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ON TAXPAYERS' ABUSE OF THEIR RIGHTS

The article is devoted to the problems of legal regulation of such a difficult and controversy issue as tax evasion. Author, referring to the works of national and foreign researches, analyses common philosophical approaches to tax evasion, trying to answer the complicated and multi-faceted question about morality of tax evasion based on the different circumstances.

The author suggests his own methods of classification of tax evasion.

The first one is a change or improvement of production by a taxpayer in such a way to be able to increase an achieved value-added cost under the current tax regime without changing, or even reducing tax pressure. It does not concern a breach of law, but an organization of internal process of production in such a way to reduce or not to increase taxable object. In this very case an incentive or disincentive function of tax is revealed. Positive or negative influence of tax on increase of production efficiency and its profitability, in particular, depends on tax composition. Coordination of tax evasion process in a proper direction for incentive, but not for prevention of economic increase shall depend on the level of governmental tax capacity. This also includes tax optimization, a selection of method, among several possible methods of execution of a transaction, corresponding to its economic meaning that shall impose the lowest tax burden of a taxpayer. The mentioned action of a taxpayer is ab-

solutely lawful; its form complies with the economic content and does not cause tax requalification under the common rule in any country.

Another type of tax evasion is when a taxpayer directly breaches current legislation. This includes fraud, combined with other relative components of crimes or breaches. In addition, an objective part of criminal act certainly consists of composition of fiscal (tax) breach. Commission of the mentioned action gives rise to protective legal relations that are subsequently (on the basis of a relevant legal fact – act of authorized governmental body) converted into relations of fiscal liability.

And the third, the most difficult tax evasion is an abuse of rights by taxpayer. In this case it is not a breach of legislation, because a taxpayer conducts transaction or executes a deed within the current legislation with an exclusive or primary purpose to avoid taxation or essentially reduce tax burden. The American legislation specifies such actions as tax avoidance, contrary to the tax evasion that means direct breach of current tax legislation.

The author pays special attention to the third method of tax avoidance, revealing considerable features of abuse of rights by taxpayers and offering a new term - tax chicane that means an intended act (or scope of interrelated actions) of a taxpayer, committed within the legislation, exclusive and primary purpose of which is to reduce

tax liability of taxpayer, or other persons in the present moment or in the future due to concealing a real nature of economic transaction by distorting its form, causing

requalification of tax consequences without making a taxpayer liable and recognition the transactions that process an appropriate deed as invalid.

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GUARANTIES OF REALIZATION AND PROTECTION OF FOREIGNERS' RIGHTS FOR EMPLOYMENT IN UKRAINE

The article analyzes the etymological origin of the term "guaranty". Based on analysis of the views of scholars, the essence of the legal and judicial guaranties is determined. Guaranties in the field of labour relations are described. Guaranties for realization and protection of the foreigners' rights for employment in Ukraine are determined, their list and definitions are offered. Only legal confirmation of the right to work, though at the constitutional level, is insufficient. The presence of effective measures provided by state is necessary for the implementation of the above law. Thus, the current national legislation provides employment institute as a structure designed to ensure the individual's right to work. The possibility for foreigners to realize their right to work, enshrined in the provisions of the Constitution of Ukraine, must be accompanied by appropriate guaranties to ensure confirmation with this right. Thus V.I. Dahl in his explanatory dictionary notes that the word "guaranty" means a surety, warranty, security. In turn,

Large explanatory dictionary of modern Ukrainian language notes that guaranty is an assurance for something or for the fulfillment of a condition; prescribed by law or specific agreement obligations which makes a legal or natural person responsible to the persons in the event of failure to perform their obligations; conditions for success of something.

The conclusion is made that guaranty of foreigners' employment in Ukraine should be understood as legally enshrined conditions and means providing possibility of exercising the foreigners' right to work, as well as protection and defense of such a right from illegal inroads. The basic guaranties for foreigners' employment in Ukraine include assurance for: free choice of activity; receipt of salary; occupational guidance and training; opportunity to appeal against decisions that led to the violation of rights, freedoms and interests of foreigners for employment; those responsible to be brought to responsibility for violation of legislation on employment.