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VALUE ADDED TAX: CUSTOMS REGIMES

Purpose of the Article. The author in the article examines the normative regulation of the collection of value added tax, including the use of preferential regimes providing for partial or complete exemption from tax, when importing / exporting goods placed in the appropriate customs regimes (re-export). The legal problematics of the tax sphere consists mainly in determining and effectively ensuring the boundaries of freedom and the need for the behavior of subjects of tax legal relations through the relevant legal and legislative norms. These legal and legislative norms should ensure a balance between public and private interests, as well as exclude their ambiguous, multiple interpretation. National legislation should introduce internal procedures for the administration (collection) of taxes, which enhance the transparency and clarity of the actions of all subjects of tax legal relations and, accordingly, minimize the risk of errors (abuse), including the possibility of understating tax objects. In addition, they should not allow subjects of tax legal relations to benefit from their illegal actions and / or avoid performing their duties. The above concerns, among other things, full or partial exemption from value added tax when subjects of foreign economic activity move goods across the customs border of Ukraine, placed in the appropriate customs regimes (temporary import, re-export), since under certain circumstances it provides an opportunity for abuse by unscrupulous taxpayers. There are currently no researches on this issue. In the context of the active development of integration processes (Ukraine's accession to the European space), the need for legislative support (regulatory regulation) of the transparency of tax collection, in particular, value added tax, is becoming increasingly important for the effective growth of the economic well-being of our state. Thus, there is a need for further scientific research on the application of benefits providing partial or full exemption from the payment of value added tax when importing / exporting goods placed in the appropriate customs regimes (temporary import, re-export). The article analyzes the current state of legal regulation of the collection of value added tax in terms of exemption from taxation (application of benefits) when moving goods across the customs border of Ukraine. This made it possible to identify problematic issues of a legal nature that lead to a violation of the balance of the budget and tax system, public and private interests, ways to solve them, and to draw scientifically based conclusions from the indicated problems.

Key words: Tax Obligations, Tax Credit, Tax Incentives, Temporary Import, Re-export.

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1. Introduction

The presence of value added tax in the tax system of any country in the European space is mandatory for joining the European Union. Also, in world practice, value added tax is considered one of the most efficiently working taxes from a fiscal point of view. One of the obligatory structural features of the state is the taxation system, since one of the goals of state regulation is the system of administration of taxes and fees, in which, on the one hand, the collected taxes should be sufficient to ensure the fulfillment of tasks and the implementation of functions facing the state, and on the other – the burden of the tax collection procedure should not be excessive for the payer.

The main legal issues in the tax sphere are mainly in determining and effectively ensuring the boundaries of freedom and the need for the behavior of subjects of tax legal relations through the relevant legal and legislative norms, in protecting the property rights of individual payers and the interests of society, implemented in the financial and tax activities of the state.

At the same time, the relevant legal and legislative norms must ensure a balance between public and private interests, as well as exclude

their ambiguous, multiple interpretation. National legislation should introduce internal procedures for the administration (collection) of taxes, which enhance the transparency and clarity of the actions of all subjects of tax legal relations and, minimize the risk of errors (abuse), including the possibility of understating tax objects. Thus, the introduction of legislative regulation of the relevant procedures for the administration (collection) of taxes should not enable the subjects of tax legal relations to benefit from their illegal actions and/or avoid fulfilling their duties.

Value added tax has a high efficiency from a fiscal point of view, since a wide tax base, which includes not only goods, but also works / services, provides constant revenues to the budget, therefore, it is necessary to constantly improve the norms of national legislation to ensure the transparency of its collection procedures. The above concerns, among other things, full or partial exemption from value added tax when moving goods across the customs border of Ukraine, placed in the appropriate customs regimes (temporary import, re-export), since under certain circumstances it provides the possibility of abuse by unscrupulous taxpayers.

In turn, it should be emphasized that currently no research has been carried out on this issue. At the same time, in the context of the active development of integration processes (Ukraine's accession to the European space), the need for legislative support (regulatory regulation) of the transparency of tax collection, in particular, value added tax, is becoming increasingly important for the effective growth of the economic well-being of our state. In this connection, there is a need for further scientific research on the collection of value added tax, the use of preferential regimes providing for partial or complete exemption from tax, when importing / exporting goods placed in the appropriate customs regimes (re-export).

