



## The Rule of Law as a Fundamental Principle of the Concept of Legal Regulation of Tax Security of Ukraine

LIUBOV M. KASIANENKO<sup>1\*</sup>, PAVLO V. KOLOMIIETS<sup>2</sup>, OLEH V. POPOVYCH<sup>3</sup>

<sup>1,3</sup>Department of Financial Law, UNIVERSITY OF THE STATE FISCAL SERVICE OF UKRAINE, UKRAINE.

\*E-mail: kasianenko6860@uohk.com.cn

<sup>2</sup>Department of Entrepreneurship and Law, POLTAVA STATE AGRARIAN UNIVERSITY, UKRAINE

### ABSTRACT

The article is devoted to the analytical review of the scientific works of scientists concerning the rational structuring and improving of principles of the tax system. The authors focus on the ambiguity of the views of scientists from other countries on the place and role of individual tax principles as the components of the tax system. The issue of improvement of the tax law system and its rational structuring of principles in Ukraine continues to be relevant. The role of the principles of tax law since Ukraine's independence as part of the Ukrainian legal system, has increased in modern life in terms of absolute performance. The authors of this article focus on the ambiguity of the views of scientists from other countries on the place and role of individual tax principles as the components of the tax system. The background of this research caused on the urgent need to identify the specificities of scientific views of scientists from other countries on tax principles. The research objective is to improve the hierarchical structure of modern Ukrainian system of taxation principles and review principles of A. Smith devoted to issues of individual taxing. The results of the analysis of scientific literature from other countries on issues of studies the tax principles are indicating the declarative character of enshrined in the Tax Code of Ukraine principles of tax law. The essence of these 11 principles of tax law is a direct continuation of tax principles of scientists from other countries. However, the practical application of enshrined in the General Part of the Tax Code of Ukraine principles of tax law is problematic in conjunction with the implementation of regulations of the Special Part of this Tax Code.

**Keywords:** Tax Code of Ukraine; Constitution of Ukraine; Revenue; Citizen; Payment.

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# El Estado de Derecho como Principio Fundamental del Concepto de Regulación Jurídica de la Seguridad Fiscal de Ucrania

LIUBOV M. KASIANENKO<sup>1\*</sup>, PAVLO V. KOLOMIIETS<sup>2</sup>, OLEH V. POPOVYCH<sup>3</sup>

<sup>1,3</sup>Department of Financial Law, UNIVERSITY OF THE STATE FISCAL SERVICE OF UKRAINE, UKRAINE.

\*E-mail: kasianenko6860@uohk.com.cn

<sup>2</sup>Department of Entrepreneurship and Law, POLTAVA STATE AGRARIAN UNIVERSITY, UKRAINE

## RESUMEN

El artículo está dedicado a la revisión analítica de los trabajos científicos sobre la estructuración racional y la mejora de los principios del sistema fiscal. Los autores se centran en la ambigüedad de las opiniones de los científicos de otros países sobre el lugar y el papel de los principios fiscales individuales como componentes del sistema tributario. La cuestión de la mejora del sistema de derecho fiscal y su estructuración racional de los principios en Ucrania sigue siendo relevante. El papel de los principios del derecho fiscal desde la independencia de Ucrania como parte del sistema jurídico ucraniano, ha aumentado en la vida moderna en términos de rendimiento absoluto. Los autores de este artículo se centran en la ambigüedad de los puntos de vista de los científicos de otros países sobre el lugar y el papel de los principios fiscales individuales como los componentes del sistema tributario. El trasfondo de esta investigación se basa en la necesidad urgente de identificar las especificidades de los puntos de vista de los científicos de otros países sobre los principios fiscales. El objetivo de la investigación es mejorar la estructura jerárquica del moderno sistema ucraniano de principios tributarios y revisar los principios de A. Smith dedicados a cuestiones de tributación individual. Los resultados del análisis de la literatura científica de otros países sobre las cuestiones de los estudios de los principios fiscales están indicando el carácter declarativo de los principios consagrados en el Código Tributario de Ucrania de la ley de impuestos. La esencia de estos 11 principios de derecho fiscal es una continuación directa de los principios fiscales de los científicos de otros países. Sin embargo, la aplicación práctica de los principios de derecho tributario consagrados en la parte general del Código Tributario de Ucrania es problemática en relación con la aplicación de las normas de la parte especial de este Código Tributario.

