

УДК 336.221

Victor Pavlovych Zvonar,*Ph.D., Lesya Ukrainka Volyn National University*

FISCAL REGULATIONS OF NONGOVERNMENTAL SOCIAL POLICY AGENTS' ACTIVITIES IN UKRAINE

У статті розглядається питання удосконалення фіскальної складової механізму державного регулювання діяльності соціально орієнтованих громадських організацій та соціально відповідального бізнесу.

Ключові слова: *некомерційні організації, неурядові організації, філантропічні пожертвування, податкове законодавство, звільнення від податку, законодавчі стимули, податковий залік, соціальна політика.*

The article urges the necessity and defines means to improve fiscal legislative regulations of corporate social responsibility and socially-oriented non-profit organizations in Ukraine.

Key words: *non-profit institutions, nongovernmental organizations, philanthropy donations, tax legislation, tax-exemption, legislative stimulus, tax credit, social policy.*

Relevance of the issue. Nongovernmental agencies and organizations contribute (or may contribute) largely to social policy performance in any country. They differ largely from governmental (state-based) social policy agents but are equally ept, representing private sector (business-sector) and non-profit institutions (so-called third sector). Recently the activities of nongovernmental for-profit and non-profit deliverers of social services in Ukraine have noticeably intensified. This has been triggered by corporate social responsibility issues, raised in the society, as well as enhanced accountability of non-profits in the country. Despite that, the governmentally produced fiscal regulations of those activities have remained unfriendly and intact for many years, causing serious hindrances to further development of the entire social policy area. That brings about the urgency to reform the fiscal legislation in this particular aspect, and that urgency can no more stay neglected in the country.

The analysis of researches and publications on the problem. Various aspects of social policy of Ukraine are investigated

in numerous publications by authoritative scientists, such as: E.M.Libanova, O.V.Makarova, V.V.Onikienko, O.A.Grishnova, V.M.Novikov etc. Financial problems of social sphere constitute the realm of scientific interest of M.I.Karlin, V.V.Bliznjuk, V.B.Tropina, D.V.Polozenko etc. Legislative regulations of activities of NGOs are discussed in publications by A.Krupnik, V.Brudnyj, I.Kaminnik, A.Tkachuk, well as analysts of the Center for Noncommercial Law. Publications by I.Akimova, O.Vinnikov, M.Starodubska, analysts of Creative Center Counterpart and the Ukrainian Philanthropists Forum are devoted to problems of regulations of the social responsibility of business in Ukraine. Having been based on these and other known high leveled proceedings, the present article supplements them with the new suggestions concerning improvement in the fiscal component of the mechanism of regulations of activities of nongovernmental social policy agents.

The purpose of the article is to develop recommendations on improvement in the fiscal regulations for activities of nongovernmental partners in reforming social policy in Ukraine.

The core of the article. The analysis of findings from the professional references [3, 5, 6, 7, 8] attests the fact that improvement in fiscal regulation of activity of nongovernmental social policy agents demands quite a number of tasks to solved in Ukraine. The first one relates to a strong need of fixing of the proper limits for profit-oriented (but socially purposed) activities of nonprofit organizations. Ukrainian nonprofits are allowed to gain profit (for any purpose) only trough establishing of NGO-owned business organizations with the status of legal entity. Moreover, any entrepreneurial initiative of a non-profit is liable to taxes in a way classical entrepreneurship is, i.e. no exemptions are possible. The exceptions from this rule list philanthropy organizations, which are allowed to do business without any additional entities, and business entities, owned by associations for disabled persons, obtained profits of which are tax-exempt.

That fact keeping in mind, we claim strong relevancy be given to the contemporary experts' numerous suggestions about total exemption of NGOs from profit tax provided that received profit is publicly utilized, with no exceptions allowable. In addition, we put forward an idea of introducing a legal norm for all varieties of NGOs to opt between the means of profit-making – through or without NPO-owned business organizations ruled as legal entities – depending on a NGO's mission. This is due to the fact that a NPO-owned business organization is not indispensably necessary for profit generation and may lead to unreasonableness of resource-intensive organizational challenges, alternative values of which may turn unexpectedly high.

In this connection exemption of the operations on delivery of goods and services (including paid delivery thereof) within the economic activities of all kinds of nonprofits (not only organizations of invalids) from VAT may also be considered perspective, with this norm fixed in sub-clause 5.2.1 of The Law of Ukraine "On the VAT " (№168/97-ВР). The same purpose should also bring about abolition of restrictions causing nonprofits' deprivation of exemption from land charge, if they engage in profit-making or control an enterprise run on a paying basis, and to amendments to paragraph 5 of the clause 12 Laws of Ukraine "On the Land Charge " (№2535-12).