Based on the analysis of current legislation and judicial practice, the article identifies problematic issues of legal regulation of the collection of value added tax (application of exemption from taxation) when moving goods across the customs border of Ukraine and ways of solving them. In addition, scientifically substantiated conclusions were made on the indicated problems.

2. Value Added Tax and Benefits: Balance Sheet.

Administration of taxes and fees is one of the hallmarks of the state and an important component of its existence. In this article, we will not dwell on the definition of the concept and essence of the administration (collection) of taxes, since in the scientific literature many scientists have given a sufficiently substantive justification for this category, including the value added tax (hereinafter – VAT). However, we only note that the efficiency of tax collection is achieved due to its proper regulatory consolidation and the legal basis of the relevant provisions.

In turn, the administration (collection) of any tax is inextricably linked with the object and taxable base. In our opinion, for value added tax, one of the main elements of its legal mechanism is such concepts as tax liability (base and object for the corresponding operations for the sale (sale) of goods / services) and tax credit, thanks to which the amount of tax to be transferred is determined. to the budget. In our previous publications, we have dwelt on these concepts more than once, so we just recall that the tax liability for value added tax is an unconditional obligation of the payer to determine and reflect it in tax reporting, and a tax credit is the right of the taxpayer to be reflected in tax reporting, allows reduce the size of the tax liability and, accordingly, affects the amount of tax payable to the budget towards its reduction. In addition, taking into account the introduction of electronic administration of value added tax (hereinafter – e-VAT), such an amount of value added tax on received tax invoices / customs declarations (tax credit) affects the amount (automatically increases the amount of the registration limit), on which the taxpayer can subsequently register tax invoices.

The Tax Code of Ukraine (hereinafter referred to as the Tax Code) (Law of Ukraine No. 2755-VI, 2010) defines the procedure for the formation of tax liabilities (Art. 187) and a tax credit (Art. 198), the ratio of which in the tax reporting (declaration) for VAT in the future leads to the calculation of the amount of tax payable to the budget. At the same time, it is necessary to pay attention to the fact that the amount of tax paid for the purchased goods (services) on duly executed tax invoices / customs declarations can be attributed to the tax credit. At the same time, Art. 198 of the Tax Code stipulates that in the event that previously purchased goods (the amount of VAT for which were included in the tax credit) are assigned for their use or begin to be used in transactions that: are not subject to taxation; exempt from taxation; is not an economic activity of the payer, such a tax payer is obliged to accrue tax liabilities based on the taxable base determined in accordance with paragraph 189.1 of Article 189 of this Code, and draw up no later than the last day of the reporting (tax) period and register in the Unified Register (hereinafter – UR) within the time frame established by this Code for such registration.

According to the Tax Code (Law of Ukraine No. 2755-VI, 2010), a tax benefit is the exemption of a taxpayer from the obligation to calculate and pay taxes and fees, provided by tax and customs legislation, and pay them less tax and fees if there are grounds. In addition, this regulatory legal act provides for the conditions (grounds) for exemption from taxation of certain transactions (they are not subject to taxation and do not provide for the accrual (determination) of tax liabilities) or taxation at a zero rate. This also applies to operations related to the movement (import / export) of goods across the customs border of Ukraine in the appropriate customs regimes. According to Art. 206 of the Tax Code provides that:

– operations for the export of goods in the customs regime of re-export are exempt from taxation, except for export operations in accordance with paragraphs 3 (for goods in the form of products of their processing) and 5 of the first part of Article 86 of the Customs Code of Ukraine, taxed at the rate determined by subparagraph 195.1. 1 clause 195.1 of article 195 of this Code (Art. 206.5);

– to operations on the import of goods into the customs territory of Ukraine under the customs regime of temporary import, a conditional full exemption from taxation or conditional partial exemption from taxation is applied, subject to the requirements and restrictions established by Chapter 18 of the Customs Code of Ukraine (Art. 206.7).

Analyzing the above norms, we can conclude that exemption from the payment of value added tax in the relevant customs regimes is possible only for goods that are moved (imported) across the customs border of Ukraine and are used solely for the purpose of moving them and only by payers who imported them (moved) across the customs border). For example, if equipment for the production of certain products is imported, then it should be used only for the production of such products, and, accordingly, production is carried out exclusively by such a payer (importer), that is, without the right to transfer it for use to other payers (third parties) for their implementation of certain activities.

