

MUNICIPALITIES AS THE SUBJECTS OF TAX ADMINISTRATION IN THE REPUBLIC OF LITHUANIA

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The subject. Article deals with problem of the participation of the municipalities in tax administration in the Republic of Lithuania.

The purpose of the article is clarify how municipalities may participate in tax administration in the Republic of Lithuania

The methodology of the research includes the analysis of Constitution and legislation of Republic of Lithuania, system analysis, logical-analytical method.

Results, scope of it's application. The existence of a unified state tax system, does not mean that the administrative-territorial unit (municipality) do not possess certain powers upon the introduction of taxes and (or) in the regulation of their collection. So, municipalities obtain part of the revenue by taxes, which rates are established by the councils of municipalities, not exceeding statutory dimensions, etc. Participation of municipalities in tax administration bases on the provisions of the Constitution on the law of the administrative territorial units to self-government and to have their own budget.

Elements of centralization and decentralization, based on the recognition of the single state tax system, are combined in Lithuania in the determination of tax competence.

The tax legislation of the Republic of Lithuania almost does not provide for local governments to participate in the tax collection process or in monitoring their collection.

Tax laws provide the right to local authorities to refine (adjust) the individual elements of taxes, although the establishment of these elements remain the exclusive right of bodies of the state (Central) authorities. Besides, local authorities have the right to establishment and the provision of common and individual tax benefits, the right to use the incomes received in the form of taxes, etc.

Conclusions. Local authorities are involved in the process of tax regulation and possess a certain autonomy in this area - the Council of the municipality has the right to adjust tax rates and provide tax incentives at the expense of its budget. In exercising such rights, local self-government bodies detail the provisions of the tax laws. However, we should take into account the fact that the local authorities operate strictly in accordance with the requirements of the tax laws.

Keywords: tax, tax administration, tax law, taxation, tax legislation, self-government, Lithuania.

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Introduction

It is generally accepted that taxes are the main source of public finance and one of the constitutional forms of budget revenues [1, с. 29]. Part 2 of Art. 127 of the Constitution of the Republic of Lithuania (hereinafter - the Constitution) states: "State budget revenues are formed at the expense of taxes, mandatory payments, fees, revenues from state property and other revenues". The special role of taxes in the formation of public finance of the state, in general, requires the creation of an effective system of administration by the process of collecting such payments. In the Republic of Lithuania, such a system is called the administration of taxes. According to Part 13 of Art. 2 of the Law № IX-2112 of 13 April 2004 "On Tax Administration" tax administration - is "the

implementation of the tax administrator's functions, as well as the duties and rights of the tax administrator and a taxpayer established in tax laws and other laws".

In general, the administration of taxes in the science of tax law of the Republic of Lithuania has both a broad and a narrow meaning. In the broad sense, administration of taxes is understood as a system of competent institutions of the state and municipal entities, as well as the measures they take to establish and collect taxes to the state budget and other monetary funds [2, p. 116]. In the narrow sense, the concept of tax administration is based on the earlier provision of Part 13 of Art. 2 of the Law on Tax Administration, according to which tax administration is limited to the functions of a tax administrator, as well as the fulfillment of duties and the exercise of the rights of a tax administrator and a taxpayer.

Tax administration in the broadest sense includes the system and the activities of various institutions of the state (municipalities) in the area of adoption and implementation of the regulatory requirements of the tax legislation, such as: the Seimas (Parliament), the Government, the Ministry of Finance, the State Tax Inspectorate under the Ministry of Finance, etc. One part of these institutions (the Seimas, the Government, etc.) participate in the process of administering taxes only by adopting certain normative legislative acts, establishing of taxes and determining the order of their collection, and the other part (the State Tax Inspectorate and the Customs Department under the Ministry of Finance, etc.) is involved in the administration of taxes, both through the adoption of legal acts and applying them. Consequently, the administration of taxes broadly covers: 1) taxation activities, 2) activities for organizing and implementing the tax collection process, and 3) overseeing the collection of taxes.

Analysis of the tax legislation of the Republic of Lithuania shows that certain authorities in the field of tax administration are endowed with self-government, which makes it possible to talk about their tax competence and regard them as a subject of tax administration. Under the tax jurisdiction generally refers to the totality of the powers conferred upon the state and its administrative-territorial units in establishing the tax in tax collection, as well as in monitoring the collection of taxes [3, c. 166]. It should be noted that the tax legislation of the Republic of Lithuania practically does not provide the possibility for local governments to participate in the collection of taxes or in the activity to control their collection. In the article, based on the study of tax legislation and the activities of local self-government bodies and using the method of system analysis, logical-analytical and other methods of scientific research, issues related to the tax competence of municipal entities are considered.

