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## LAND TAX IN THE STRUCTURE OF THE TAX SYSTEM OF UKRAINE

**Maryna Pravdiuk<sup>1</sup>**

**Abstract.** As a result of the study the main possible directions of improvement of the mechanism of taxation of land resources are substantiated. The dynamic development of the tax system is accompanied by constant changes in the collection of taxes, fees and other obligatory payments. The need to improve the mechanisms of taxation, to find those forms that best fit the fiscal psychology and tax culture of taxpayers, is the main task and way to improve the socio-economic development of the state. Recognition of the uniqueness of land and its isolation from any other real estate necessitates the establishment of a special legal regime of its use. The article deals with the content and structural elements of the mechanism of legal regulation of land tax in Ukraine. The essence of payment for land as one of the most important tax payments, which today is a significant source of filling local budgets, is revealed. On the basis of analysis of scientific works and normative-legal acts the legal meaning of the notions "land tax" and "payment for land" is determined. Such element of land relations as obligation to pay land tax is disclosed. It is noted that payment for land in relations of land use has a derivative character. It is established that the object of taxation is a specific, individually defined and legally separate land plot (or its part), assigned to a particular subject of use in accordance with its designated purpose. The main attention is focused on the characteristic of such components of the mechanism of legal regulation of land payment as land tax payers, object of land taxation, tax base, land payment rate, procedure of calculation, tax period, term and procedure of payment of land tax, term and procedure of reporting on the calculation and payment of land payment. It is established that the notion of a "land share (unit of land)" does not contain a proper definition in legislation. Land shares (parcels) are a special object of land relations, since it is not a specific plot with established boundaries, but only the owner's right to receive such a plot. A land share (unit) as an object of land tax is only the right of its owner to claim ownership of a land plot from the land plot to be divided. That is, the right of ownership of a land share (unit) does not mean ownership of a land plot, but only the right to claim for granting to the owner of such land plot. It is established that the property tax, to which the land tax relates, relates to local taxes and is compulsory. Amounts of land tax are credited to the general funds of local budgets. The normative-legal regulation of the system of benefits in land taxation is investigated. The system of tax control is considered as an important element of legal regulation in the field of land taxation, providing proper functioning of the tax system of Ukraine.

**Key words:** land tax, payment for land, land plot, land share, legal mechanism.

**JEL Classification:** H24, K34, R14, R52

### 1. Introduction

At the present stage of land reform and implementation of financial decentralization the legal content of land relations, in particular in the field of taxation, is significantly changing. The opening of the land market, as well as the increased role of the territorial community causes the necessity to develop new scientific approaches to land taxation in the science of financial law. The main problems of land taxation in Ukraine are the lack of proper legal regulation of land payment, low efficiency of control over the timeliness

and completeness of its payment, insufficient powers of local governments in the field of land taxation, insufficient regulation of the rights and obligations of land owners, land users, territorial communities and other subjects of land relations, the lack of mandatory targeted distribution of land payment revenue, etc. Problems in the field of land taxation necessitate the formation of new scientific approaches and further research on these issues.

The issues of legal regulation in the field of land taxation have been studied by Ye. Alisov,

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O. Bandurka, O. Hetmanets, O. Holovashevych, E. Dmytrenko, O. Drozd, O. Kopylenko, I. Krynytskyi, M. Kucheravenko, M. Perepelytsia, O. Tronko, Y. Tunyk, R. Usenko, M. Shulga and others. However, the need to improve legal mechanisms of land tax requires more detailed research.

Taxation of land has always been important for Ukraine because land is a national treasure under the special protection of the state (Constitution of Ukraine, 1996). This constitutional provision emphasizes the extremely important role of land resources in all spheres of human activity and the need to create the most optimal organizational and economic conditions for their rational and efficient use. Recognition of the uniqueness of land and its isolation from any other real estate necessitates the establishment of a special legal regime of its use. Land resources in Ukraine are a strategic source of economic development, and their taxation plays an important role in this process.