Before proceeding to a description of the relevant customs regimes, substantiation of problematic issues related to the use of privileges and possible ways of solving them, the following should be noted. In our opinion, the determination of tax liabilities, the formation of a tax credit and the payment of value added tax, including the use of incentives (full or partial exemption from taxation), in particular, on operations for the movement of goods across the customs border of Ukraine in the appropriate customs regimes (temporary import, re-export), should take place taking into account the provision (observance) of a balance of the budget and tax system, public and private interests. In turn, the application of exemption from taxation, including value added tax, in the relevant customs regimes should take place in a certain way and taking into account the actual operations carried out, without harming national interests. This refers to the deliberate use of the appropriate customs regimes, contrary to the conditions of their provision, in order to understate the object of taxation and, accordingly, reduce the payment of tax to the budget.

3. Customs regimes.

According to Art. 4 of the Customs Code of Ukraine (hereinafter – Customs Code) [2], the customs regime is a set of interrelated legal norms, according to the stated purpose of moving goods across the customs border of Ukraine, they determine the customs procedure for these goods, their legal status, taxation conditions and stipulate them use after customs clearance.

According to the definition contained in the Customs Code (Law of Ukraine No. 4495-VI, 2012):

– re-export is a customs regime, according to which goods previously imported into the customs territory of Ukraine or the territory of a free customs zone are exported outside the customs territory of Ukraine without paying export duties and without applying measures of non-tariff regulation of foreign economic activity (Article 85);

– temporary import is a customs regime according to which foreign goods, commercial vehicles are imported for specific purposes into the customs territory of Ukraine with conditional full or partial exemption from taxation by customs payments and without the use of non-tariff regulation of foreign economic activity and are subject to re-export before the end of the specified period without any changes, with the exception of normal wear and tear as a result of their use (Art. 103).

At the same time, in the Law of Ukraine of April 16, 1991 No. 959-XII On Foreign Economic Activity (hereinafter referred to as Law No. 959-XII) (Law of Ukraine No. 959-XII, 1991), the concept of re-export is defined differently. Thus, according to the definition contained in Law No. 959-XII, the term re-export means the sale to foreign economic entities and the export outside Ukraine of goods previously imported into the territory of Ukraine. At the same time, the provisions of the Customs Code do not

provide for the placement into the customs regime of re-export of goods previously imported (brought in under the import customs regime and released for free circulation) into the customs territory of Ukraine. Thus, in accordance with the norms of the current legislation, the concepts of "re-export" and the concept of "customs regime of re-export" are not identical.

Nevertheless, returning to the Customs Code (Law of Ukraine No. 4495-VI, 2012), we note that this Code provides for cases (conditions) under which a certain customs regime can be applied to goods that, when imported into the customs territory of Ukraine, may be subject to a certain customs regime, in particular, a temporary import regime (Article 104) and re-export (Article 86).

It is pertinent to note that in accordance with Art. 106 of the Customs Code (Law of Ukraine No. 4495-VI, 2012), in the case of the release of goods placed in the customs regime of temporary import with conditional partial exemption from taxation by customs payments, **into free circulation in the customs territory of Ukraine** (customs import regime) ***or the transfer of such goods for use to another person,*** **customs payments paid in the amount provided by law for the import of these goods into the customs territory of Ukraine in the customs regime of import**, minus the amount already paid on the basis of conditional partial exemption of these goods from taxation by customs payments.

Moreover, according to the condition of Art. 71 of the Customs Code (Law of Ukraine No. 4495-VI, 2012), the declarant has the right to choose the customs regime in which he wishes to place the goods, subject to the conditions of such a regime and in the manner determined by this Code. The placement of goods in the customs regime is carried out by declaring them (drawing up cargo customs declarations) and fulfilling the customs formalities provided for by this Code. The customs regime in which the goods are placed may be changed to another one chosen by the declarant in accordance with part one of this article, provided that the measures of tariff and non-tariff regulation of foreign economic activity established in accordance with the law for goods placed in such other customs regime are observed.

As you can see, the above customs regimes are somewhat similar, since under certain conditions determined by the relevant regulatory documents, they provide for further export outside the customs territory of Ukraine of goods previously imported into the customs territory of Ukraine, including without paying customs duties (conditional full or partial dismissal from taxation), including value added tax, and without the use of non-tariff regulation measures.

