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PUBLIC DECISIONS IN THE TAX LEGISLATION OF GEORGIA

Abstract. According to the tax legislation of Georgia, informing taxpayers is one of the important elements in the tax administration system. On January 1, 2011, with the implementation of the new tax code in Georgia, a public decision was defined as one of the sources of providing information to the taxpayer. It is a decision on the norm of application of the tax legislation, which is issued by the Minister of Finance of Georgia based on the decision of the dispute review body or based on the analysis of the existing practice of taxation of taxpayers by the tax body. A public decision has binding legal force, therefore, regulatory and law enforcement authorities are not authorized to charge a person additional fees and/or sanctions if he acts in accordance with a public decision.

The introduction of the public decision mechanism into the tax legislation of Georgia was supposed to be a measure to facilitate the timely fulfillment of tax obligations by taxpayers, however, until now only 7 such decisions have been adopted and published accordingly. In addition, the use of the mentioned lever for informing the payers did not happen until 2018.

Published public decisions have regulated several issues of taxation, including: income from securities, forgiveness of loan obligations for individuals, operations related to crypto-assets, the right to use a leased asset, delivery of agricultural products produced in Georgia, the difference between the weight of goods at the port of unloading and the port of loading when importing grain, Rules of taxation of tourist services. It is important to note that the basis of public decision-making is the analysis of the existing practice, which determines the need to explain the tax norm more than it is conveyed by the tax code or subordinate normative acts.

The annual reports of the Revenue Service do not reflect information about the effectiveness of using this important lever of tax administration - the mechanism of public decision. In addition, it is difficult to name arguments about the absence of the need to use this means of informing the payers more intensively.

A significant part of tax disputes is partially satisfied complaints in favor of taxpayers, which indicates that there are many disputed legal norms in the tax legislation. In the conditions of a low tax culture in the country, insufficient protection of one of the fundamental rights of taxpayers - the right to receive information about the application of the tax legislation of Georgia - has a negative effect on the timely fulfillment of tax obligations. In the mentioned conditions, the active use of the public decision mechanism has an important role in ensuring the correct and unambiguous application of tax norms, both from the side of the payers and the tax authorities.

Key words: public decision, tax administration, informing the payers.

JEL classification: G18, H21, K2.

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საჯარო გადაწყვეტილებები საქართველოს საგადასახადო

კანონმდებლობაში

აბსტრაქტი. საქართველოს საგადასახადო კანონმდებლობით გადამხდელთა ინფორმირება საგადასახადო ადმინისტრირების სისტემაში ერთ-ერთი მნიშვნელოვანი ელემენტია. საქართველოში 2011 წლის 1 იანვრიდან ახალი საგადასახადო კოდექსის ამოქმედებით გადამხდელისთვის ინფორმაციის მიწოდების ერთ-ერთ წყაროდ განისაზღვრა საჯარო გადაწყვეტილება. იგი წარმოადგენს საგადასახადო კანონმდებლობის გამოყენების ნორმის შესახებ გადაწყვეტილებას, რომელსაც გამოსცემს საქართველოს ფინანსთა მინისტრი დავების განმხილველი ორგანოს გადაწყვეტილებით ან საგადასახადო ორგანოს მიერ გადასახადის გადამხდელთა დაბეგვრის არსებული პრაქტიკის ანალიზის საფუძველზე. საჯარო გადაწყვეტილებას აქვს სავალდებულო იურიდიული ძალა, ამდენად, მაკონტროლებელი და სამართალდამცავი ორგანოები არ არიან უფლებამოსილნი, პირს დაარიცხონ დამატებით გადასახადი ან/და სანქცია, თუ იგი მოქმედებს საჯარო გადაწყვეტილების შესაბამისად.

