
МИТНЕ, ПОДАТКОВЕ ТА ФІНАНСОВЕ ПРАВО



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BODIES OF SELF-ORGANIZATION OF THE POPULATION: GETTING TAXES, PAYING TAXES

ОРГАНИ САМООРГАНІЗАЦІЇ НАСЕЛЕННЯ: ПРОБЛЕМИ ОПОДАТКУВАННЯ

ABSTRACT

At present, the municipal reform is carried out in Ukraine. Ukrainian municipal legislation’s main drawback consists of its lack of details, when it comes about the local territorial community groups; very often they organize themselves in the house committees, street committees, block committees etc. According to the law, they are named “bodies of self-organization of population”. The Ukrainian Parliament has yet to clear a lot of provisions about these legal entities, including their funding and taxation. These provisions can be included either to the Tax Code of Ukraine or to the Law of Ukraine On Bodies of Self-organization of Population. The Parliament has adopted several previous laws. Some of the most recent examples include the

1998 Parliament Act on the General Meetings of the Territorial Communities and 1984 Law of the Ukrainian Soviet Socialist Republic On self-taxation of rural population. Therefore, the Parliament has not revised or reformed – for a long time. Ukrainian legal authors research mostly the constitutional and the civil law aspects of the bodies of self-organization of population. The authors conclude that Ukraine, to revive the bodies of self-organization of the population, needs changes in the legislation on the tax questions they are involved. As of the moment, they can organize self-taxation with a lot of difficulties and have to pay taxes as the typical non-governmental organizations. Therefore, it is necessary: firstly, to exclude the bodies of self-organization of the population from the subjects of taxation; secondly – to improve the norms about their material and financial basis in order to make them really financially independent from the local government bodies, thirdly – to revise the legislation on self-taxation in order to make it up-to-date and easy to follow. Such changes will also further develop the country's local government system.

The key words: bodies of self-organization of population, house committees, street committees, block committees, local authorities, municipal authorities, local taxes, local budget.

Introduction

In 2014 Ukraine has launched the decentralization and the municipal reforms, which core element is to be redirecting revenues from the state to local budgets. However, Ukrainian municipal legislation's main drawback consists of its lack of details, when it comes about the local territorial community groups; very often they organize themselves in the house committees, street committees, block committees etc. According to the law, they are named "bodies of self-organization of population". The country's parliament – the Verhovnya Rada – has yet to clear a lot of provisions about these legal entities, including the issues of taxation, which are crucial for performing the functions of such entities. It is argued that respective provisions can be included either to the *Tax Code of Ukraine* or to the Law of Ukraine *On Bodies of Self-organization of Population*.

The Parliament has adopted several previous laws. Some of the most recent examples include the 1998 Verkhovna Rada's by-law *On the General Meetings of the Territorial Communities* and 1984 Law of the Ukrainian Soviet Socialist Republic *On self-taxation of rural population*. Therefore, the Parliament has not revised or reformed – for a long time – regulations and tax acts leading to the bodies of self-organization of population's further development. No one ever writes about the taxation of these bodies.

Ukrainian legal authors research mostly the constitutional and the civil law aspects of the bodies of self-organization of population. Experts

propose to see them as non-profit organization, when it comes about their taxation (Mishyna, 2015, 68; Mishyna. 2004, 100). Some lawyers pay the utmost attention to the special regime of their taxation (Orlovskiy, 2006). Researchers propose to modernize Soviet inspired policy on these bodies, using the civil law and Civil Code as the means – and to see bodies of self-organization of population as the typical NGOs (the problem is that they are not). They try to use civil law to deal with this problem and pay no attention to the potential of the *Tax Code of Ukraine*. It is very interesting, as the only provisions about using taxation to support the bodies of self-organization of population still dates from Soviet times (Krupnyk, Orlovskiy, 2005). And surely, there are no provisions of the reverse procedure in that legal acts – about the taxation of bodies of self-organization of population.