At the same time, there are problematic issues of a legal nature associated with the use of these regimes by some payers for the possibility of understating tax liabilities for value added tax, including through a tax credit formed according to cargo customs declarations (hereinafter – CCD) based on the results customs clearance of goods moved (imported) across the customs border of Ukraine.

For example, there are cases when:

1. The payer of the tax has imported goods (equipment) into the territory of Ukraine for carrying out economic activities (production of goods). When importing goods into the customs territory of Ukraine, the relevant documents (CCD) were drawn up and the necessary payments were paid, including VATT indicated amounts of value added tax were included in the tax credit (based on the executed CCD) in the respective reporting periods. When moving (importing) through the customs border of Ukraine and executed by the customs declaration, the payer does not indicate their placement in the customs regimes of temporary import / re-export. In the future, the taxpayer (importer) shall return to the non-resident previously imported goods (equipment) and export it outside the customs territory of Ukraine under the customs regime of temporary import or re-export, without paying the corresponding payments.

2. The payer of the value added tax imported goods (equipment, etc.) into the territory of Ukraine under the customs regime of temporary import for the production of economic activities (production of goods, provision of services / performance of work). When importing goods into the customs territory of Ukraine, the relevant documents (CCD) were drawn up and the necessary payments were paid, taking into account partial or complete dismissal. At the same time, after import, such goods (equipment, etc.) were transferred for use (rent) to other payers (third parties) to carry out their activities. In fact, the specified goods (equipment, etc.) were not used within the economic activities of the payer (direct provision of services / performance of work using such equipment), by which they were imported into the territory of Ukraine. That is, the payer (importer) transferred the relevant goods (equipment, etc.) across the customs border of Ukraine solely for one purpose (transfer to other persons for use). In the future, the payer (importer) shall return to the non-resident previously imported goods (equipment, etc.) and export them outside the customs territory of Ukraine, of course, without paying the corresponding payments.

Yes, indeed the examples given are inherently different, but in both cases, the amount of value added tax is underestimated.

As for the second case, everything is clear here, taking into account the requirements of Art. 106 of the Customs Code, a taxpayer, in the case of release of goods placed in the customs regime of temporary import with conditional partial exemption from taxation by customs payments, into free circulation in the customs territory of Ukraine or **transfer of such goods for use to another person, must pay customs payments** in the amount provided for the law for the import of these goods into the customs territory of Ukraine in the customs regime of import. At the same time, in this case, it is possible to identify the fact of transfer of goods (equipment), which, upon import, are placed in the customs regime of temporary import, for use by other persons is possible only when checking the financial and economic activities of the payer (who imported goods and placed them in the appropriate customs regime). Thus, a taxpayer can, in a certain sense, calmly unreasonably (unlawfully) use the privilege of paying customs duties, including value added tax, when importing goods and placing them in the customs regime for temporary import with their subsequent transfer to other persons for use. (Actually released into free circulation).

Regarding the first case, the underestimation of the payment of value added tax occurs due to the failure to increase tax liabilities in accordance with clause 198.5 of Art. 198 of the Tax Code due to the fact that imported (received, purchased) goods (equipment), the amounts of value added tax for which were previously included in the tax credit, are subsequently intended for their use (began to be used) in operations that: is subject to taxation; exempt from taxation; is not an economic activity of the payer. At the same time, in our opinion, in this case, it is necessary to increase the tax liability for VAT, regardless of whether the payer would indicate or not during import (movement across the customs border of Ukraine) to place such goods (equipment) into the appropriate customs regime (temporary import). or re-export), since upon import, the payer paid VAT and the corresponding amounts were included in the tax credit.

To substantiate the need in this case (upon the export of goods (equipment) to increase the tax liability for VAT, we note that the payment of value added tax when importing goods made it possible to exercise the right to a tax credit and include the paid amounts of tax in its composition on the basis of a CCD, in addition , the formation (increase) of a tax credit made it possible to reduce tax liabilities and, accordingly, the amount of tax payable based on the results of the corresponding reporting period. In addition, the generated tax credit for the CCD increased the registration limit (amount) for which the taxpayer can subsequently register tax invoices. Therefore, the payer, in the event that such goods (equipment) are subsequently placed in the appropriate customs regimes (temporary import or re-export), still needs to increase tax liabilities.

The State Tax Service of Ukraine adheres to a similar opinion (Letter of the State Tax Service of Ukraine No. 891/99-00-07-03-02-06/IPK, 2020).

