the regulatory functions of tax law. The procedures of tax control only hypothetically may result in the emergence of jurisdictional (conflict) tax procedures. However, the procedure of tax control, as well as procedures for resolving tax disputes are carried out within the tax process. In most cases, the tax control is the appropriate procedural form, namely in the form of tax and judicial proceedings in order to prevent and suppress tax offenses. A large number of scholars, most scientists administrativists, justifying affiliation proceedings to implement the tax control in the administrative process. It seems that this position is not entirely correct due to the fact that the basis of membership registration procedure for state control within the administrative process in its broadest sense, is the realization of the functions of government. For the filling content of tax control procedures, the determining factor in this case is the economic nature of the relationship, in which it is carried out.

Thus, we consider it appropriate to consider the tax process is in its broadest sense. On the exercise of jurisdiction of procedures, which some authors associate the concept of "tax process", the lion's share of such conflict is resolved through administrative and procedural rather than tax-judicial proceedings. This tax law may determine only some procedural aspects of the consideration of such disputes, for example, to determine the specific terms of an appeal to the administrative court. Affiliation tax disputes subject to jurisdiction of administrative courts reflects consideration of the tax execution procedure of the conflict in the administrative proceedings. Perhaps, over time, Ukraine will apply a positive experience to financial

courts in other states, and only then we can talk about the existence of the tax court process.

The complex structure of the tax process reflects its specific manifestation in the settled by law tax judicial proceedings and non-judicial tax-jurisdictional proceedings.

In our opinion, the settled by law proceedings taxation process should include: tax-settlement proceedings, which is at the stage of calculating tax proceedings to implement the tax payer, proceeding to implement the control in the tax records, proceedings to change the deadline for the payment of tax proceedings the implementation of tax audits.

For tax-conflict judicial proceedings, and are, in our opinion, is only carried out within the tax-court process.

Conclusions. The scientific and theoretical study allows us to formulate the following conclusions:

- Tax process is a complex legal category, which has all the features of the category "suit";

- Tax process is carried out in order to implement both security and regulatory functions of the tax law;

- Structural tax process consists of procedural proceedings stages of procedural steps and proceedings;

- The concept of "tax process" in the etymological sense is equivalent to the concept of "tax procedure," but to avoid confusion of these concepts should be regarded as the ratio of their general and special. In this sense, the term "tax procedure" can be equivalent to the concept of "tax and judicial proceedings";

- To classify tax and judicial proceedings different criteria may be used, for example, based on functional criteria they can be classified into the settled by law and jurisdictional.

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