However, in these works, authors pay almost no attention to tax aspects of the bodies of self-organization of population's activity. These experts in constitutional and administrative law almost do not research the tax problems involved both taxation of these bodies and the taxes, introduced to support their activity. Orlovsky and Krupnik represent the exception, with their works looking at the basic provisions of how do the bodies of self-organization of population pay and receive taxes.

This study shows which aspects of bodies of self-organization of population receiving and paying taxes should appear in Ukraine's Tax Code.

1. Current Problems and Legal Provisions on the Proposed Topic

Ukraine's constitution's authors created the foundation for the bodies of self-organization of population's existence in the country. The constitution guarantees that this bodies are created voluntary, only if the members of the territorial community will show their will to organize and register such a body and follow the certain procedure (art. 140). The supreme law also declares the country as a "democratic state" (art. 1). Moreover, the constitution provides that, "the person, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is responsible to a person for his activities. The assertion and guarantee of human rights and freedoms is the main responsibility of the state" (art. 3).

In addition, a number of the 1996 Constitution's articles deal with the basics of the local government in Ukraine (Chapter XI), but there are no other direct provisions about the bodies of self-organization of population.

The 1996 Constitution's provisions are detailed in the 1997 Law of Ukraine *On Local Self-Government in Ukraine*. Some of this Law's provisions are important for the understanding the problem with the bodies of self-organization of population paying taxes and receiving tax money.

First, the 1997 Law of Ukraine *On Local Self-Government in Ukraine* claims that "bodies of self-organization of the population – representative bodies created by residents who legally reside in the territory of a village, settlement, city or parts thereof, for the purpose of solving the tasks stipulated by this Law".

The article further provides that, "own authority of the body of self-organization of the population – authority granted in accordance with the Constitution and laws of Ukraine to the village, settlement, city or district in the city (if created) council to the body of self-organization of the population during its formation; delegated authority of the body of self-organization of population – authority of the village, settlement, city, district in the city (if it is created) council, which it additionally given to the body of self-organization of the population".

These provisions are important, because the body of self-organization of the population always and for sure gets money from the village, settlement, city or district in the city budget only to perform its delegated authority. As for their own authority, the local councils might give some budget money to support it, but it is purely voluntary. Nowadays as usual, no money is given for this purpose, so the body of self-organization of the population should rely on its own resources and to demonstrate the outstanding fundraising creativity. Why creativity? Because one of the principles of the body of self-organization of the population's organisation and functioning is the financial independence (art. 5).

Now it is time to have a look, could the body of self-organization of the population in Ukraine can really be financially independent.

At first, what does it mean – the body of self-organization of the population is financially independent? Independent from whom? Or independent from what? Here it should be mentioned that the bodies of self-organization of the population are included to the local government system of Ukraine, but they aren't the bodies of local government (therefore, they aren't the bodies of public power). This provision comes from the 2001 Law of Ukraine *On Bodies of Self-Organization of the Population* and is highly important for the taxation purposes. So, for the purposes of taxation the body of self-organization of the population is seen not as

a body of public power, but as the private entity; to be more precise, – as the non-governmental organization). After mentioning that bodies of self-organization of the population are not the bodies of public power, it becomes clear – the “financial independency” is independence from the bodies of public power, mostly the local government bodies.

Now, if the body of self-organization of the population is financially independent from the local councils, local government executive bodies, this fact should be reflected in the legal provisions about the financial basis of the bodies of self-organization of the population. Now one should take into consideration articles 16-17 of 2001 Law of Ukraine *On Bodies of Self-Organization of the Population*: “Article 16. Financial basis of the body of self-organization of the population. 1. The financial basis of the activity of a body of self-organization of the population is: the funds of the respective local budget, which are provided to it by the village, settlement, city, district in the city (if created) by the council for the exercise of the powers granted to the body of self-organization of the population; voluntary contributions of individuals and legal entities; other proceeds not prohibited by law. 2. The body of self-organization of the population shall independently use the financial resources received from the local budget for the purposes and within the limits determined by the respective council”.