That is, the formation of a tax credit and the assignment to its composition of the corresponding amounts of tax paid upon the acquisition (import) of goods, and further determination of tax liabilities during their implementation (export) (placement in the appropriate customs regimes) is to ensure a balance of the budget and tax system.

So, if the payer made the movement (import) of goods (equipment) across the customs border of Ukraine, taking into account the appropriate customs regime (temporary import, re-export), without paying customs payments (conditional full or partial exemption from taxation), including tax value added and without the application of non-tariff regulation measures would not have the right to: Formation of a tax credit; decrease in tax liabilities (decrease in the amount of tax payable based on the results of the corresponding reporting period); increase in registration limit. Objectively, in this case, such a payer, when exporting goods (equipment) in these regimes, is also exempt from paying value added tax (enjoys the appropriate privilege), taking into account the requirements of clause 206.5 and clause 206.7 of Art. 206 of the Tax Code (Law of Ukraine No. 2755-VI, 2010).

Thus, the taxpayer, without defining tax liabilities based on the results of the export and placement of goods in customs regimes (temporary import and re-export), the amounts of VAT on which were previously (upon import) included in the tax credit, receives an unjustified benefit, since in fact the attribution of the amounts to tax credit reduces the amount of tax payable for the relevant reporting period and increases the registration limit.

Since the relevant customs regimes (temporary import or re-export) provide for a conditional full or partial exemption from taxation, including value added tax, and without the use of non-tariff regulation

measures, therefore, when importing, the payer must refrain from paying the corresponding payments in order to avoid further disputes with regulatory authorities.

In our opinion, in order to ensure a more effective mechanism for administering (collecting) value added tax, taking into account the use of customs regimes (temporary import, re-export) and avoiding situations of their use to obtain unjustified tax benefits (understatement of tax obligations), it is necessary to amend the relevant regulatory – legal acts, in particular, the Tax Code and the Customs Code, which provide for:

– the impossibility of attributing to the tax credit the amounts of value added tax (if paid) on cargo customs declarations, which indicate (made a corresponding note) about the placement of goods (imported into the customs territory of Ukraine) into the customs regimes temporary import or re-export, including number of technological changes in the software of the electronic VAT administration system and the customs data accounting algorithm;

– the need to increase tax liabilities for value added tax when goods are placed under customs regimes (temporary import and re-export), the amount of VAT on which was previously (when imported) included in the tax credit.

4. Judicial practice

Regarding the second case, the position of the courts is somewhat ambiguous, since at the moment there are quite opposite decisions of the Supreme Court of Ukraine. Thus, the resolution of March 12, 2019 in case No. 813/2435/17 (Resolution of the Supreme Court of Ukraine in the case No. 813/2435/17, 2019) confirmed the legality of the taxpayer's actions to transfer to third parties for use the goods (equipment) previously imported into the territory of Ukraine and placed in the customs regime of temporary import with conditional partial exemption from taxation by customs payments. In turn, already by the order of September 30, 2020 in case No. 826/14324/18 (Resolution of the Supreme Court of Ukraine in the case No. 826/14324/18, 2020), the Supreme Court of Ukraine made the opposite conclusions and confirmed the legality of the previous instances of the relevant court decisions on the absence of grounds to satisfy the taxpayer's claim, since the latter transferred for the use by third parties of property imported into the customs territory of Ukraine under the customs regime of temporary import with conditional partial exemption from taxation by customs payments.

As for the first case, the position of the judges on the available court decisions is quite unambiguous. So, by the decision of the Supreme Court of Ukraine dated of April 3, 2020 in case No. 813/2377/16 (Resolution of the Supreme Court of Ukraine in the case No. 813/2377/16, 2020), the taxpayer's claim was satisfied to cancel the tax notification-decision on additional accrual of the monetary liability for value added tax upon the re-export of property previously imported to the customs territory of Ukraine in the customs regime of temporary import. A similar position was expressed in the ruling of the Second Administrative Court of Appeal of December 8, 2020 in case No. 440/1239/20 (Resolution of the Second Administrative Court of Appeal in case No. 440/1239/20, 2020). At the same time, in the cases considered by the courts, the placement of goods (property) into the customs regime of temporary import, during their movement across the customs border of Ukraine (import), taxpayers paid VAT in full (in the amount of 20%), and not in the amount of 3%, as this is provided for by the terms of article 106 of the Customs Code. That is, in this case, the Plaintiffs deliberately made the payment of value added tax in order to obtain the corresponding benefit, which was indicated above, in particular, obtaining the right to a tax credit, increasing the registration limit and, accordingly, reducing the VAT payable based on the results of the corresponding reporting period.