**Palabras clave:** Código Fiscal de Ucrania; Constitución de Ucrania; Ingresos, Ciudadano; Pago.

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## 1. Introduction

The issue of improvement of the tax law system and its rational structuring of principles in Ukraine continues to be relevant. The role of the principles of tax law since Ukraine's independence as part of the Ukrainian legal system, has increased in modern life in terms of absolute performance (Ushakov et al., 2017; Piskova and Tsurkan, 2020; Onishchenko and Bobrovnyk, 2019). The authors of this article focus on the ambiguity of the views of scientists from other countries on the place and role of individual tax principles as the components of the tax system (Schmiel and Weitz, 2019; Beretta, 2018; Taufik, 2018). The background of this research caused on the urgent need to identify the specificities of scientific views of scientists from other countries on tax principles (Bliznets et al., 2018; Kozybaeva et al., 2019; Polovchenko, 2019b). The declared in the Tax Code of Ukraine (2010) principles of tax law is the subject of active discussion of Ukrainian scientists. O. Artyuh (2016) in her article explores questions of classification principles of tax audit.

I. I. Babin and A. V. Demin (2011) in their article argue that the principles of tax law serve as the effective instruments of permission of legal disputes, by the applied facilities of the legal adjusting, which are follows by tax law subjects under reaching the aims of the practical activity. The principles of tax law are use in the most difficult situations, which do not succeed to be settling, coming running to the ordinary norms-orders. O. O. Barabash (2014) in the article "The principle of fiscal adequacy in the tax legislation of Ukraine" analyzes the principle of fiscal adequacy and explains that its contents are listed on communications and the impossibility of the existence of the principle of fiscal adequacy without regard to the principle of social justice. A. M. Kotenko (2014) describes in the article the issue of principles in the tax and legal regulation. W. M. Hussey and D. C. Lubick (1996) have written the "Basic World Tax Code and Commentary" in a very timely manner while carrying on a heavy load of tax advisory assistance around the world. It should be noted that the "Basic World Tax Code and Commentary" rests on a number of assumptions or principles, both overall and in the case of each of the 4 categories of taxation (Onishchenko and Suniehin, 2018; Polovchenko, 2019a).

R. K. Gordon (1996) says, that the greater transitivity of world tax principles perceived by some has been partly responsible for the increased presence of model tax codes. A number of such evolving models are now used by experts in providing technical assistance. Some models are simply examples of tax reform statutes proposed or enacted in developing and transition countries. The first edition of Basic World Tax Code and Commentary (BWTC) is perhaps one of the most important of these models. There is assumption, that no model or sample code has yet been advanced as a universal solution for all needs, it is obvious that reference to them, be they actual legislation or more theoretical examples like the BWTC, has been an important element in the drafting of many new tax codes in transition and developing countries (Hussey and Lubick, 1996). General principles of tax were described in 1769 by W. Petty (2011) in his treatise of taxes and contributions. A. Smith (2007a) in his book "An inquiry into the nature and causes of the wealth of nations", says: "Before I enter upon the examination of particular taxes, it is necessary to premise the four following maxims with regard to taxes in general".

The research objective is to improve the hierarchical structure of modern Ukrainian system of taxation principles.