This article adequately reflects the Soviet approach to the legal regulation of the bodies of self-organization of the population. Firstly, the list of the resources, that create the financial basis of this bodies, is opened by the local budget money. The second part of art.16 also mentions the local budget money. So these provisions dominate in article 16 and leave some questions if the bodies of self-organisation of the population in Ukraine are really independent from the local government bodies. This model envisaged dominate municipal financing of the bodies of self-organization of the population.

Like the local government bodies, the bodies of self-organization of the population can introduce taxes at their territory. But this source is considered to be less important, then the local budget money, – at least, the legislator thinks so, as he places this source at the second position in the list, cited above. Why do we talk about the taxation, and the list mentions “voluntary contributions”? Not being the body of the public power, it can’t introduce the mandatory taxation. Though the voluntary taxation is opened for the bodies of self-organization of the population – according to the provisions of the Ukrainian legislation.

It should be mentioned that the Ukrainian legislation has no up-to-date provisions about the self-taxation of the territorial community members in the benefit of the bodies of self-organization of the population. If one reads the 1997 Law of Ukraine *On Local Self-Government in Ukraine* or 2001 Law of Ukraine *On Bodies of Self-Organization of the Population*, it might seem that it is very common, and that the self-taxation is widely used nowadays. In fact it is not.

The only legal document about self-taxation of the territorial community members in the benefit of the bodies of self-organization of the population is dated 1984 and it is the Law of Ukrainian Soviet Social Republic *On self-taxation of rural population*. This Law represents the Soviet approach to the bodies of self-organization of the population. Firstly, it is clear from the year it was adopted. Secondly, the provision of this Law shows that the self-taxation is heavily controlled by the local bodies of public power. The following provisions illustrate that thesis the most vividly: ‘1. To establish that self-taxation of the population can be carried out in rural areas in order to attract additional funds for the implementation of measures for the improvement and socio-cultural development of settlements in the territory village councils of people’s deputies. 2. Self-taxation shall be organized by the Village Council of People’s Deputies. Self-tax decisions are made by the general meeting (assembly) of citizens who reside in a settlement (part of it) or in several settlements in the territory of the village Council of People’s Deputies. The Executive Committee of the Village Council of People’s Deputies convenes general meetings (assembly) of citizens and notifies them within ten days about the time and place of convening of general meetings (assembly)’.

What is still the same now, if one will leave aside the Soviet legacy – is that the body of self-organization of the population, in order to get some money using the taxation, should organise the territorial micro-community’s general meeting and to persuade the members of this micro-community (who live in the house, street, block etc.) to agree to use self-taxation.

One should keep in mind that here another problem arises, and this problem is connected with the Soviet legacy. The legal provisions on the general meetings at the local level are heavily Soviet-inspired, though the relevant by-law was passed several years after the Ukraine gained the independence. Such a document, as 1993 by-law of Verkhovna Rada *On General Meetings at the Local Level*, should be used. The problem is – it is too old, and (let us repeat ourselves) too Soviet-inspired to be used nowadays.

Coming back to the 2001 Law of Ukraine *On Bodies of Self-Organization of the Population*, it is also necessary to look at the article 17 “Material basis of activity of body of self-organization of population”: “The material basis for the activity of the body of self-organization of the population is the property transferred to it by the council for operational management. The body of self-organization of the population uses the property according to its purpose for the fulfillment of its powers”.

This article also demonstrates the Soviet-based approach to the body of self-organization of the population. Lawmakers even haven’t tried to expand the list of the sources, that can be used by the body of self-organization of the population to acquire the property. As in the Soviet times, it is only the local council’s property...

So many Soviet-inspired provisions in the sphere of the body of self-organization of the population getting tax money lead to the logical consequence – the taxation of the body of self-organization of the population’s activity isn’t legally regulated now (just like in the Soviet times!). The body of self-organization of the population, if has profit, pays taxes as a non-government organisation. This can’t be considered correct, because non-governmental organisations have some features, that distinguish them from the bodies of self-organization of the population. For example, non-governmental organisations are based on the interest, while the bodies of self-organization of the population are based on the territory of living. Non- governmental organisations aren’t the part of the local government system, like the bodies of self-organization of the population, and so on.