საჯარო გადაწყვეტილების მექანიზმის შემოტანა საქართველოს საგადასახადო კანონმდებლობაში უნდა გამხდარიყო გადამხდელთა მიერ საგადასახადო ვალდებულებების ჯეროვნად შესრულებისთვის ხელშემწყობი ღონისძიება, თუმცა, დღემდე მხოლოდ 7 ასეთი გადაწყვეტილებაა მიღებული და შესაბამისად, გამოქვეყნებული. ამასთან, გადამხდელთა ინფორმირების აღნიშნული ბერკეტის გამოყენება 2018 წლამდე არ მომხდარა.

გამოქვეყნებული საჯარო გადაწყვეტილებებით დარეგულირდა დაბეგვრის რამდენიმე საკითხი, მათ შორის: ფასიანი ქაღალდებიდან მიღებული შემოსავლების, ფიზიკურ პირთათვის სასესხო ვალდებულებების პატიების, კრიპტოაქტივებთან დაკავშირებული ოპერაციების, საიჯარო აქტივის გამოყენების უფლების, საქართველოში წარმოებული სოფლის მეურნეობის პროდუქციის მიწოდების, მარცვლეულის იმპორტისას დაცლის პორტსა და დატვირთვის პორტში საქონლის წონებს შორის სხვაობის, ტურისტული მომსახურების დაბეგვრის წესები. მნიშვნელოვანია აღინიშნოს, რომ საჯარო გადაწყვეტილების მიღების საფუძველია არსებული პრაქტიკის ანალიზი, რომელიც განაპირობებს საგადასახადო ნორმის უფრო მეტად განმარტების აუცილებლობას, ვიდრე ეს საგადასახადო კოდექსითა თუ კანონქვემდებარე ნორმატიული აქტებით არის გადმოცემული.

შემოსავლების სამსახურის ყოველწლიურ ანგარიშებში არ არის ასახული ინფორმაცია საგადასახადო ადმინისტრირების ამ მნიშვნელოვანი ბერკეტის - საჯარო გადაწყვეტილების მექანიზმის გამოყენების შედეგიანობის შესახებ. ამასთან, რთულია დავასახელოთ არგუმენტები, გადახდელთა ინფორმირების აღნიშნული საშუალების მეტი ინტენსივობით გამოყენების აუცილებლობის არარსებობის შესახებ.

საგადასახადო დავებში მნიშვნელოვანი ნაწილი უჭირავს გადამხდელთა სასარგებლოდ ნაწილობრივ დაკმაყოფილებულ საჩივრებს, რაც იმის მაუწყებელია, რომ სადავო საკანონმდებლო ნორმები საგადასახადო კანონმდებლობაში მრავლადაა. ქვეყანაში დაბალი საგადასახადო კულტურის პირობებში, გადამხდელთა ერთ-ერთი ფუნდამენტური უფლების - საქართველოს საგადასახადო კანონმდებლობის გამოყენების შესახებ ინფორმაციის მიღების უფლების არასრულფასოვანი დაცვა უარყოფითად მოქმედებს საგადასახადო ვალდებულებათა ჯეროვნად შესრულებაზე. აღნიშნულ პირობებში კი საგადასახადო ნორმების სწორად და ერთმნიშვნელოვნად გამოყენების უზრუნველსაყოფაში, როგორც გადამხდელთა, ისე საგადასახადო ორგანოთა მხრიდან, სწორედ საჯარო გადაწყვეტილების მექანიზმის აქტიურ გამოყენებას აკისრია მნიშვნელოვანი როლი.

საკვანძო სიტყვები: საჯარო გადაწყვეტილება, საგადასახადო ადმინისტრირება, გადამხდელთა ინფორმირება.

JEL კლასიფიკაცია: G18, [H21](#), K2.

Introduction and literature review

Several factors influence the correct fulfillment of tax obligations, including: the tax culture of the payers, the severity of the tax, the possibility of ambiguous perception of the legislation, the competence of the payers or the accountant hired by them in tax legislation, the compliance of the tax administration with the behavior of the payers, and others. Among the operating factors, it is important to inform the taxpayers, as often in tax practice it is the non-uniform perception of the law that causes taxpayers to commit tax offenses involuntarily.

