

Обліково-правові аспекти адміністрування військового збору

В українську податкову систему із серпня 2014 року введено військовий збір. Метою статті є вивчення проблем правового забезпечення справляння та обліку військового збору та обґрунтування шляхів їх вирішення. На основі контент-аналізу норм Податкового кодексу України з'ясовано проблеми правового забезпечення процесу справляння та обліку військового збору. Виявлено, які положення податкового законодавства було порушено внаслідок його введення та дії. Встановлено, що сучасне законодавство не передбачає належність військового збору до загальнодержавних податків і зборів. Запропоновано алгоритм визначення його місця в податковій системі. Доведено тотожність між елементами військового збору й податку з доходів фізичних осіб, коли не брати до уваги базу оподаткування, бо вона як в момент введення збору в дію, так і дотепер, залишається законодавчо не визначеною. Використання об'єкта обкладання військовим збором як бази для його визначення викликало зростання загальної ставки оподаткування місячного доходу працівника. Запропоновано механізм, за яким нарахування доходів у формі заробітної плати, винагороди, передбаченої за цивільно-правовими договорами за виконання робіт (надання послуг), супроводжується зменшенням об'єкта обкладання військовим збором на суму податку з доходів фізичних осіб. На основі тлумачення в законодавстві понять податку та збору обґрунтовано необхідність цільового використання коштів військового збору, пов'язаного з отриманням його платниками спеціальної вигоди, у тому числі від виконання на їх користь уповноваженими органами та особами юридично значущих дій. Умотивовано потребу змінити тимчасовий статус військового та порядок його розрахунку, а також доведено неправомірність подвійного обкладання загального місячного (річного) оподатковуваного доходу фізичної особи.

Ключові слова: військовий збір, податок, код класифікації доходів бюджету, подвійне оподаткування, принципи податкового законодавства.

Учетно-правовые аспекты администрирования военного сбора

С августа 2014 года в украинскую налоговую систему введен военный сбор. Целью статьи является изучение проблем правового обеспечения взимания и учета военного сбора и обоснование путей их решения. На основе контент-анализа норм Налогового кодекса Украины определены проблемы правового обеспечения процесса взимания и учета военного сбора. Определено, какие положения налогового законодательства были нарушены в результате его введения и действия. Было установлено, что современное законодательство не предусматривает принадлежность военного сбора к общегосударственным налогам и сборам. Предложен алгоритм определения его места в налоговой системе. Доказано идентичность элементов военного сбора и налога с доходов физических лиц, если не принимать во внимание базу налогообложения, поскольку она как в момент введения сбора в действие, так и поныне, остается законодательно не определенной. Использование объекта обложения военным сбором в качестве базы для его определения обусловило рост общей ставки налогообложения месячного дохода работника. Предложено механизм, по которому начисление доходов в форме заработной платы, вознаграждения, предусмотренного гражданско-правовыми договорами за выполнение работ (предоставление услуг), сопровождается уменьшением объекта налогообложения военным

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сбором на суму налога из доходов физических лиц. На основе толкования в законодательстве понятий налога и сбора обоснована необходимость целевого использования средств военного сбора, связанного с получением его плательщиками специальной выгоды, в том числе от совершения в их пользу уполномоченными органами и лицами юридически значимых действий. Мотивированна потребность в изменении временного статуса военного сбора и порядка его начисления, а также доказано неправомерность двойного налогообложения общего месячного (годового) дохода физического лица.

Ключевые слова: военный сбор, налог, код классификации доходов бюджета, двойное налогообложение, принципы налогового законодательства.

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Accounting and Legal Aspects of Military Fee Administration

The article studies the issue of legal coverage of charging and accounting the military fee and explains the ways of solving it. As based on the content analysis of the provisions of the Tax Code of Ukraine the issue of the legal coverage of charging and accounting the military fee is clarified. It has been found out what the provisions of the tax laws and regulations have been violated due to the introduction and effect of this fee. It has been established that the current law does not provide for the military fee rated as nationwide taxes or fees. The algorithm of defining its place in the tax system has been proposed. It has been proved that the elements of the military fee and those of the personal income tax are identical without reference to the taxation base because the latter both when introducing the fee and till now has not been defined in accordance with law. The framework has been suggested according to which the assessment of revenues in the form of salary or awards as stipulated by independent contractor agreements (provision of services) comes with a decreased military fee unit by the amount of the personal income tax. The urgency of changing the provisional status of the military fee and the procedure for calculating the same has been explained and the unlawfulness of double taxation of the total monthly (annual) taxed personal income has been proved.