## 2. Materials and Methods

A. Smith (2007a) is known in the academic world as an economist, author of a study on "An inquiry into the nature and causes of the wealth of nations". However, his first scientific study was a philosophical work called "The theory of moral sentiments", which came to light in 1759. This original work of ethics reveals the important role of morality in society and human life. He focuses on the study of the tenets of justice and equality. It is noteworthy that A. Smith (2007b) asserts in the last phrase of this philosophical work: "In another work I shall try to give an account of the general principles of law and government and of the different revolutions they have gone through in the different ages and periods of society, not only in relation to justice but also in relation to policy, taxation, and arms, and whatever else is the object of law". Thus, in his next economic paper on the "An inquiry into the nature

and causes of the wealth of nations”, A. Smith (2007a) convincingly asserts that the “wealth of the people” is created, in particular, by the honest fulfillment of the duty of every citizen of the State to pay taxes, that is, by the principle of equality (general obligation).

The results of analysis of the structure of the Tax Code of Ukraine (2010), made by the authors of this article, show that A. Smith's (2007a) tax principles, formulated by him over 240 years ago in the scientific study “An inquiry into the nature and causes of the wealth of nations”, formed the basis of the normative provisions of Article 4 “Basic principles of tax legislation of Ukraine”. Before consideration of certain taxes, A. Smith (2007a) in his book “An inquiry into the nature and causes of the wealth of nations” previously outlined four general provisions for taxes in general. The private revenue of individuals, it has been shown in the first book of this Inquiry, arises, ultimately from three different sources; rent, profit, and wages. Every tax must finally be paid from someone or other of those three different sources of revenue, or from all of them indifferently. I shall endeavor to give the best account I can, first, of those taxes which, it is intended should fall upon rent; secondly, of those which, it is intended should fall upon profit; thirdly, of those which, it is intended should fall upon wages; and fourthly, of those which, it is intended should fall indifferently upon all those three different sources of private revenue (Smith, 2007b). As M. M. Alekseenko (2020) notes in his work “A look at the development of the doctrine of tax among economists A. Smith, J.-B. Seya, Ricardo, Sismondi and D. S. Mill”. A look at the development of the doctrine of tax on economists A. Smith, J. - B. Seya, Ricardo, Sismondi and D. S. Mill. A. Smith gives his famous four laws that serve as his criterion for assessing all taxes.

The first principle of tax says, that the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation, is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate. In the observation or neglect of this maxim, consists what is called the equality or inequality of taxation (Shevchuk, 2020; Abramov and Sokolov, 2017; Duraković and Cosic, 2019). Every tax, it must be observed once for all, which falls finally upon one only of the three sorts of revenue above mentioned, is necessarily unequal, in so far as it does not affect the other two. In the following examination of different taxes, I shall seldom take much farther notice of this sort of inequality; but shall, in most cases, confine my observations to that inequality which is occasioned by a particular tax falling unequally upon that particular sort of private revenue which is affected by it. Thus, the main tenet of A. Smith's (2007a) first principle is the generality of taxation for the citizens of the state, which leads to the so-called “equality of taxation”. At the same time, A. Smith (2007a) points out that any tax is certainly unequal.

The principle of generality of taxation for the citizens of the state is still relevant today, as evidenced by the norms of the Constitution of Ukraine (1996) and the Tax Code of Ukraine (2010). The principle of generality of taxation for the citizens is declared in the norms of Article 67 of the Constitution of Ukraine (1996), according to which everyone is obliged to pay taxes and levies in accordance with the procedure and in the extent established by law. All citizens annually file declarations with the tax inspection at their place of residence, on their property status and income for the previous year, by the procedure established by law. Citizens have equal constitutional rights and freedoms and are equal before the law (Article 24). Everyone is obliged to strictly abide by the Constitution of Ukraine and the laws of Ukraine, and not to encroach upon the rights and freedoms, honor and dignity of other persons. Ignorance of the law shall not exempt from legal liability (Article 68). In Ukraine, the principle of the rule of law is recognized and effective. The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it. The norms of the Constitution of Ukraine are norms of direct effect (Article 8). The following are established exclusively by the laws of Ukraine the system of taxation, taxes and levies (Monaenko, 2020).