It is also necessary to consider a future possibility of delegation of some of the governmental social functions to the third sector. The delegation should be followed by assignation of a part of the state property to the third sector. It is recommended to provide two alternatives of such assignation – on paid and on a gratuitous basis. Therefore the norm on exclusion from the list of operations which are VAT-liable must be extended to operations on gratuitous or paid assignation of objects of any ownership (including objects of not privatized housing, uncompleted building and a social infrastructure) to NGOs. Today the specified norm is applied to transactions on gratuitous assignation of such objects from a tax payer (including a governmental or municipal establishment) to another governmental or municipal establishment (see. sub-clause 3.2.9 of The Law №168/97-ВР). In view of this, the privatization legislation (e.g. State Property Fund's "Regulations on privatization of the objects, pertaining to the group "Ж ") should be revised and supplemented with the clause which would provide requisites for both paid (privatization), and gratuitous assignation of the specified objects from the state or municipal property to the property of NGOs.

Another problem, broached by many of experts, is impossibility of obtaining philanthropic donations (and other varieties of irrevocable financial help) as well as membership dues by some of non-profits without the following taxation of these inpayments. This problem is relevant to youth and children's organizations, garage and gardening cooperatives (may not obtain donations and membership dues), and associations/unions of nonprofits (as legal persons) (may not obtain donations and membership dues). The suggestions for the solution of this problem made in the specialized literature, as a rule, advocate broadening of the list of tax-free incomes of the given organizations and, on our opinion, only ease seriousness of the problem, the real reason for which is taxation regime dependency on a certain kind of a organization (see sub-clauses 7.11.3, 7.11.5-7.11.7, 7.12 of The Law № 334/94-ВР).

We propose the main criterion for introduction or abolition of tax break though be the conformity of the virtual activity of a certain non-profit, with its statute mission. Therefore we consider necessary to unify the taxation regime of activities of all types of non-profits, exempting them from profit tax under condition of their strong adherence to their statute missions. This unification should also provide elimination of restrictions authorized by sub-clause 7.11.9 of The Law № 334/94-вр concerning the size of incomes of some organizations which in case of a certain excess are liable to the profit tax on the general conditions. It is also recommended to introduce a practice of exemption of funds or property from the profit tax in case they are obtained by a non-profit gratuitously or as the irrevocable financial help or donations, being strictly purposed and utilized according to the mission of a non-profit. That is supposed to promote effective development of the obtained resources.

Legislative stimulus for philanthropy constitutes an integral element of regulations of activities of nongovernmental social policy agents. Some of noncommercial law practitioners in Ukraine question the reasonableness of existence of the bottom boundary of the sum of a charitable contribution which brings a benefactor (an enterprise or physical person) – tax break in form of inclusion of this sum accordingly in total costs or tax credit. According to the sub-clause 5.2.2 of The Law №334/94-вр and the clause 5.3 of The Law of Ukraine "On the income tax " (№889-15) only contributions in the sum of not less than 2% and no more than 5% of profit, savings or property of a benefactor authorize tax break or tax credit. At the same time there are umpteen real-life evidences convincing, that the amounts of funds which an enterprise directs to charity do not exceed 1% of its profit, and consequently the donation does not reduce the sum of the paid tax. The research of ours based on Volyn region experiences confirms the conclusion that the specified legislative norm does not perform the desired stimulating role [2].

On our opinion, the government should also encourage willingness of particular Ukrainian companies to donate up to 20% of net profit that has been revealed by the findings of some national researches on corporate social responsibility [1]. Some experts also advocate the necessity of more active encouraging philanthropic actions of physical persons [7]. Supplementing this idea, we recommend providing the mechanism of encouraging all benefactors to donate primarily to local charities to develop local territories. Accomplishment of this will require the raise of the upper boundary of the donation sum to be included in the sum of total costs of a profit tax payer (an enterprise) as well as in the sum of tax credit of an income tax payer (a physical

person) up to 20%. It is also advisable to provide additional stipulation for differentiation of the donation sum, authorizing tax break, within the scope of 0–20%, increasing it when the donation is directed to municipal establishments or to local non-profits.