Keywords: military fee, tax, budget revenue classification code, double taxation, principles of tax legislation.

Introduction. Since 03.08.2014 military fee has been introduced in Ukrainian tax system. First, relying upon the Law of Ukraine No. 1621 [1], subsection 10 of section XX of the Tax Code of Ukraine (TCU) [2] has been completed by item 16¹ according to which it has been planned to produce the military fee up to 01.01.2015. Then, at the end of 2014, the period has been prolonged up to its “entering into legal force according to the decision of Verkhovna Rada of Ukraine on the completion of the Reform of Armed Forces of Ukraine” [3; 2, i. 16¹ subsection 10, section XX]. The new compulsory due introduced changes in taxation procedure of incomes of physical entities, increased their tax burden as well as duties of tax agents. By all means, the innovation could not be neglected by scientists.

Literature Review. Historical aspects of introduction of temporary military taxes and fees, current problems of legal regulation in Ukraine, and practices of military fee production were studied by L.H. Markova and R.O. Alekseeva [4, pp. 31-36]. Tax mechanism for military fee production from physical entities in the context of historical retrospective was studied by S.V. Orlyk [5, pp. 27-33; 6, pp. 119-129]. “The importance of military fee for the state budget and expediency of its introduction under the crisis situation in the state” were determined by T.O. Kalashnyk and O.M. Reznik [7]. Ways to improvement of legal regulations concerning military fee in Ukraine basing upon the analysis of current legislation were developed by L.V. Ostrivna [8, pp. 200-207], O.M. Rieznik, and Ye.V. Ihnatenko [9, pp. 838-841].

However, despite apparent simplicity of the military fee administration and published results of researchers, clarifying by taxmen, comments by accountants and lawyers, a number of problems to be cross-lighted and solved are remained. The paper concerns the problems.

Objective of the study. The aim of the study is to determine (with the help of content analysis of the current legislative acts) prevailing problems concerning production and account of the military fee as well as substantiation of ways to solve the problems.

Results and discussion. It is common knowledge that relations in the sphere of production of taxes and dues are regulated by the Tax Code of Ukraine [2, item 1.1, article 1]. Articles 9 and 10 of chapter I of the Code include complete list of available national and local taxes and dues; military fee is not among them. Up to now, general principles for its production have been regulated by item 16¹ of subsection 10 “Other transitional provisions” of Section XX of the TCU [2]. The fact that the due is national may be cleared up only with the help of following legislative quest. First use subitems 1.4 of item 16¹ of subsection 10 of section XX of the TCU [2] to identify that imputation, deduction, and payment (recomputation) of the due to the budget is implemented according to a manner prescribed by article 168 of the Code. Then subitem 168.4.1 of its content helps us determine that “a tax deducted from profits of residents and non-residents is placed into a budget according to the Budgetary Code of Ukraine” (BCU) [10, item 2, article 29]; thus, the military fee is among profits of general fund of the National Budget of Ukraine. Hence, it is the