Land tax is an integral part of the tax system of Ukraine, the system of local taxes and fees. It is also one of the most important sources of financial support for local governments, without which the successful development of territorial communities is impossible. Proper collection of land tax is in the interests of territorial communities, on behalf of which local governments act. The successful functioning of the institution of local taxes and fees is an effective mechanism for creating prosperous territorial communities and a lever of development of the entire economic system of Ukraine.

The main normative legal acts regulating land taxation in Ukraine are the Tax Code of Ukraine (2011), the Land Code of Ukraine (2002), the Budget Code of Ukraine (2010), the Laws of Ukraine "On Local Self-Government in Ukraine" (1997), "On Land Lease" (1998), etc.

The lands of Ukraine include all lands within its territory, which are divided into nine categories in accordance with their final use (Articles 18, 19 of the Land Code of Ukraine) (2002). Attribution of lands to a certain category is carried out on the basis of relevant decisions of local self-government or state authorities.

The legislation stipulates that land use in Ukraine is paid. The principle of payment for land, on the one hand, provides rational use and protection of land resources, and on the other hand, is a guarantee of budget revenues.

Legal relations in the sphere of land use are an important prerequisite for the emergence of the obligation to pay land tax. Payment for land in relation to relations on land use is derivative in its nature. The legal mechanism of payment for land is built through the object of land legal relations. Land relations are the basis and prerequisite for the emergence of the obligation to pay land tax (Alisov, 2016).

The object of payment for land is a specific, individually defined and legally separate land plot (or its part), which is assigned to a particular subject of use in accordance with its intended purpose. Thus, the content of the right to use land is the totality of the rights and obligations of the subjects of the relevant legal relations, which are formed regarding the use of a particular land plot. According to Shulga M., certain legal land relations arise regarding this plot, through which the subjective right is realized, as well as the right of possession, the right of land use, and its internal management (Shulga, 2019).

In land and legal relations, the legal fact of possession or use by the subject of these legal relations of a particular individually defined land plot (land share) allocated for designated use is decisive (Alisov, 2016).

The Ukrainian legislator uses the concepts of "land tax" and "land fee". To determine the legal meaning of these concepts is possible by analyzing the scientific views, norms of tax and land legislation.

According to the Tax Code of Ukraine (TCU), land tax is a mandatory payment made by owners of land plots and land shares, as well as permanent land users.

Land tax as a specific mandatory tax payment has a number of characteristics:

- a) local tax is set by the decisions of local governments (local councils), and all revenues from its payment are accumulated in the revenue part of local budgets;
- b) property tax – the object of taxation is real estate owned or used by the taxpayer, namely a land plot (owned or used) and / or a land share (owned only);
- c) direct (real) tax – payers of this tax are only those persons who own or use a particular land plot, regardless of whether such land gives them income, whether it is actually used by them;
- d) mandatory tax – in accordance with the provisions of paragraph 10.2 of Article 10 of the Tax Code, the payment for land is mandatory until local councils establish a mandatory tax payment;
- e) integrated tax is a structural element of the payment for land (Krigina, 2018).

Tax law defines the land fee as a compulsory payment within the real estate tax, which is levied in the form of land tax or rent for land in state and communal ownership (paragraph 147 of clause 14.1 of Article 14 of the Tax Code of Ukraine).

Consequently, the legal content of the terms "payment for land" and "land tax" are somewhat different in meaning. Payment for land has a broader meaning and includes land tax.

According to V. Kryhina, application of the term "payment for land" is explained by the need to combine legal norms concerning the regulation of both land tax and rent. However, in some provisions there is a certain inconsistency in the terminology used (for example, the categories of "payment for land" and "land tax") (Krigina, 2018).

According to Ye. Alisov, the term "payment for land" indicates an objective feature that determines the features of the legal regulation of this type of mandatory payments, and a direct link with special land use, in particular (Alisov, 2016).

Land tax in one form or another exists in the vast majority of countries. As already mentioned, in Ukraine land tax is obligatory to be introduced at the local level as an obligatory tax payment.