1. Constitutional bases of the tax competence of local governments

The Republic of Lithuania, like any other state, has its own tax structure and a state (national) system of taxes, predetermined by the peculiarities of the state structure. The existing state system of taxes in Lithuania began to form immediately after the restoration of independence in 1990, because until that time, imposed on Soviet law, taxes do not conform to any new realities of political and economic life, nor the status and needs of an independent state, so that the state The task was to create its own system of public finance [4, c. 481]. That is why even in the first years of independence were adopted such important tax laws as: Law № I-442 of 31 July 1990 "On taxes on profits of legal entities" and Provisional Law № I-641 of October 5, 1990 "On Income Tax from Individuals". The very same state system of taxes (making up its taxes) was first legislated in Law No. I-974 of June 28, 1995, "On Tax Administration". According to Art. 13 of the Law on Tax Administration of April 13, 2004 the state system of taxes of the Republic of Lithuania includes: 1) value added tax; 2) excises; 3) personal income tax; 4) tax on immovable property; 5) land tax; 6) tax on state natural resources; 7) tax on hydrocarbon resources; 8) pollution tax; 9) the consular fee;

10) stamp duty; 11) tax on property transferred in the order of inheritance; 12) contributions for compulsory health insurance; 13) contributions to the Guarantee Fund; 14) state fee; 15) the tax on lotteries and gambling; 16) taxes for the registration of industrial property; 17) profit tax; 18) contributions on state social insurance; 19) tax on surplus in the sugar sector; 20) tax on production in the sugar sector; 21) customs duties; 22) deductions from income in accordance with the Law on Forests; 23) payment for the use of state property on the right of trust management; 24) payment for a one-time redemption of an additional quota for the production of white sugar and an additional quota for the production of isoglucose.

It should be noted that this list covers both traditional taxes and other mandatory payments to the budget. The existence of a unified state system of taxes, however, does not mean that administrative-territorial units (municipalities) do not have certain powers in establishing taxes and (or) regulating their collection. Thus, the budgets of municipalities receive part of the revenues from taxes, the rates (tariffs) of which, not exceeding the size provided by the tax legislation, establish councils of municipalities, etc. Consequently, one can speak about a certain tax competence of municipalities. The tax competence of is based on certain provisions of the Constitution. According to Art. 10 of the Constitution, the Republic of Lithuania is a unitary state whose territory is one and indivisible for any state entities, and the power is exercised by the Seim, the President of the Republic, the Government and the Court (Article 5). However, Art. 119 of the Constitution guarantees to the administrative-territorial units (municipal entities) the right to self-government, which includes the right to self-organization and initiative of the community of permanent residents in accordance with the competence defined by the Constitution and laws (Part 2 of the statutory state administrative-territorial unit (municipal entity) 3 of Law No. I-533 of July 7, 1994 "On Local Self-Government"). The main purpose of each municipal formation is the creation and improvement of the economic, social, cultural and ecological structure of the managed territory on the basis of combination of interests of self-government and the state [5, p. 1027]. Practical exercise of the constitutional right to self-government is impossible without the possession of a municipal entity by certain property (the property of a municipal formation), without the right of local self-government bodies to independently dispose of public finances and property at their disposal [6, p. 288].

2. Tax competence of municipalities

2.1. General Provisions

The existence of public finance as an object of ownership of municipal entities. An independent budget of municipal entities at a glance may create the impression that municipalities not only have their own finances (revenues) but also have the unlimited right to fully regulate and control their collection into their budget. However, the question arises: is the budget of municipal entities (especially in its revenue part) completely independent of the state budget and of decisions of central governmental institutions? Do local self-government bodies have absolute independence in regulating their incomes? In the search for an answer to a given question, it is first of all necessary to turn to the tax legislation, since income from taxes is a significant part of the local budget revenues. At the same time, one should also take into account the fact that Art. 9 of the European Charter of Local Self-Government ratified by Act No. VIII-1197 of May 25, 1999, "On the ratification of the European Charter on Local Self-Government" obliges the member states of the Council of Europe not only to ensure the right of local self-government bodies within the framework of national economic policy to have sufficient financial means that they can freely dispose of in the performance of their functions, but also to create conditions for getting at least part of the financial means of local self-government bodies from local fees and taxes, the rates of which local governments may establish within the limits determined by law". Art. 67 of the Constitution