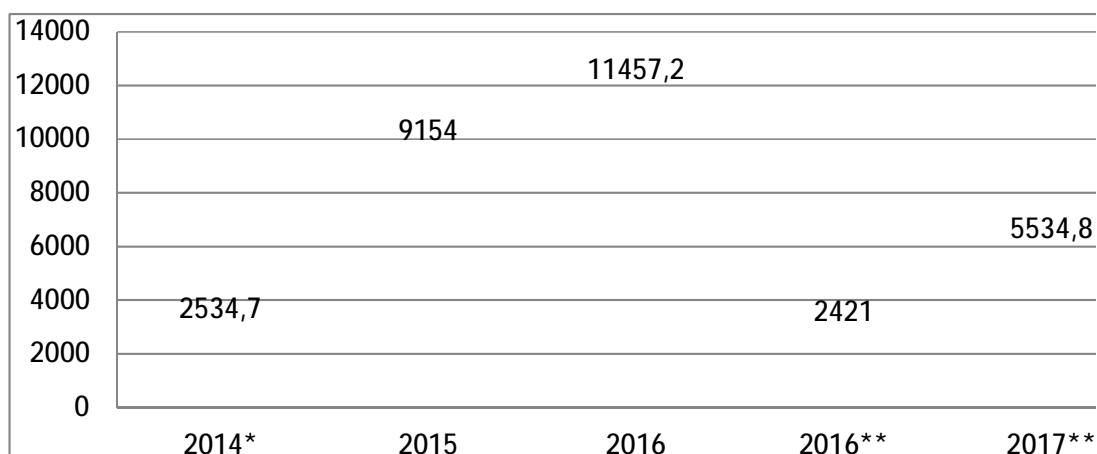
national due which has increased domestic tax system since August 2014 violates one of principles being a basis of tax legislation of Ukraine (according to the TCU); namely, stability principle: “taxes and dues ... cannot vary during a budgetary year” [2, subitem 4.1.9, article 4]. In other words, it is legally to introduce new taxes and dues only from the 1st of January of a new budgetary year.

Name of the due states its purposiveness explicitly. However, no legislative act determines a list of charges financed using its resources.

S.V. Orlyk supposes [5] that “origination of specific, temporary military taxes and dues in the context of tax systems of different periods of Ukrainian history depended on the necessity to attract extra finance to

national budget. The finance had to meet the demands of increasing military expenditures during active war efforts”. O.M. Rieznik and Ye. Ihnatenko confirm: “military tax in Ukraine was introduced to finance and support Ukrainian Army” [9, p. 838]. L.H. Markova and R.O. Alekseeva [4, p. 33] believe that prolongation of the due action “depends upon the need in extra budget revenues to ensure fighting efficiency of the country and renew infrastructure of its Eastern regions”. The majority of average citizens being payers of the tax adhere to the opinion.

Figure 1 demonstrates data concerning total income of general fund of the National Budget of Ukraine resulting from the military fee revenue.



Notes: * – from 03.08. to 31.12. 2014;

** – January-May of budgetary year.

Figure 1. Military fee revenue to the national budget of Ukraine, UAH mln

Source: developed by the author according to data by the Ministry of Finance of Ukraine [11].

In fact (see the Fig. 1), military fee production makes it possible to attract huge sums: from UAH 9.2 bln in 2015 to UAH 11.5 bln in 2016. During January-May 2017 almost UAH 5.5 bln have been raised. Rates of the tax revenue are 130.9 % from the comparable period a year earlier.

Item 16¹ of subitem 10 “Other transitional provisions” of section XX of the TCU [2] states that the due is imposed “temporarily up ... to the completion of the reform of Armed Forces of Ukraine”. It may be concluded that funds provided from the military fee are used for financing of Ukrainian Army.

The State Program for the reform and progress of Armed Forces of Ukraine (AFU) for 2012-2017 promulgated by the Project Office of Reforms of the

Ministry of Defense of Ukraine [12] does not contain any fixed dates of the projects implementation. Not long ago the President of Ukraine approved the State Program for AFU progress up to 2020 [13]. Hence, administration of the military fee will be actual up to 2020. Analysis of information by Ukrainian mass media makes it possible to understand that the term is not boundary one. That is why it is quite expedient today not to consider it as a temporary due.

Analysis of scientific sources, content of legislative acts and official correspondence testify that authors of the military fee imposition, certain scientists, and employees of fiscal organs equate conceptions of a tax and a due notwithstanding that article 6 of subsection I of the TCU defines them strictly (Table 1).

Table 1

Official determination of a tax notion and a due notion

Tax [2, item 6.1, article 6]	Due (payment, fee) [2, item 6.2, article 6]
Compulsory payment to a corresponding budged. The payment is paid by tax payers in accordance with the Tax Code of Ukraine	Compulsory payment to a corresponding budged. The payment is paid by tax payers if they obtain specific benefits including those resulting from a <i>feasance in behalf on such persons</i> by the state bodies, by the local self-government bodies, other authorized bodies, and persons of <i>legally significant actions</i> (italicized by the author)

Source: formed by the author.