## 2. Legal mechanism

Consider the legal mechanisms of land tax collection, the main components of which are the subjective and objective content of legal relations in the sphere of payment, the tax base for land payment, the rate of land payment, the procedure for calculating land payment, tax period, terms and procedure for calculating the amount and payment of land tax, term and procedure for filing a tax return.

The Tax Code stipulates that the subjects of land tax are the owners of land plots, land shares and land users (Article 269 of the TCU).

Based on the above, land tax payers can be differentiated by a number of classification features: depending on the legal status of the owner or user of a land plot into a) taxpayers – legal entities and b) taxpayers – individuals; depending on the specific property right, under which the land tax payer owns the object of taxation, into a) taxpayers – owners of land plots (land shares) and b) taxpayers – land users.

Thus, the owner of a land plot may be a legal entity or an individual who have acquired land ownership rights. A land user may be an individual or legal person that have been provided with the state and communal land plots for the use, including on lease terms (Article 14 of the TCU).

Depending on the resident status, land tax payers can be divided into a) resident taxpayers; b) non-resident taxpayers; depending on the taxation system to which land tax payers belong, they can be divided into 1) taxpayers belonging to the general taxation system; 2) taxpayers belonging to the simplified taxation system. Depending on the specifics of the object of ownership rights among land taxpayers can be distinguished: a) taxpayers – owners of land plots; b) taxpayers – owners of land shares.

According to Article 270 of the TCU, the objects of land tax are land plots and land shares. If the law clearly defines the concept of "land", the concept of "land share" as an object of taxation requires detailed analysis (Tax Code of Ukraine, 2011).

Thus, Article 79 of the Land Code of Ukraine stipulates that a land plot is a part of the surface with fixed boundaries, a certain location and certain rights with respect thereto. The title to a land plot extends within its boundaries to the surface (soil) layer, as

well as water bodies, forests and perennial plantings located on it, and also extends to the space above and below the surface to the height and depth required for construction of residential, industrial and other buildings and structures.

The notion of "land share" is not properly defined in legislation. A land share is a special object of land relations, as it is not a specific plot with established borders, but only the right of the owner to receive such a plot. A land share as an object of land tax is only the right of its owner to demand separation from the land plot to be divided. So that ownership of the land share means belonging not of the land plot, but only the right of claim to provide the owner with such a land plot. At the same time, for example, Article 81 of the Land Code of Ukraine stipulates that citizens of Ukraine "acquire property rights to land plots on the basis of... d) allocation in kind (on the ground) of their land share (Land Code of Ukraine, 2002).

To understand the essence of the concept of "land share" it is necessary to refer to the Land Code of Ukraine, Laws of Ukraine "On Land Lease", "On the Procedure for allocating land plots in kind (on the ground) to owners of land shares (units)", Decree of the President of Ukraine "On the procedure for distribution of land transferred to collective ownership of agricultural enterprises and organizations" (Decree of the President of Ukraine "On the Procedure for Sharing Lands Transferred to Collective Ownership by Agricultural Enterprises and Organizations", 1995).

For the first time the term "land share" was introduced in the land legislation of Ukraine by the Decree of the President of Ukraine "On Urgent Measures for Accelerating the Land Reform in Agricultural Production", which states that "land management organizations divide land transferred to collective ownership into land shares without isolating them in kind (on the ground)" and also states that "the right to a land share may be the object of purchase and sale, donation, production, inheritance, pledge." (Decree of the President of Ukraine "On urgent measures to accelerate land reform in the field of agricultural production", 2007) The concept of "land share" is directly related to the distribution of agricultural land owned by landowners on the right of collective ownership.

Thus, in accordance with the above-mentioned normative acts regulating the process of land distribution, a land share is the right to a conditional land share. The law defines the circle of persons entitled to a land share. The Law of Ukraine "On the Procedure for allocation of land in kind (on the ground) to owners of land shares (shares)" defines the category of persons entitled to a land share (Law of Ukraine "On the Procedure for allocation of land in kind (on the ground) to owners of land shares (shares)", 2003).

In order to ensure the exercise of the right to a land share, the owner of a land share shall be obliged to confirm such right. The main document confirming the right to a land share is a certificate of right to a land share indicating the size of the share in conditional cadastral hectares as well as in terms of value.