So, both collecting taxes and paying taxes for the bodies of self-organization of the population in Ukraine is not an easy question.

2. Propositions on the Legislation to be Amended

Dealing with the taxation questions, related to the bodies of self-organization of the population, the legal provisions about getting and paying taxes should be reformed, taking into consideration the following provisions:

a) bodies of self-organization of the population shouldn’t be heavily dependent from the local government bodies, as it used to be in the Soviet times;

b) bodies of self-organization of the population are non-profit according to their nature, but they are also considered to be the element of the local

government system is Ukraine. That is why in terms of taxation they shouldn't be treated like the other non-profit organizations.

At first the provisions on the financial control over the bodies of self-organization of the population should be revised. They are Soviet-inspired heavily. To be more exact, this is article 24 of the 2001 Law of Ukraine *On Bodies of Self-Organization of the Population*. Now it is as follows: "Article 24. Control over the financial activity of a body of self-organization of the population. Control over the financial activities of the body of self-organization of the population within the limits of their powers shall be exercised by:

- 1) village, settlement, city, district in the city (if created) council and its executive bodies;
- 2) the executive committee, which has registered the body of self-organization of the population;
- 3) meeting (conference) of residents at the place of residence;
- 4) public authorities".

When it comes about the financial control, it would be more logical – taking into consideration the principle of the bodies of self-organization of the population's financial independence – that only two subjects will have the possibility to control their financial activity:

- a) the population of the relevant territory (members of the territorial micro-community);
- b) the fiscal bodies.

As for the local government bodies, it should be mentioned, that if the local council delegates some authorities to the body of self-organization of the population – and some money to fulfil the tasks – it should be allowed to the executive committee of this local council to check, how this money was used by the recipient. Otherwise, in order to follow the principle of the bodies of self-organization of the population's financial independence, local government bodies shouldn't interfere in the financial activity and accounting of the bodies of self-organization of the population.

And surely, the order of the control subjects, mentioned in the list above, should be totally reversed, – at first fiscal bodies, then the members of the territorial micro-community, then the local government bodies – but only the executive committees of the local councils, not both executive committees and the local councils.

Looking at the article 17 of 2001 Law of Ukraine *On Bodies of Self-Organization of the Population*, titled "Material basis of activity of body

of self-organization of population”, one can get the impression, that the legislators do not understand, how does the typical house, street, block etc. committee operates. They are the typical legal persons, that need, as the material basis for their activity, not only “the property transferred to it by the council for operational management”. Let’s assume that the office was transferred along with the computers and printers, copying machines. They will also need stationery and other office supplies, communications. They consume energy and other resources, so they can hardly normally operate, if they will only get as the material basis for their own activity what is mentioned in art.17 of this Law.

In order to make bodies of self-organization of the population independent from the local government bodies, they should be able to collect money from the members of the territorial micro-community to cover the expenses for their operation. The positive example can be shown by condominiums (according to the Ukrainian legislation, the condominiums are called “associations of co-owners of apartment buildings” and are regulated by the 2001 Law of Ukraine *On the Associations of Co-owners of Apartment Buildings*. Both this Law and Law of Ukraine *On Bodies of Self-Organization of the Population* were introduced in 2001, but the first legal act is much more progressive in terms of correspondence of the subject’s nature and the subject’s taxation and financial and material basis. Associations of co-owners of apartment buildings are regulated as the legal persons, much more independent from the local government bodies, than the bodies of self-organization of the population. In fact, it should be vice versa.

Article 4 of the 2001 Law of Ukraine *On the Associations of Co-owners of Apartment Buildings* states that: “The property of the association is formed from: property conveyed to him by the co-owners; income received; other property acquired on grounds not prohibited by law. The property acquired by the association at the expense of the contributions and payments of the co-owners is their joint property”.