establishes the exclusive right of the Seim to establish state taxes by adopting tax laws. The fact that the Seim has an exclusive right to establish taxes means that there is a single system of state taxes based on tax laws in Lithuania. It should be noted that there is no term for local taxes in the legislation of the Republic of Lithuania, hence in the national tax law there is no institution of local taxes (taxes, the right of establishment of which is fully owned by local authorities). Therefore, under local taxes both economic science [7, p. 20-21; 8, c. 247] and the theory of tax law [2, p. 47-50] understand taxes which, in accordance with tax legislation, are credited to the local budget (self-government budget). It should be borne in mind that Art. 36 of the Law on Local Self-Government provides for the right of municipalities to receive income from taxes, the rates of which are set by local authorities themselves, and the Constitution and other laws grant the right of municipal councils to introduce local fees in their territory that in a certain sense fulfill the role of local taxes, although their establishment and collection is not subject to the tax law. In accordance with the current legislation of the Republic of Lithuania the order of taxation by a certain tax is established exclusively by a specific tax law or a government decree adopted on its basis, as well as another legal act adopted on their basis. Thus, the main powers in the field of tax competence are concentrated mainly in the hands of the central authorities. Meanwhile, it should be noted that tax laws grant the right of the bodies of local self-government to detail (adjust) certain elements of taxes, although the very establishment of these elements remains the exclusive right of state (central) authorities. In addition, local governments have the right to establish and grant tax benefits, the right to use income received in the form of taxes, etc. This means that elements of centralization and decentralization are combined in the Republic of Lithuania. Therefore, it can be concluded that local government bodies participate in the tax administration process and have a certain independence in this area. However, the powers of municipalities in the field of regulating the collection of their income from taxes are limited, since the right to introduce taxes and to establish the basic elements of taxes belongs exclusively to the Seim. As a consequence, the fiscal initiative and the responsibility of the local self-government bodies are constrained, their activity in the sphere of public finance is losing its effectiveness [10, p. 208] and the level of fiscal decentralization in the state is recognized as insufficient [11, p. 32-40]. Insufficient development of the institute of local taxes is the main reason of this situation, as a result of which the municipalities own revenues make up only about 10 percent of their budget revenues [12, p. 126].

2.2. Powers of local governments to establish the tax rate

As already noted, the European Charter of Local Self-Government and national legislation guarantee the right of municipalities to receive income from taxes, the rates of which are set by the local self-government bodies. In exercising this right, local government bodies detail and enforce the provisions of tax laws. However, one should take into account the circumstance that local governments act strictly in accordance with the requirements of tax laws. Despite the fact that the state system of taxes of the Republic of Lithuania in accordance with Art. 13 of the Law on Tax Administration makes up even twenty-four taxes, the following ones are credited to the budget of municipal entities (in whole or in part): (1) income tax from the population; 2) the tax on immovable property of natural persons (with the exception of the tax on immovable property, the value of which exceeds 220,000 euros); 3) land tax; 4) tax on property transferred in the order of inheritance; 5) tax for the use of hunting animals. As part of the tax on state natural resources; 6) the tax on lotteries and games; 7) state fee for services provided by local self-government bodies; 8) pollution tax; 9) tax on hydrocarbon resources. These taxes in the Republic of Lithuania that fall into the category of local taxes and the presence of which is regarded as one of the main signs of the financial independence of municipalities [5, p. 1026].

However, in relation to these taxes, the rights of local governments related to the establishment of their rates are limited. The main part of tax revenues of municipal budgets is income from personal income tax. Despite this, local governments generally have no right to regulate (reduce or increase) the overall rate of this tax, either to exempt from paying it, or postpone the payment of this tax. However, there are certain exceptions to the taxation of income received by residents from activities that are carried out if there is an entrepreneurial certificate. According to Part 3 of Art. 6 of Law No. IX-1007 of July 2, 2002 "On Income Tax from the Population", for income received from activities that are carried out in the presence of an entrepreneurial certificate, a fixed-income income tax established by councils of municipal entities is paid. Consequently, the councils of municipalities have the right to set the amount (rate) of such income tax. However, the realization of this right is limited by the requirement of Part 4 Art. 6 of the Income Tax Law - the amount of this income tax can not be less than the "income tax calculated by applying to the amount of twelve minimum monthly salaries effective as of October 1 of the tax period preceding the tax period for which the entrepreneurial certificate specified in paragraph 1 of this article, the income tax rate, which will be effective on January 1 of the tax period for which the entrepreneurial certificate is acquired". The councils of municipal entities are given the right to establish a smaller income tax of a fixed amount for income received from activities that are carried out in the presence of an entrepreneurial certificate: 1) For the disabled, old age pensioners, parents (adoptive parents) raising three or more children (adopted children) under the age of 18, and also older if they are enrolled in schools for general education programs, vocational training in the form of group training using daily, remote mode of organization of the educational process, in the form of individual training with the use of independent, remote method of organization of educational process, training programs in the permanent (day) form of training, parents (adoptive parents) raising a child (adopted child) - a disabled person under the age of 18, as well as older, with respect to whom there is a special need for constant care, the mother (adoptive mother) or father (foster father) single-parent foster child (adopted child) under the age of 18, and also older if he is enrolled in the school for general education programs, etc.; 2) for persons acquiring an entrepreneurial certificate for engaging in the type of activity specified in the entrepreneurial certificate throughout the territory of the Republic of Lithuania, except for the territories of Alytus, Kaunas, Klaipeda, Palanga, Panevėžys, Šiauliai, Vilnius city municipalities and Nyerling Municipality; the territory of the city of Marijampolė Marijampolė municipality, or in the territory of a particular municipal formation; 3) for persons acquiring an entrepreneurial certificate for engaging in activities related to traditional crafts; 4) for persons who, during the period for which the entrepreneurial certificate is acquired, receive income related to the employment relationship or the relationship corresponding to their essence.