### **3. Taxation of land fees**

The tax base for land payment is the normative monetary evaluation of land plots, taking into account the indexation coefficient and the area of land plots, the normative monetary evaluation of which has not been conducted. Thus, the land tax rate may be calculated both with and without the normative evaluation of land. In this case the area of the respective land plots is used as the base.

The tax rate is set at an appropriate rate depending on the category of land. Thus, for land plots with a normative monetary evaluation, the rate should not exceed 3 percent of their normative monetary evaluation; for public lands – not more than 1 percent of their normative monetary evaluation; for agricultural lands – not less than 0.3 percent and not more than 1 percent of their normative monetary evaluation, and for the forest fund lands – not more than 139 percent of their normative monetary evaluation. In addition, the land tax rate is set at the amount of no more than 12 percent of the normative monetary value for land plots that are in the permanent use of business entities (except for the state and municipal ownership) (Article 274 TCU).

The law divides the rates of land tax for land plots, the normative monetary evaluation of which has not been conducted. Thus, the tax rate for land plots located outside settlements or within settlements is set at no more than 5 percent of the normative monetary value per unit of arable land in the Autonomous Republic of Crimea or the region, and for agricultural lands – not less than 0.3 percent and not more than 5 percent of the normative monetary value of arable land area in the Autonomous Republic of Crimea or region, and for forest lands – not more than 0.1 percent of the normative monetary value of arable land area in the Autonomous Republic of Crimea or region ( Tax Code of Ukraine, 2011).

The procedure for such evaluation is regulated by the Law of Ukraine "On Land Evaluation" and other regulations. According to the legislation, the normative monetary evaluation of land is the capitalized rental income from the land plot, determined according to the established and approved standards. Such an assessment should be carried out in the case of determining the amount of land tax, determining the amount of rent for land of state and communal property, etc.

Decisions of councils on the normative monetary evaluation of land plots are officially published by

the relevant local government body before July 15 of the year preceding the budget period in which the normative monetary evaluation of land or changes (planned period) are planned. Otherwise, the norms of the relevant decisions shall be applied no earlier than the beginning of the budget period following the planned period. The duty of the central executive body implementing the state policy in the field of land relations is the annual calculation by the consumer price index for the previous year of the indexation coefficient of the normative monetary valuation of land, for which normative monetary valuation of agricultural lands appointment is indexed as of January 1 of the current year, which is determined by a clearly established formula (Article 289 of the TCU). Thus, the normative monetary evaluation of land is a prerequisite (characteristic) for determining the amount of land tax.

Land tax rates may be determined by other criteria as well. For example, depending on the location of the land plot the rates applicable to lands located within settlements and the rates applicable to lands located outside settlements can be distinguished; depending on the end use of land there are rates for public lands and rates for agricultural lands. Maximum and minimum rates are established by the Verkhovna Rada of Ukraine (Krygina, 2018).

Local authorities approve the tax rates in the respective territory taking into account the marginal rates. Thus, the tax rate is set at a rate not exceeding 12 percent of the normative monetary evaluation of land plots in permanent use of economic entities (except for state and municipal property). Thus, with regard to land permanently used by business entities, local governments may set the rate from 1 to 12 (inclusive) percent of the normative monetary evaluation of such land (Article 274 of the TCU).

Consequently, the law establishes marginal rates, as there are fixed minimum and maximum rates for land plots with or without normative monetary evaluation. The legislator establishes the minimum and maximum rates, within which the local authorities may set the rates when approving decisions on the amount of land tax rates in the respective territory.

According to Tokareva K., the normative monetary valuation of land is a key factor for the determination of the appropriate tax rates. At the same time, in the context of European integration processes, it is necessary to consider the experience of countries where either mass or cadastral valuation of land is mainly used ( Tokareva, 2019).

### **4. Tax benefit**

It should be noted that the tax legislation provides for a system of benefits for the payment of land tax. According to Article 30 of the TCU, the tax benefit

is a tax exemption provided by the tax legislation of the taxpayer from the obligation to accrue and pay tax or pay tax in a smaller amount on the grounds provided by the provisions of tax legislation.