Another failure of legislative regulations of philanthropy in Ukraine, according to many of experts, is spotted in the routine of granting the same scope of tax break to philanthropists, regardless whether they donate to non-profits or to the State Budget of Ukraine, budgets of local authorities, governmental and municipal establishments. Consequently the tax break has mostly fiscal (not regulative) effect. On our opinion, the State Budget and local budgets can nowise “be put in the black” via philanthropy. Otherwise there remain stimuli for rent-oriented behaviors of civil servants and state officials while contracting with socially active businesses. Moreover, it is advisable to stipulate that donations to governmental (budgetary) social establishments may be equal to those to non-profits providing there would be the firm guarantee of the uptake of these donations jointly with a specialized non-profit (e.g. community foundation). In addition, donations to governmental (budgetary) establishments should be limited to a certain annual sum of money which, as well as all philanthropic acts in any other case, should be target-purposed.

The tax legislation should also provide a possibility for socially responsible enterprises and physical persons to choose the direction of uptake of at least a part of the paid taxes, in particular – the taxes collected to local budgets (community taxes). It will supposedly reduce the scope of shadow economy and a number of half-legal businesses, as well as stimulate social activity of businessmen operating according to the Decree of the President of Ukraine “On the simplified taxation system ” (№727/98) i.e. not entitled to terms of tax break determined by The Law №334/94-вр and enjoyed by common profit tax payers.

As many of experts of the noncommercial law have marked, development of philanthropy in Ukraine is severely hampered by the imperative of the sub-clause 5.4.2 of The Laws №889-15 which applies terms of tax credit only to salaries and wages despite the fact that labour earnings are not the chief sources of income of individuals in Ukraine. On this ground we support suggestions of many of men of law concerning necessity of extend of terms of tax credit to all legal incomes of physical persons. We’d like only to add a point on urgency of directing the tax-exempted part of these incomes to community foundations. In other cases terms of tax credit must remain applied merely to salaries and wages. That would give the highest priority to donations to cross-sector partnerships’ institutions (recognized as a must [4] in Ukraine) and thus promote the development of

nongovernmental social services' providers throughout the country. Calculation of sum liable to tax credit must be based on amounts of time (hours) spent by a volunteer on a foundation's programs, size of labour earnings per hour at a virtual place of employment taken into account. This idea will have special relevance with the introduction of system of hourly pay rates in Ukraine.

Conclusion. Improvements in the system of legal regulations of activities of nongovernmental social policy agents in Ukraine is a prerequisite to the further development of the social policy itself and should provide considerable simplification of the taxation regimes of non-profits and socially responsible businesses and strengthening (by fiscal tools) the local level of social policy realization.

Література

1. Акімова І. Бути чи не бути бізнесмену відповідальним перед суспільством? [Електронний ресурс] / Ірина Акімова, Олена Осинкіна // Дзеркало тижня. – 2006. – 11–17 берез. (№ 9). – Режим доступу: <http://www.dt.ua/2000/2675/52833/>.

2. Благодійники та меценати міста Луцька / [Звонар В., Козак Ю., Хомук В., Шокало О.]. – Луцьк: Асоц. захисту прав молоді Волині, 2006. – 48 с.

3. Законодавче регулювання діяльності неприбуткових організацій: світовий досвід та рекомендації для України. – К.: Лабораторія законодав. ініціатив; Міжнар. фонд „Відродження”, 2000. – 36 с.

4. Звонар В. П. Організаційно-економічні засади розвитку міжсекторного партнерства в контексті реалізації соціальної політики України / В. П. Звонар // Науковий вісник Волинського державного університету імені Лесі Українки. Серія: "Економіка". – 2007. – № 12. – С. 67–73.

5. Неприбуткові організації: консультації, роз'яснення провідних спеціалістів податкових органів, нормативна база / Голов. ред. А. Бабак. – Д.: Баланс-Клуб, 2005. – 112 с. – (Баланс, 2005, берез., №3; Практичне керівництво).

6. Правова підтримка діяльності НПО: статус, доходи, звітність, оподаткування та ін. [Електронний ресурс] / Проект ЄС „Розв. громадян. сусп-ва у м. Київ та обраних регіонах”. – К., 2004. – 144 с. – Режим доступу: http://civilsociety.org.ua/uploads/media/ngo_legal_assistance_ua.pdf.

7. Проблеми в податковому законодавстві та шляхи їх вирішення: проект для обговорення [Електронний ресурс] / Міжнар. центр некомерц. права, Ін-т громадян. сусп-ва, Укр. форум грантодавців. – К.: Укр. форум грантодавців. – 7 с. – Режим доступу: <http://www.civicsa.org/df/proposals.doc>.

8. Савченко О. Неприбуткові організації: податковий та бухгалтерський облік / О. Савченко, В. Кузнецов. – [8-ме вид., перероб. і доп.]. – Х.: Фактор, 2005. – 297 с.