It is possible to reduce the amount of income tax in accordance with the requirements of the Law on Income Tax from the Population (for example, for unemployed persons registered at the Labor Exchange, the amount of tax is reduced by 25 percent, and for the so-called long-term unemployed, even by 90 percent). Similar solutions are made in other municipalities.

Consequently, the councils of municipal entities by setting the income tax rate on income derived from activities that are carried out in the presence of an entrepreneurial certificate not only realize the tax competence, but also regulate the employment of residents, and thus affect the overall economic situation in their territory and regulate the revenues.

According to Part 1 of Art. 6 of Law No. X-233 of June 7, 2005 "On Real Estate Tax" the rate of this tax is 0.3 - 3 percent of the tax value of immovable property. The concrete rate of the real estate tax must be established by the council of the municipality until June 1 of the

current tax year. The law also grants the right of councils of municipalities to establish several different rates of tax on real estate, depending on: 1) the appointment of real estate (buildings); 2) state on the results of its technical inspection; 3) the categories of the taxpayer (the size or legal form of the legal entity, the social position of the individual); 4) the location of the real estate on the territory of the municipality. In a similar way, the issue and setting of the land tax rate is decided. Part 1 of Art. 6 of Law No. I-2675 of June 21, 1992 "On Land Tax" establishes that the rate of land tax is from 0.1 to 4 percent of the value of the land plot. Consequently, the establishment of rates of land tax and real estate tax can be considered an exclusive right of councils of municipal entities, which is implemented through the adoption of relevant legal regulations. Thus, the Council of the Municipality of Vilnius, by the decision No. 1-479 of May 25, 2016, "On Approval of Real Estate Tax Rates for 2017", approved three real estate tax rates for 2017 - with a rate of 0.7 percent in the structure used for the purposes of sport, culture, catering, scientific research, provision of hotel services; a rate of 3 percent of the tax value is levied on the unused (used for other purposes), abandoned or left unattended property (structure); all other real estate is taxed at a rate of 1 percent of the tax value. By Decision No. 1-481 of May 25, 2016 "On Establishing Land Tax Rates for 2017", the Council of the Municipality of Vilnius approved the total land tax rate 0.12 percent of the value of the land plot. The increased rate (4 percent of the land value) of the land tax is established for unused land plots, as well as for the plots where the buildings recognized as unauthorized construction are located. Decisions of similar content also apply in other municipalities. From the analysis of the contents of the decisions of the councils of municipalities it follows that an increased rate of land tax and real estate tax is usually established for those subjects of taxation, the state of which does not meet the requirements of special legislation (construction, land, etc.) - land (buildings) is used not for their intended purpose etc. Such objects (land plots, buildings) are included in special lists and their owners (users) are obliged to pay the appropriate ie taxes at a higher rate.

2.3. The powers of local governments to establish and apply tax incentives

Compared with the powers to establish local tax rates, the powers of local governments in the field of establishing tax incentives are much broader. It should be noted that the right of municipal entities to establish tax incentives is already stipulated in the Constitution, Part 2 of Art. 121 of which states: "[...] councils of municipalities can provide tax benefits at the expense of their budget [...]". According to Art. 2 of the Tax Administration Law, tax privilege is the exclusive taxation conditions granted to a taxpayer or a group of taxpayers. As a general rule, universal tax benefits are established only by tax laws. Tax relief or benefits only provide for laws on certain taxes that establish the procedure for taxation with these taxes. However, when clarifying the specifics of the establishment and provision of tax benefits, one should take into account the circumstance that in certain cases the Government and local self-government bodies are authorized to establish and apply tax privileges. As the Constitutional Court of the Republic of Lithuania noted, the legal regulation of taxes is not only their introduction by law, but also the procedure for implementing these laws, which can be regulated by subordinate acts [14, p. 1053].