Land tax exemptions are defined in Articles 281 and 282 of the TCU. Land tax exemptions can be divided into two main groups: land tax exemptions for individuals and land tax exemptions for legal entities.

In turn, the following categories of persons are entitled to land tax benefits: a) disabled persons of the first and second groups; b) persons with three or more children under the age of 18; c) pensioners (by age); d) war veterans and persons covered by the Law of Ukraine "On Status of War Veterans, Guarantees of their Social Protection"; e) persons recognized by law as victims of the Chernobyl disaster.

Exemption from taxation applies to land plots for each type of use within the limits: a) for personal farming – in the amount of not more than 2 hectares; b) for the construction and maintenance of a dwelling house, farm buildings and structures (homestead land): in villages – not more than 0.25 hectares, in settlements – not more than 0.15 hectares, in cities – not more than 0.10 hectares; c) for the individual country house construction – not more than 0.10 hectares; d) for the construction of individual garages – not more than 0.01 hectares; e) for horticulture – not more than 0.12 hectares (Articles 281, 282 of TCU).

The need for the introduction of appropriate land plot boundary norms is caused by objective reasons and should be aimed at implementing the principle of social justice. In this case, we can indeed agree that it is hardly advisable to apply such a land tax benefit to surplus land plots, the title to which would belong to the specified category of citizens. Since the purpose of this exemption is to promote the realization of the minimum and most important vital interests of the respective category of citizens.

In order to stimulate economic turnover and protect the interests of owners (users) of land plots (land shares) that do not use them personally, lawmakers introduced appropriate benefits (Article 281 TCU).

Thus, owners of land plots, land shares and land users are exempt from tax for the period of the single tax of the fourth group, provided the land plots and land shares are leased to the payer of the single tax of the fourth group. In this case, it stimulates the development of agriculture – payers of the fourth group were able to form a material (land) base for their own economic activities on a contractual basis, and citizens were given the opportunity not to pay land tax on land plots not used by them. In this case, it stimulates the development of agriculture – payers of the fourth group were able to form a material (land) base for their own economic activities on a contractual

basis, and citizens were given the opportunity not to pay land tax on land plots not used by them.

Land tax benefits are also provided for legal entities, including sanatoriums and health facilities of public organizations of the disabled, rehabilitation facilities of public organizations of the disabled, public organizations of the disabled, bases for Olympic and Paralympic training, preschool and secondary schools of all ownership forms and sources of funding, institutions of culture, science, education, health care, social protection, physical culture and sports, which operate at the expense of the state or local budgets, state and municipal children's sanatoriums, health and recreation facilities, etc. (Article 282 TCU).

Thus, the establishment of relevant benefits is determined by the peculiarities of the legal status of such taxpayers and the social orientation of their activities. It should be noted that if the subjects subject to the land tax privilege lease out such land plots, buildings or structures, they lose the right to the privilege in respect of such land plots (including the land plots located under the respective buildings and structures). This means that under such circumstances the land tax will be paid on general grounds. This norm does not apply to budgetary institutions when they provide buildings, structures (their parts) for temporary use (lease) to other budgetary institutions, pre-school institutions, general education schools, regardless of ownership and funding sources.

It is also possible to distinguish a "partial exemption" from the payment of land tax. Thus, the provisions of the current tax legislation enshrine land tax benefits for land plots provided to railroads in the right-of-way; provided to mining companies for the extraction of minerals and development of mineral deposits. This "partial benefit" ensures that the land tax for the relevant category of land is collected in the amount of 25 percent of the total amount of land tax, i.e.,  $\frac{1}{4}$  of the amount of land tax, which is calculated in the manner prescribed by the current tax law. Land tax benefits should be distinguished from the objectively conditioned exemption from payment of such tax in respect of certain types of land plots.