Бухгалтерський облік

Taking into consideration the interpretation of notions of a tax and a due in the context of taxation, one may state that the military fee money should be spent exclusively on the rehabilitation of military men, material support of families of dead servicemen etc. Thus, tax agents should place the money to corresponding designated fund rather than to a common fund of the

State Budget. L.H. Markova, R.O. Alekseeva [4], O.M. Rieznik, and Ye.V. Ihnatenko insist on intended use of the military fee money [9, p. 840].

It is known that the process of the military fee imposing should involve determination of components listed in item 1 of article 7 of TCU (Table 2).

Table 2

Legislative foundations for the military fee production

Compulsory components of a tax (a due) [2, item 7.1, article 7, chapter I]	Legislative provisions	
Tax payer	[2, item 16 ¹ , subsection 10, section XX]	1.1. The due is paid by those determined in item 162.1 of article 162 of the Code
Taxation object		1.2. Taxation object involves the revenue determined in article 163 of the Code
Taxation basis		Not determined
Tax rate		1.3. Tax rate is 1.5 per cent of the taxation object determined in subitem 1.2 of the item
Procedure for tax charge		1.4. Charges, deductions, and payments (recomputations) of the due to the budget are performed according to the procedure determined in article 168 of the Code according to the rate determined in subitem 1.3 of the item.
Terms and procedure of tax payment	[2, chapter 2, section 14]	1.5. Those determined in article 171 of the Code are responsible for deductions (charges) and payments recomputations of the due to the budget.
		1.6. Payers of the due should meet tax requirements according to the forms and methods determined in article 176 of the Code
Tax period		Calendar quarter
Terms and procedure for applying papers concerning tax charge and payment		During 40 calendar days following the last calendar day of fiscal quarter

Source: formed by the author.

As it is seen from data in Table 2, payers of the military fee, taxation object, charge procedure, deductions and its payments (recomputations) to the budget, those responsible for deduction (computation) and payment (recomputation) of the due to the budget, a form and a procedure ensuring the tax compliances [2, item 16¹, subsection X, section XX] are similar to individual income tax (IIT) as similar articles of section IV of TCU determine them. However, at the level of treasury the similarity disappears. In the part, determined in articles 64 and 66 of BCU [10], IIT becomes a share of the incomes belonging to a local government budgets; they are considered while determining volumes of interbudgetary transfers. Military fee is transferred completely to a general fund of the state budget. That is why accounting of IIT receipt (except income IIT in the form of interest) is performed in the treasury at the account of 3321 called "Sums require to be distributed among budget levels"; in terms of military fee the accounting is performed at the account of 3111 "Receipts to common fund of the State Budget" [15].

It is known that "tax agent is a person whom the Code obliges to calculate, deduct from incomes being calculated (paid off, given) to a payer and transfer taxes to the corresponding budget on behalf of and at the expense of the tax payer finance" [2, item 18.1, article

18], military fee payers are individuals (residents and nonresidents of Ukraine) who receive tax object and who are obliged to pay it according to TCU [2, item 15.1, article 15].

Hence, from wages calculated for an employee (tax payer) the employer (tax agent) should timely and completely perform compulsory deduction of IIT and military fee (Table 3) and transfer them to the corresponding accounts of the State Treasury.

Data from Table 3 demonstrate application of similar taxation object while calculating EIIT and military fee.

Current double taxation of a monthly income of employee which is considered both by economic scientists [4], legislative scientists [8, p. 206; 9, p. 839] and experts contradicts the principles of the development of taxation system determined by Commercial Code of Ukraine (CCU) [16, article 17]. At the first glance, it seems that both Commercial Code and Tax Code have similar legislative power. However, CCU regulates availability of taxes in the mechanism of state regulation of commercial activity and TCU regulates relations in the sphere of tax and due production [2, item 1.1, article 1; 16, part 1, article 17] and elimination of double taxation considers only if it concerns the incomes obtained by residents from the sources of finance beyond Ukraine [2, article 13].