In addition, the above court decisions, which satisfied the claims of taxpayers and canceled the tax authorities-tax notices-decisions adopted by the tax authorities, indicate the inconsistency of the provisions of Art. 206 of the Tax Code and Art. 86 of the Customs Code. In our opinion, such inconsistency is due to the fact that paragraph 206.5 of Art. 206 of the Tax Code provides for exemption from taxation of the export of goods under the customs regime of re-export (regardless of the customs regime in which they were before their export), except for export operations in accordance with paragraph 3 and paragraph 5 of Art. 86 of the Customs Code, which are still subject to taxation (albeit at a zero rate). In turn, Art. 86 of the Customs Code defines the conditions for placing goods in the customs regime of re-export without payment of export mail and without the application of measures of non-tariff regulation of foreign economic activity.

It should be emphasized that the Tax Code, in terms of the collection of value added tax, made a distinction between operations: taxed at the basic rate (Art. 194) and at a zero rate (Art. 195); is not subject to taxation (Art. 196); exempted from taxation (Art. 197).

5. Discussion

In our opinion, when considering the above court cases (accrual of VAT tax liabilities based on the results of property re-export operations), it was not taken into account that the taxpayer, without defining tax liabilities based on the results of the export and placement of goods in customs regimes (temporary import and re-export), the VAT amounts for which were previously (upon import) attributed to the tax credit, receives an unjustified benefit, since upon the inclusion of the amounts in the tax credit, it reduces the amount of tax payable for the corresponding reporting period and increases the registration limit.

In turn, as if an enterprise when moving (importing) goods (property) across the customs border of Ukraine and placing them in the appropriate regime (temporary import, re-export), taking into account the provisions of the Tax and Customs Codes on the exemption of such operations from tax refrained from paying tax value added, then, accordingly, would not be able to include such amounts in the tax credit, increase the registration limit and reduce the amount of VAT payable to the budget based on the results of a certain reporting period. It is understood that the exemption from payment of the respective payments upon exportation is conditioned by the absence of their payment upon importation.

That is, the placement of goods (property) in customs regimes (temporary import, re-export) should correspond to the purpose of their placement in the appropriate customs regime without the possibility of abuse and obtaining unjustified benefits.

So, under certain circumstances arising in the implementation of economic activities, it becomes necessary to return (export) goods (previously imported into the customs territory of Ukraine), given the impossibility for objective reasons of their use in economic activities, and placing them in the appropriate customs regimes (re-export). However, given that when they were imported, the corresponding payments were paid, including the amount of value added tax, which influenced the possibility of forming a tax credit, an increase in the registration limit, a decrease in tax liabilities payable based on the results of the corresponding reporting period, for such circumstances it is advisable and reasonable, from the point of view of the norms of clause 198.5 of Art. 198 of the Tax Code, an independent increase in tax obligations by the payer is required.

Thus, the determination of tax liabilities, the formation of a tax credit and the payment of value added tax, including the application of incentives (full or partial exemption from taxation), in particular, on operations for the movement of goods across the customs border of Ukraine in the appropriate customs regimes (temporary import, re-export) should take place taking into account the provision (observance) of a balance of the budget and tax system, public and private interests.

In a sense, the above also applies to the application by payers of an "export" customs regime (subject to a zero rate), which in some cases is used to optimize tax liabilities for value added tax ("atypical exports"). "Transactions) and for the purpose of avoiding the payment of value added tax and receiving reimbursement of the budget by exporting companies (they are not actual producers), mainly agricultural products purchased from agricultural producers, and in some cases of unknown origin, legalized by documenting transactions. for its purchase from a number of unscrupulous taxpayers (documentary registration of virtually nonexistent transactions). In turn, it should be noted that this is the subject of a separate study.

6. Conclusions

Based on the results of the analysis:

1. The peculiarity of the existence of normative legal support for the administration of value added tax in Ukraine has so far been legal collisions of certain provisions of legislative documents, leading to disputes between regulatory authorities and taxpayers.