The main goal of tax reforms in Georgia recently was tax liberalization, introduction of a mechanism to encourage conscientious taxpayers, offering effective tax services to taxpayers and facilitating the timely fulfillment of tax obligations. In the mentioned approach, the most important thing is to inform the payers and the means used in the mentioned direction, among which the object of our research is public decisions.

In the course of the research, we studied the existing regulations in the tax legislation of Georgia in the direction of informing the payers, specifically in relation to public decisions. Also, the information reflected in the reports published by the Revenue Service was studied.

Methodology

The methods of analysis and evaluation of normative documents, published reports and statistical information are used in the research process. The level of achievement of the goals determined when the legislative changes were initiated has been studied, the statistical information reflected in the reports of the Revenue Service has been analyzed and relevant conclusions have been drawn.

Research Results

Since 2011, with the introduction of the new tax code in Georgia, the means of informing taxpayers have been defined, among which public decisions are one of the important levers. The goal of introducing this means of information was determined from the beginning to establish a uniform practice of taxation, to support taxpayers in the proper fulfillment of tax obligations. According to the Tax Code of Georgia, a public decision is defined as a decision issued by the Minister of Finance on the application of the norm of the tax legislation of Georgia based on the decision of the dispute review body or the tax body's analysis of the existing practice of taxation of taxpayers. In addition, if a person acts in accordance with a public decision, it is not allowed for the controlling/law enforcement body to take a decision contrary to this decision and charge an additional tax/sanction. Allowing such decisions

in the tax legislation from the beginning creates the expectation that individual norms are vague and do not uniquely and clearly define the ways of the proper fulfillment of tax obligations. However, despite such an assumption, our goal is to study the results obtained using this mechanism.

In addition to public decisions, the Tax Code of Georgia defines other means of informing. Consider each of them:

- a written explanation, which is only a recommendation on the application of tax legislation, and not a precise and unambiguous explanation;

- Preliminary decision, which is an individual decision issued by the Revenue Service on the basis of the payer's appeal, regarding obligations and reporting rules in relation to tax, customs, fees. It has binding legal force and it is not allowed to take a decision contrary to the prior decision by the controlling/enforcing authority and to levy tax and/or sanction. In addition, it belongs to the paid services of the Revenue Service;

- The service of a personal tax advisor, whose function is to support specific taxpayers in the proper fulfillment of tax obligations, which does not imply the monetary calculation of tax obligations. It also belongs to the paid services of the Revenue Service.

Therefore, the listed means of information are either paid or only of a recommendation nature. Under the mentioned conditions, only a public decision is a free guarantor with binding legal force in the proper fulfillment of tax obligations. However, the state did not use this important lever for 7 years after its introduction in the legislation, i.e. until 2018.

From 2018 to the current period, a total of 7 public decisions have been issued. Such issues of taxation as:

- For the purposes of taxation of income from securities, in which case the income received from the source in Georgia includes the income received from the delivery of equity and debt securities, the income received from equity securities in the form of dividends, and the income received from debt securities in the form of interest;

- Exemption from taxation of benefits received as a result of forgiveness of loan obligations for individuals by commercial banks and microfinance organizations;

- the issue of VAT and income tax taxation of the income received as a result of the delivery of the crypto-asset;

- the issue of consideration of the right to use the fixed assets leased by the payer as an object of taxation for property tax purposes;

- the issue of consideration of individual cases for the supply of agricultural products produced in Georgia in order to use the tax benefit of exemption from VAT;

- the issue of taxation of the difference between the weight of the goods at the port of unloading and the port of loading when importing grain;

- The issue of VAT taxation of tourist services (organized import and export of tourists to Georgia and supply of tourist products to them).

The content of the listed public decisions reveals that the rules outlined in the tax code and subordinate normative acts on the regulated issues were perceived in different interpretations, which is why, based on the analysis of the existing practice, they were additionally explained by a document with binding legal force.