## 5. Peculiarities of non-taxation of land

The list of categories of land plots that are not subject to land tax has been directly formalized within the norms of Article 283 of the TCU. Thus, land tax is not paid for: a) agricultural lands located in the radioactively contaminated areas and chemically contaminated agricultural lands; b) agricultural lands that are being temporarily conserved or are in the stage of agricultural development; c) land plots of the state variety testing stations and variety divisions used to test varieties of agricultural crops; d) lands under public roads; e) land plots of agricultural enterprises

of all ownership forms and farms under young orchards, berries and vineyards before their fruiting, as well as hybrid plantations, gene pool collections and nurseries of perennial orchards; e) land plots of cemeteries, crematoria and columbariums; f) land plots on which diplomatic missions are located; g) land plots provided for the construction and maintenance of religious and other buildings necessary to ensure the activities of religious organizations of Ukraine (Article 281 of the TCU).

It should be noted that the introduction of land tax benefits is explained, first of all, by the specifics of the subjects to which they apply. Thus, it is obvious that tax privileges directly affect the subjects of tax relations. However, it should be emphasized that exemption from taxation of certain categories of land is due to objective reasons associated with the object of tax relations, namely the specificity of this or that category of land.

For this category of taxpayers the tax period for land tax can be less than 12 months. Land owners and land users pay land tax from the moment of occurrence of the right of ownership or right to use land. In case of termination of ownership or use of land, the land fee shall be paid by such taxpayers for the actual period of ownership or use of land in a particular year.

It should be noted that the current tax legislation provides for a different procedure for payment of land tax for legal entities and individuals. Thus, legal entities shall pay land tax monthly within 30 calendar days following the last calendar day of the tax (reporting) month. As for the individuals, they are obliged to pay land tax within 60 days from the date of delivery of the tax notice of the decision. If the controlling body has not sent (not served) a tax notice of the decision within the time limits set by the TCU, individuals are released from liability for late payment of tax liability (Article 287 of the TCU).

Control over payment of all taxes, including land fees, is entrusted to the tax authorities. Other bodies do not have the right to check the timeliness, accuracy, completeness of accrual and payment of taxes and fees, including at the request of law enforcement agencies (Article 41 of the TCU).

The object of tax control in the field of payment for land is public relations arising with regard to calculation and payment of land tax. The subject of tax control in the field of land payment is correctness of tax calculation, completeness and timeliness of payment, accrual of financial sanctions, reliability, completeness and timeliness of submission of tax declarations. The task of tax control in the field of land fees is to achieve

these results by collecting and using information necessary for tax control, prevention of violations of tax laws, checking compliance with the law, etc.

## 6. Conclusions

Having analyzed the current legislation defining the legal mechanism of land tax payment, it should be noted that a number of norms of tax legislation do not meet the requirements of the time. The state of land taxation is determined by the lack of a balanced state policy in this area, unstable legislation, significant changes in land ownership. In our opinion, a significant problem is the lack of clearly defined principles of payment for the use of land, especially now, in the absence of a clear and transparent mechanism for evaluating land.

The need to improve tax legislation in the field of land payment is due to social processes taking place in Ukraine in connection with the decentralization reform, land reform, the opening of the land market. According to the author, it is necessary to expand the powers to regulate the collection of land tax by local governments, to establish a procedure for the targeted use of land tax revenues, to introduce tax incentives for small agricultural producers, to exclude rental payments for state and municipal land from taxation.

It can also be noted the fact that the transfer of land management authority to the local level will improve the quality of land management. This, in turn, will increase tax revenues to local budgets, which is necessary for the development of rural communities in the context of increasing their autonomy within the framework of the decentralization reform. With regard to land tax, the legislator uses marginal rates as fixed minimum and maximum rates for land plots with or without normative monetary evaluation.

Once again, it should be emphasized that this position of the legislator is quite understandable and justified, since in fact the relevant limits are set, within which local self-government bodies may show some variability when approving decisions on land tax rates on the territory of a district.

It should be emphasized that the normative monetary evaluation of land is a key factor in determining appropriate tax rates.

Land valuation is especially important under conditions of decentralization of power, which involves the alienation by territorial communities of their land, as well as on the eve of the formation of a market turnover of agricultural land, the formation of which is taking place in Ukraine.

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