2. Determination of tax liabilities, the formation of a tax credit and the payment of value added tax, including the application of incentives (full or partial exemption from taxation), in particular, on operations for the movement of goods across the customs border of Ukraine in the appropriate customs regimes (temporary import, re-export) should occur taking into account the provision (observance) of the balance of the budget and tax system. In turn, the application of exemption from taxation, including value added tax, in the specified customs regimes should take place in a certain way and taking into account the actually carried out operations, without causing harm to national interests. This implies the deliberate use of the relevant customs regimes, contrary to the conditions for their provision, in order to understate the object of taxation and, accordingly, reduce the payment of tax to the budget.

3. To ensure a more effective mechanism for administering (collecting) value added tax, taking into account the use of customs regimes (temporary import, re-export) and avoiding situations of their use

to obtain unjustified tax benefits (understatement of tax obligations), it is necessary to amend the relevant regulatory legal acts, in in particular, the Tax Code and the Customs Code, which provide for:

– the impossibility of attributing to the tax credit the sums of value added tax (in case of payment) on cargo customs declarations, which indicate (made a corresponding note) about the placement of goods (imported into the customs territory of Ukraine) into customs regimes temporary import or re-export, including technological changes in the software of the electronic VAT administration system and the customs data accounting algorithm;

– the need to increase tax liabilities for value added tax when goods are placed under customs regimes (temporary import and re-export), the amount of VAT on which was previously (when imported) included in the tax credit;

– elimination of inconsistencies in Art. 206 of the Tax Code and Art. 86 of the Customs Code, since the provisions of the Customs Code provide for exemption from taxation on operations for placing goods into the customs regime of re-export during export, and the Tax Code provides for both exemption from taxation and taxation of value added tax on such operations.

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ПОДАТОК НА ДОДАНУ ВАРТІСТЬ: МИТНІ РЕЖИМИ

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Автором в статті досліджується нормативне регулювання справляння податку на додану вартість, в тому числі застосування пільгових режимів, які передбачають часткове або повне звільнення від сплати податку, під час ввезення/вивезення товарів, поміщених у відповідні митні режими (реекспорт). Юридична проблематика податкової сфери полягає переважно у визначенні та ефективному забезпеченні меж свободи й необхідності у поведінці суб'єктів податкових правовідносин через відповідні правові, законодавчі норми. Зазначені правові, законодавчі норми повинні забезпечувати збалансованість публічних та приватних інтересів, а також унеможливлювати їх неоднозначне, множинне трактування. Національне законодавство повинно запроваджувати внутрішні процедури адміністрування (справляння) податків, які посилюють прозорість і ясність дій всіх суб'єктів податкових правовідносин та відповідно мінімізують ризик помилок (зловживань), в тому числі можливості для заниження об'єктів оподаткування. Крім того, вони не повинні давати можливість суб'єктам податкових правовідносин отримувати вигоду від своїх протиправних дій та/або уникати виконання своїх обов'язків. Зазначене стосується в тому числі повного або часткового звільнення від сплати податку на додану вартість під час переміщення суб'єктами зовнішньоекономічної діяльності товарів через митний кордон України, поміщених у відповідні митні

режими (тимчасове ввезення, реекспорт), оскільки за певних обставин надає можливість для зловживань з боку несумлінних платників податку. На даний час дослідження з цього питання на проводились. В умовах активного розвитку інтеграційних процесів (вступ України до Європейського простору), необхідність законодавчого забезпечення (нормативної урегульованості) прозорості справляння податків, зокрема, податку на додану вартість, набуває все більш вагомого значення для ефективного зростання економічного благополуччя нашої держави. Таким чином, постає необхідність подальших наукових досліджень з питань застосування пільг, які передбачають часткове або повне звільнення від сплати податку на додану вартість, під час ввезення/вивезення товарів, поміщених у відповідні митні режими (тимчасове ввезення, реекспорт). В статті здійснено аналіз сучасного стану правового регулювання справляння податку на додану вартість в частині звільнення від оподаткування (застосування пільг) під час переміщення товарів через митний кордон України. Вказане дозволило виявити проблемні питання правового характеру, які призводять до порушення збалансованості бюджетної та податкової системи, публічних та приватних інтересів, шляхи їх вирішення та зробити науково обґрунтовані висновки з окресленої проблематики.

Ключові слова: податкові зобов'язання, податковий кредит, податкові пільги, тимчасове ввезення, реекспорт.