We studied the annual reports published by the Revenue Service in order to evaluate the effectiveness of the practice of introducing and implementing public decisions in the tax legislation of Georgia, however, it does not contain information about the results achieved using this lever and the problems solved.

It is also worth noting the fact that the statistics of the use of advance decisions by the payers are quite low (Table 1).

Table 1. Statistics of preliminary decisions

Years	Number of preliminary rulings issued by area	
	construction, communication, medical, banking, transport, charity, agricultural activities	Regarding goods, in accordance with the national commodity nomenclature of foreign economic activity, on determining the commodity code or the country of origin
2011	60	
2012	No information has been published	
2013	36	
2014	40	123
2015	62	17
2016	66	39
2017	83	46
2018	64	75
2019	No information has been published	79
2020	58	25
2021	No information has been published	58
2022	No information has been published	97

Source: The table was compiled by the author based on the annual reports published by the Revenue Service

The mentioned statistics reveal that the taxpayers do not intensively use the paid service of the preliminary decision, which is a legally binding document on the taxation of the operations they have carried out or to be carried out.

However, it should be noted here that a large number of payers, mostly payers with small and medium status, do not have information about the lever of public decision.

It should be noted that the Revenue Service actively uses other means of informing taxpayers: open door days, forums, publishing situation manuals, sending personal messages to taxpayers about legislative news, sending short text messages to remind taxpayers about fulfilling tax obligations and submitting declarations, etc. . But despite the above, the use of public solutions with greater intensity is inevitably necessary, for which we can name the statistics of partially satisfied complaints of payers as a noteworthy reason (Table 2).

Table 2. Statistics of partially satisfied complaints in favor of payers

Years	Share of partially satisfied complaints in favor of taxpayers (%)
2016	46
2017	52,5
2018	55,7
2019	No information has been published
2020	55
2021	55
2022	34

Source: The table was compiled by the author based on the annual reports published by the Revenue Service

These indicators are proof that the controlling authority, i.e., the Revenue Service, and the taxpayer understand many issues of tax taxation in different ways. In the presence of various interpretations of the law, when conducting tax audits, the controlling body chooses the worst decision for the payer in order to insure itself, i.e. additionally charges taxes and sanctions, and the payer is forced to appeal it. Under these conditions, more than half of the complaints reviewed by the Disputes Council are partially satisfied in favor of the payers. In this case, the payer suffers significantly because he loses both time and financial resources.

In the conditions of a low tax culture in the country, the non-use of the most legitimate means of informing taxpayers - public decisions in a wider scope - has a negative effect on the regular fulfillment of tax obligations.

Conclusions

- Despite the fact that the goal of the changes implemented in the tax legislation of Georgia is always to simplify it and harmonize it with the European legislation, there are still a lot of vague and ambiguous norms, which have a negative impact on the proper fulfillment of tax obligations;

- the means offered to taxpayers by law to ensure the timely fulfillment of tax obligations - the preliminary decision belongs to a paid service and it is not available to a large part of taxpayers, while some - in the conditions of a low tax culture, cannot properly assess tax risks and do not consider it necessary to spend funds for this purpose. This is evidenced by the presented statistical information, according to which the use of the advance ruling service is mainly related to unavoidable needs related to customs operations, such as determining the country of origin of the goods and the commodity code;

- among the levers defined by the legislation of informing the payers, the means of the highest legitimacy and at the same time available to all types of payers is the issuing of public decisions, however, the state uses it with less intensity.

- In order to ensure a clear understanding of the law, the necessity of issuing public decisions is confirmed by the statistics of partially satisfied decisions in favor of the payers in the complaints considered by the Disputes Council;

- Considering all of the above, the fundamental right of the payer to receive information about the application of tax legislation is violated;

- The goal determined by the changes implemented in order to improve the tax legislation - to facilitate the timely fulfillment of tax obligations for taxpayers, has not been fully achieved;

- More intensive use of the free information service - public decisions should become one of the important stimulators for the timely fulfillment of tax obligations.

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