For the bodies of self-organization of the population the joint property isn’t a relevant issue, but the idea can be used – to see their property as the property of the typical legal person.

The associations of co-owners of apartment buildings are legal persons of the private law, and pay taxes as the non-profit organisations. The bodies of self-organization of the population’s nature is much more complex – they are closer to the public law legal persons (if registered as a legal

peron, they might not). Plus, they are usually not very big in terms of the number of employees and do not operate on the daily basis. The typical house, street, block committee do not perform the activity every day 5 days a week. Their officials work on the voluntary basis and perform the activity in case of the need. Taking into consideration this fact, there is a reason to cancel the taxation for the bodies of self-organization of the population. This will save a lot of time and resources for them. If the officials will not deal with the tax papers, they will have more time for the protection of the rights of the territorial micro-community's members.

The associations of co-owners of apartment buildings collect the monthly fee from the apartment owners to cover some utilities, common for the apartment building, and to cover association's expenses. The bodies of self-organization of the population aren't responsible for paying utilities and housekeeping expenses, so they need much less money. But, the activity of the bodies of self-organization of the population is much more politically oriented, their nature is very close to the body of public power. That is why it is logical, if they will get not the fee money, but the tax money. It isn't correct to make the local councils to "share" the local budget money with the bodies of self-organization of the population, as it will decrease the level of independence of the house committees, street committees, block committees etc. The Soviet experience showed all of the negative sides of such a decision. So the legislation on self-taxation should be up-to-date and easy to follow.

Being the part of the local government system in Ukraine, the bodies of self-organization of the population can't always stay away from the local budget money. Especially when it comes about the delegated authority. In order to perform this activity, these bodies should get the budget money. But it is hardly correct to name the local budget money as the main element of their financial basis. It is the Soviet approach again, that totally breaks the principle of the financial independence of the bodies of self-organization of the population. So, par 1 of the article 16 "Financial basis of the body of self-organization of the population" of the 2001 Law of Ukraine *On Bodies of Self-Organization of the Population* might be amended as follows:

"1. The financial basis of the activity of a body of self-organization of the population is:

- a) money, received from the self-taxation;
- b) voluntary contributions of individuals and legal entities;
- c) local budget money (mostly to perform the delegated authorities);

d) others, not prohibited by law”.

It might be a reason to make the provisions on the financial resources of the bodies of self-organization of the population more detailed. Taking into account the current practice of these bodies, the practitioners recommend considering, that “the basis of the bodies of self-organization of the population’s independent budget may be assigned and own revenues. Assigned revenues are funds, that come from local taxes and fees and which, at the discretion of the local council. It can include:

- a) parking fees;
- b) payment for the documents issued by the bodies of self-organization of the population on behalf of local government bodies;
- c) part of the funds from the privatization of communal property located in the territory of the bodies of self-organization of the population;
- d) percentage of the rent for communal property located on the territory of the bodies of self-organization of the population;
- e) administrative fees and other revenues” (Krupnyk, Orlovskiy, 2005, 49).

Again, this list would be relevant for the bodies of self-organization of the population, that perform the delegated authorities.

Conclusions

The authors conclude that Ukraine, to revive the bodies of self-organization of the population, needs changes in the legislation on the tax questions they are involved. As of the moment, they can organize self-taxation with a lot of difficulties, and have to pay taxes as the typical non-governmental organizations. Therefore, it is necessary: firstly, to exclude the bodies of self-organization of the population from the subjects of taxation; secondly – to improve the norms about their material and financial basis in order to make them really financially independent from the local government bodies, thirdly – to revise the legislation on self-taxation in order to make it up-to-date and easy to follow. Such changes will also further develop the country’s local government system.

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АНОТАЦІЯ

Мишина Н. В. Органи самоорганізації населення: проблеми оподаткування. – Стаття.