Tax Code of Ukraine regulates relations in the sphere of taxation and duties, in particular, defines an exhaustive list of taxes and duties levied in Ukraine, and the order of administration thereof, payers of taxes and duties, rights and responsibilities, competence of regulatory authorities, powers and duties of their officials in the exercise of fiscal control as well as responsibility for the violation of tax laws. The tax legislation of Ukraine is based on the following principles: 4.1.1. generality of taxation – each person is required to pay taxes and duties established by this Code, laws on customs of which he is the payer under the provisions of this Code; 4.1.2. equality of all taxpayers before the law, prevention of any form of tax discrimination – ensuring equal treatment of all taxpayers regardless of social, racial, national, religious affiliation, form of ownership of a legal entity, citizenship of an individual, place of origin of the capital (Tax Code of Ukraine...,2010).

### **3. Results and Discussion**

The second principle of tax, states that the tax which each individual is bound to pay, ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. Where it is otherwise, every person subject to the tax is put more or less in the power of the tax-gatherer, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself. The uncertainty of taxation encourages the insolence, and favors the corruption, of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality, it appears, I believe, from the experience of all nations, is not near so great an evil as a very small degree of uncertainty (Smith, 2007a).

Thus, the second principle of the tax, governs the precise definition, not arbitrariness in its establishment. Everyone has the right to entrepreneurial activity that is not prohibited by law. Everyone is guaranteed the right to know his or her rights and duties. Laws and other normative legal acts that determine the rights and duties of citizens shall be brought to the notice of the population by the procedure established by law. Laws and other normative legal acts that determine the rights and duties of citizens, but that are not brought to the notice of the population by the procedure established by law, are not in force (Constitution of Ukraine, 1996).

Presumption of legality of decisions of a taxpayer if the rule of law or other legal act adopted on the basis of the law, or if the rules of different laws and different regulations allow mixed (multiple) interpretation of the rights and duties of taxpayers or regulatory authorities, resulting in ability to take a decision in favor of the taxpayer as well as the regulatory authority; 4.1.8. Neutrality of taxation – establishment of taxes and duties in a manner not affecting the increase or decrease in the competitiveness of a taxpayer; 4.1.9. Stability – changes of any element of taxes and duties cannot be made later than six months before the beginning of the new fiscal period where new rules and rates are to be applied. Taxes and fees, their rates, and tax privileges cannot be changed during the fiscal year; 4.1.11. Unified approach to the establishment of taxes and fees – legal definition of all mandatory elements of the tax (Tax Code of Ukraine..., 2010).

The third tax principle, states that every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it. A tax upon the rent of land or of houses, payable at the same term at which such rents are usually paid, is levied at the time when it is most likely to be convenient for the contributor to pay; or when he is most likely to have wherewithal to pay. Taxes upon such consumable goods as are articles of luxury, are all finally paid by the consumer, and generally in a manner that is very convenient for him. He pays them by little and little, as he has occasion to buy the goods. As he is at liberty too, either to buy or not to buy, as he pleases, it must be his own fault if he ever suffers any considerable inconveniency from such taxes. 4.1.10. Uniformity and convenience of payment – established of deadlines for the payment of taxes and fees, based on the need to ensure the timely receipt of the budget revenues for the exercise of budget expenditures and convenience of payment thereof for taxpayers (Smith, 2007a; Code of Ukraine, 2010).

The fourth tax principle, states that every tax ought to be so contrived, as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state. A tax may either take out or keep out of the pockets of the people a great deal more than it brings into the public treasury, in the four following ways. First, the levying of it may require a great number of officers, whose salaries may eat up the greater part of the produce of the tax, and whose perquisites may impose another additional tax upon the people (Sidorova and Tikhonova, 2017; Sidorova, 2015; Abuqadumah et al., 2019; Smith, 2007a). Secondly, it may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and employment to great multitudes. While it obliges the people to pay, it may thus diminish, or perhaps destroy, some of the funds which might enable them more easily to do so. Thirdly, by the forfeitures and other penalties which those unfortunate individuals incur, who attempt unsuccessfully to evade the tax, it may frequently ruin them, and thereby put an end to the benefit which the community might have received from the employment of their capitals (Azam and Qureshi, 2021; Saparbayev et al., 2020; Tscheha, 2011).