Object and procedure to calculate compulsory deductions

Individual income tax (IIT)	Military fee (MD)
Taxation object of a resident is: total monthly (annual) taxable income; incomes from source of funds in Ukraine which are finally liable to taxation while their calculating (paying, extension); foreign incomes – incomes (revenues) obtained from the sources beyond Ukraine. Taxation object of a nonresident is: total monthly (annual) taxable liable to taxation incomes from source of funds in Ukraine; incomes from the sources of Ukraine being finally liable to taxation while their calculating (paying, extension) [2, article 163]	Taxation object is the incomes determined by article 163 of TCU [2, subitem 1.2, item 16 ¹ , subsection 10, section XX]
If EMILT < UAH 2240.00, then $EIIT = (EMILT - STB) \times TR / 100.$ If EMILT > UAH 2240.00, then $EIIT = EMILT \times TR / 100$	$MD = EMILT \times TR / 100$

Source: formed by the author.

Note: EMILT is employee's monthly income liable to taxation, TR is taxation rate, STB is social tax benefit and UAH 2240.00 is boundary monthly income of an employee giving him/her right to get STB in 2017.

Thus, relying upon the sphere of action of the two normative and legislative acts, one may state that double taxation of personal incomes contradicts norms of national law; thus, it is an appropriate time to make changes in a procedure of the military fee charging.

While charging incomes in the form of wages, a base of military fee taxation should be determined as a charged wages decreased by EIIT amount; while charging incomes in the form of remuneration according to civil and legislative agreements for performed work (provision of services) it should be determined as a charged sum of such remuneration decreased by EIIT amount.

Thus, quite expedient formula to calculate a sum of a military fee being deducted may be as follows:

$$MD = (EMILT - EIIT) \times TR / 100$$

The above help draw following **conclusions**. Military fee has been introduced into national taxation system since 03.08.2014 with the violation of following principles of tax legislation of Ukraine [2, articles 4 and 7]: stability (neither taxes nor dues can be changes during a budget year), unified approach to imposing taxes and dues (determination of all compulsory tax components at the legislative level).

Taxation basis has not been defined yet. The rest of its compulsory components coincide with compulsory components of individual income tax (see Table 2).

Lack of taxation basis has resulted in double taxation of individual income tax and increase in general rate of their income taxation up to 19.5 % (1/5 of income) contradicting the principles of taxation system development [16, article 17]. The laws regulating taxation should involve elimination of double taxation [16, part 2, article 17], and taxation system should be developed relying upon a principle of social justice meaning determination of taxes and dues in accordance with paying capacity of their payers [2, subitem 4.1.6, article 4; 16, part 1, article 17]. Immiserization of the Ukrainians is seen in statistic data concerning extension of subsidies. In March 2017 43.6 % of total number of households in the country were subsidized. 35.4 % of the households consist of one person, almost third part consist of two people, and the rest – of three and more people [17].

Currently there is no official determination of the content of terminological structure “military fee” and its status in national tax system (it is not included into a list of national taxes and dues indicated in article 9 of TCU) [2]. At the same time: 1) part 2 of article 29 of Budget Code of Ukraine has been complemented with item 1²: “military fee ... belongs to incomes of common fund of state budget of Ukraine” [1; 10]; 2) Classification of Budgetary Incomes determines a code of the military fee as 11011000 [18]; 3) military fee is transferred completely to a common fund of the State Budget; it is charged at the account 3111 “Receipts to common fund of the state budget” [15].

Military fee is not a military tax! It is a just a component of tax incomes of the state budget as a compulsory due. A list of budgetary expenditures ensured by the military fee has not been officially determined yet. Current status of military fee in Ukrainian tax system envisages intended use of its funds. Money transferred to a common fund of the state budget with classification code of its incomes 11011000 should be spent only for the measures aimed at the tax payers' special benefit including their production to their advantage by state bodies, local government bodies, and other authorities as well as legal entities.

Taking into consideration terms of implementation of a programme of Armed Forces of Ukraine development as well as a state of political and economic situation in our country, it is possible to forecast that application of the military fee will last at least several years. That is why currently it is very topical issue to remove its status as temporary and to solve immediately burning problems of its legal regulation.

History of economy show that war exhausts inevitably state treasury (Voltaire), gives ... an excuse for new monetary exactions (Jean-Jacques Rousseau). To sum it up, it is required to pay attention to the fact that “War is just when it is necessary; arms are permissible when there is no hope except in arms” (Niccolo Machiavelli). Everyone should understand that “universal harmony is not worth a tear of one child” (F. Dostoevsky).

4 Список використаних джерел

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