На сучасному етапі в Україні відбувається муніципальна реформа. Основним недоліком українського муніципального законодавства є його недостатня деталізація щодо місцевих територіальних мікро-громад та їхніх органів – часто

вони організуються в будинкові комітети, вуличні комітети, квартальні комітети тощо. Відповідно до закону їх називають “органами самоорганізації населення”. Парламент країни – Верховна Рада – ще не розробив багато положень щодо окремих аспектів функціонування цих суб’єктів, не є виключенням і відповідні податкові питання. Ці положення можуть знайти своє закріплення або у Податковому кодексі України, або у Законі України “Про органи самоорганізації населення”. Деякі з чинних актів у цій сфері – це Положення Верховної Ради про загальні збори громадян за місцем проживання 1998 р. та Закон Української Радянської Соціалістичної Республіки 1984 р. “Про самооподаткування сільськогосподарів і не реформував податкове законодавство у цій сфері. В юридичній літературі оподаткування цих органів майже ніхто не досліджує. У статті автор аргументує, що Україні, щоб відродити органи самоорганізації населення, потрібні зміни в законодавстві щодо податкових питань, які стосуються цих органів. На даний момент ці органи можуть організувати самооподаткування з великими труднощами та вимушені сплачувати податки як типові неурядові організації. Тому необхідно: по-перше, виключити органи самоорганізації населення з переліку суб’єктів оподаткування; по-друге, вдосконалити норми про їх матеріальну та фінансову базу, щоб зробити ці органи справді фінансово незалежними від органів місцевого самоврядування, по-третє, переглянути законодавство про самооподаткування, щоб зробити його сучасним та легким для застосування. Такі зміни також сприятимуть подальшому розвитку системи місцевого самоврядування в країні.

Ключові слова: органи самоорганізації населення, будинкові комітети, квартальні комітети, вуличні комітети, органи місцевого самоврядування, муніципальне управління, місцеві податки, місцевий бюджет.

АННОТАЦІЯ

Мишина Н. В. Органи самоорганизации населения: проблемы налогообложения. – Стаття.

На современном этапе в Украине происходит муниципальная реформа. Основным недостатком украинского муниципального законодательства является его недостаточная детализация относительно местных территориальных микро-громад и их органов – часто они организуются в домовые комитеты, уличные комитеты, квартальные комитеты и т.п. Согласно закону, их называют “органами самоорганизации населения”. Парламент страны – Верховная Рада – еще не разработал многие положения, касающиеся отдельных аспектов функционирования этих субъектов, не являются исключением и соответствующие налоговые вопросы. Эти положения могут найти свое закрепление или в Налоговом кодексе Украины, или в Законе Украины “Об органах самоорганизации населения”. Некоторые из действующих актов в этой сфере – это Положение Верховной Рады об общем собрании граждан по месту жительства 1998 и Закон Украинской Советской Социалистической Республики 1984 г. “О самоналогообложении

сельского населения”». Таким образом, Парламент в течение довольно длительного времени не пересматривал и не реформировал налоговое законодательство в этой сфере. В юридической литературе налогообложение этих органов почти никто не исследует. В статье автор аргументирует, что Украине для возрождения органов самоорганизации населения нужны изменения в законодательстве по налоговым вопросам, касающимся этих органов. На данный момент эти органы могут организовывать самоналогообложение с большим трудом и вынуждены платить налоги как обычные неправительственные организации. Поэтому необходимо: во-первых, исключить органы самоорганизации населения из перечня субъектов налогообложения; во-вторых, усовершенствовать нормы об их материальной и финансовой базе, чтобы сделать эти органы действительно финансово независимыми от органов местного самоуправления, в-третьих, пересмотреть налоговое законодательство о самообложении, чтобы сделать его современным и легким для применения. Такие изменения также будут способствовать дальнейшему развитию системы местного самоуправления в стране.

Ключевые слова: органы самоорганизации населения, домовые комитеты, квартальные комитеты, уличные комитеты, органы местного самоуправления, муниципальное управление, местные налоги, местный бюджет.