An injudicious tax offers a great temptation to smuggling. But the penalties of smuggling must arise in proportion to the temptation. The law, contrary to all the ordinary principles of justice, first creates the temptation, and then punishes those who yield to it; and it commonly enhances the punishment, too, in proportion to the very circumstance which ought certainly to alleviate it, the temptation to commit the crime (Shakbutova et al., 2020; Bobrova, 2016; Bobrova and Garipov, 2018). Fourthly, by subjecting the people to the frequent visits and the odious examination of the tax-gatherers, it may expose them to much unnecessary trouble, vexation, and oppression; and though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which every man would be willing to redeem himself from it. It is in some one or other of these four different ways, that taxes are frequently so much more burdensome to the people than they are beneficial to the sovereign. The evident justice and utility of the foregoing maxims have recommended them, more or less, to the attention of all nations (Sholpanbaeva et al., 2019; Borodin et al., 2020; Amirbekova et al., 2017). All nations have endeavored, to the best of their judgment, to render their taxes as equal as they could contrive; as certain, as convenient to the contributor, both the time and the mode of payment, and in proportion to the revenue which they brought to the prince, as little burdensome to the people. The following short review of some of the principal taxes which have taken place in different ages and countries, will show, that the endeavors of all nations have not in this respect been equally successful (Malyarets et al., 2021).

The main criteria for this principle of tax were reflected in the principles of tax law, which are set out in subparagraphs 4.1.3., 4.1.5., 4.1.6., 4.1.7. of paragraph 4.1. Article 4 of the Tax Code of Ukraine. Inevitability of the responsibility for violations of tax laws defined by the law; 4.1.5. Fiscal competence – establishment of taxes and duties, taking into account the need to achieve a balance between budget expenditures and revenues thereof; 4.1.6. Social justice – establishment of taxes and duties in accordance with taxpayers' ability to pay; 4.1.7. Efficiency of taxation – establishment of taxes and duties, the revenue from payment of which the budget is significantly higher than the cost of administration thereof (Tax Code of Ukraine..., 2010).

#### **4. Conclusions**

The results of the study indicate that the principles of the tax, written in 1776 by A. Smith, are still relevant today. They were reflected in the norms of the Constitution of Ukraine and the Tax Code of Ukraine, – the main tenet of A. Smith's first principle is the generality of taxation for the citizens of the state, which leads to the so-called "equality of taxation". At the same time, A. Smith points out that any tax is certainly unequal. At the same time, it should be emphasized that the A. Smith's tax principles, written by him at the beginning of the development of capitalism (the so-called manufactory production), are declarative in their essence. The fact is that the principles of the tax legislation, normalized in the Tax Code of Ukraine today do not correspond to the realities.

The question is, does the Tax Code of Ukraine adhere to the main tenet of A. Smith's first principle – the generality and equality of taxation for citizens of the state? The answer is no, because, in the Tax Code of Ukraine, the legislator legalized a rule of law according to which the establishment and abolition of taxes and fees, as well as the benefits to their payers, are carried out in accordance with Tax Code of Ukraine by the Verkhovna Rada of Ukraine, while establishing or extending existing tax benefits, such benefits shall apply from the following fiscal year (paragraphs 4.4., 4.5. of Article 4 of the Tax Code of Ukraine). In addition, paragraph 7.2. of Article 7 of the Code stipulates that tax benefits and the procedure for their application may be provided during the establishment of the tax. It is understood that at the legislative level there is a tax discrimination against individual taxpayers.

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