The fact that councils of municipalities have the right to establish tax incentives should not be regarded as a deviation from the principle enshrined in Art. 4 of the Law on Tax Administration and providing for a legislative form for establishing tax incentives, since councils of local municipalities, when making decisions on tax incentives, always act in accordance with the requirements of the law, and are entitled to establish and apply tax incentives only in relation to those taxes that are credited in the local budget. The right of

councils of municipal entities to grant tax privileges of an individual character in the form of complete exemption from payment of tax and the deferral of tax payment is provided by Art. 7 of the Law on Immovable Property Tax, Art. 7 of the Land Tax Act, Art. 7 of Law No. IX-1239 of December 10, 2002 "On Property Tax Transferring in the Order of Inheritance", Art. 7 of Law No. VIII-1725 of June 13, 2000, "On fees". Unlike universal tax benefits provided for by tax laws, tax incentives established by decisions of councils of municipal entities, as a rule, have an individual character and are applied to a particular taxpayer at his written request [2, p. 94]. Thus, by the decision of the Vilnius City Council of self-government, 8 taxpayers were released from payment of the real estate tax for 2015; no taxpayer was released from payment of the land tax for 2015; 1 taxpayer was exempted from paying the tax for property passing by inheritance, and 1 taxpayer in 2015 was deferred the payment of the tax for the property, passing in the order of inheritance. As can be seen, the councils of municipalities do not often make decisions on the provision of tax incentives of an individual nature. And this is understandable: the application of tax benefits is carried out at the expense of the budget of the municipal entity, which means the reduction of own incomes. However, despite this, criticism is often subject to the decision-making procedure for exemption from payment or reduction of the amount of tax for certain taxpayers, since the law does not oblige councils of municipalities to indicate the motives for making such decisions, which creates prerequisites for violating the principle of social justice in the field of taxation.

Conclusion

It is generally accepted that taxes are the main source of public finance and one of the constitutional forms of budget revenues. The special role of taxes in the formation of public finance of the state, in general, requires the creation of an effective system of administration by the process of collecting of such payments. Analysis of the tax legislation shows that municipal authorities are also given certain powers in the field of tax administration, which makes it possible to talk about their tax competence. The tax competence as a whole implies a set of powers granted to the state, its administrative and territorial units when establishing taxes, in the process of collecting taxes, as well as in the process of controlling the collection of taxes. It should be noted, however, that Lithuania's tax legislation practically does not provide for the possibility for local governments to participate in the collection of taxes or in the activity to control their collection. The Republic of Lithuania, like any other state, has its own tax structure and a state (national) system of taxes, predetermined by the peculiarities of the state structure. Art. 67 of the Constitution establishes the exclusive right of the Seimas to establish state taxes by adopting tax laws. The fact that the Seim has the exclusive right to establish taxes means that there is a single tax system based on tax laws. The existence of a unified state system of taxes, however, does not mean that administrative-territorial units (municipalities) do not have certain powers in establishing taxes and (or) regulating their collection. Thus, municipalities receive part of the revenues from taxes, the rates (tariffs) of which do not exceed the sizes prescribed by law. It should be noted that the participation of municipalities in tax administration is based on the provisions of the Constitution on the right of administrative-territorial units on self-management and on own budget. In accordance with the current legislation, the taxation procedure for a certain tax is established exclusively by a specific tax law or by a decision of the Government adopted on its basis, as well as by another legal act adopted on their basis. Thus, the main powers in the field of tax competence in establishing the basic structural elements of the tax are concentrated mainly in the hands of the central authorities. Meanwhile, it should be noted that tax laws provide the right of local governments to detail (adjust) certain elements of taxes, although the very establishment of these elements remains the exclusive right of state (central) authorities. In addition, local

governments have the right to establish and grant tax benefits, the right to use income received in the form of taxes, etc. This means that in determining the tax competence in Lithuania, based on the recognition of a unified state system for the elements of centralization and decentralization are combined. Consequently, it can be concluded that local government bodies participate in the process of tax regulation and have a certain independence in this area - the council of the municipal entity has the right to adjust tax rates and grant tax benefits from its budget. Carrying out such rights, local governments detail the provisions of tax laws. However, one should take into account the circumstance that local governments act strictly in accordance with the requirements of tax laws.

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