

BASIC DIRECTIONS OF TAX SYSTEM IMPROVEMENT IN BELARUS IN THE 21ST CENTURY

Introduction

The necessity of carrying out tax reforms could be explained as follows: firstly, the tax laws are still undergoing serious changes. Imperfection, instability and ambiguity of the tax laws do not accompany effective implementation of the tax reform at all. Carrying out the tax reform should be based on scientific concepts whereas the purpose of the reform should be precisely established. Secondly, there is no systematization in carrying out the reforms whereas the reform of the tax system should be introduced in parallel to other reforms, such as administrative, judicial, etc. Thirdly, existing shortages or flaws are caused by the fact that during the development of a concept of the tax system, a complex approach to the issue of taxation has not been fully adopted. Complex interrelations between all parties to the process of establishment and collection of taxes have not been considered. The absence of a complex approach at the formation of the tax system of Belarus leads to the aggravation of economic and social contradictions, the outflow of the capital abroad and the development of shadow economy. The reasons for such condition of the tax laws can be named as following: 1) there is no conceptual unity in the science of tax rights; a multi-variant approach and differences in the directions and levels of conceptual approaches and construction separate the institutes of tax laws and all system of certificates in the field of financial activity of the state; 2) the second reason is the imperfection of the tax laws connected with current needs of the experts. A problem of compatibility of tax policy and promptly developing economy is one of the key problems in Belarus. Thus, any tax reform should be connected with the improvement of tax institutes.

The necessity for the society to maintain public authority embodied in the state has caused the establishment and development of taxes. In conditions of market relations the tax system is one of the major economic regulators.

The stages of the tax system reform

The tax system is one of the components of the legal system of Belarus. The tax system of Belarus has been functioning since 1992. It has a conventional set of tax payments used both in European and CIS countries. For the period of the development of Belarus it is necessary to allocate four stages in the development of the tax system.

Originally, the tax system included 15 basic taxes. Thus, legal persons paid 8 kinds of deductions in inappropriate funds. The initial stage of the domestic tax system's foundation (1992 - 1998) was characterized by a standard activity followed by a subsequent improvement of already accepted legal certificates in the sphere of taxation. It allowed to eliminate operatively loopholes included in the tax laws, and also strengthen the role of taxes as a tool realizing priority directions of the economic development of the Republic. Therefore by the end of the specified period, the legislative base of the taxation in the Republic has practically been completely generated. Further, the system of taxes was repeatedly corrected with regard to the list of taxes, different rates and tax privileges. But especially essential changes have occurred regarding inappropriate funds, which have been incorporated and transformed to budgetary funds with simultaneous revision of their rates. All this has led to the essential change in the structure of taxes and tax collection.

A basic direction of the second stage of the development of the tax system of the Republic was the performance of a stage-by-stage decrease in tax loading on economy with a view of the stimulation of economic growth and business activity in all sectors of economy.

Tax rates have been considerably reduced. In comparison with 1992, a basic VAT rate has been lowered from by 28 to 18%¹ whereas income tax – from 30 up to 24%². The scale of surtax rates has been reconsidered: the minimal rate has been lowered from 12 up to 9% whereas the maximum – from 50 to 30%³.

The mechanism of the taxation of separate categories of taxpayers has been simplified. 7 special modes of taxation are in force now: the simplified system of the taxation for subjects of small business⁴, the uniform tax for individual businessmen

1 Закон Республики Беларусь от 20 июня 2000 г. N 403-3 О внесении дополнений в закон Республики Беларусь «О налоге на добавленную стоимость», Национальный реестр правовых актов Республики Беларусь 21 июня 2000 г. N 2/178

2 Закон Республики Беларусь 30 июля 2001 г. N 51-3 О внесении дополнения в закон Республики Беларусь «О налогах на доходы и прибыль», Национальный реестр правовых актов Республики Беларусь 2 августа 2001 г. N 2/794

3 Закон Республики Беларусь от 21.12.1991г. О подоходном налоге с физических лиц. №1327 – XII (в ред. 24.07.2002) // ВНС Республики Беларусь.- 1999.- № 16-17. – Ст. 322; Национальный реестр правовых актов Республики Беларусь. – 2002.- № 87, 2/883.

4 Указ Президента Республики Беларусь «Об упрощенной системе налогообложения» 9 марта 2007 г. N 119 (в ред. Указов Президента Республики Беларусь от 15.10.2007 N 497. Национальный реестр правовых актов Республики Беларусь 20 марта 2007 г. N 1/8417

and manufacturers of agricultural production⁵, taxes on gaming and lottery activity⁶, etc.

The third stage - carrying out the codification of the tax laws, which in turn is the guarantor of stability and predictability of a tax system.

On 1st of January, 2004 the General Part of Tax Code of the Republic of Belarus was put into operation. The acceptance of the General Part of the Tax Code is an important point in the development of the economic reforms in our country - owing to it, a complex revision of the entire system of taxation has begun.

Until now the systematized standard-legal base of taxation has been in force in the Republic, which allows a taxpayer to find the answer practically to any question arising in connection with the execution of his tax obligations, which has been practically created.

Certainly, it does not mean that the tax system and the tax laws have reached perfection. Quite often a fiscal nature of taxes is ignored. Therefore even today the urgency of the problem of tax system improvement (internal structure of taxes) is still valid⁷.

A legal basis of taxation will be further developed with the adoption of the Special Part of the Tax Code. Work on this project, at a level of the interested ministries, has already been completed.

The project is changing the structure of taxes mostly by reducing their number and optimizing ineffective tax collection as much as possible. Special attention has been given to the increasing role of direct taxes.

Discussing deeper reforming of the tax system, in our opinion, it should be guided by both internal and external unification. Internal unification provides the following basic directions:

- tax elements of a tax legal structure should be precisely defined in the law;
- it would be necessary to separate two directions of privileges. Social tax privileges should be applied under the most general bases and

5 Указ президента Республики Беларусь 18 июня 2005 г. N 285 «О некоторых мерах по регулированию предпринимательской деятельности», Национальный реестр правовых актов Республики Беларусь 21 июня 2005 г. N 1/6561

6 Закон Республики Беларусь 30 июля 2001 г. N 51-3 «О внесении дополнения в закон Республики Беларусь “О налогах на доходы и прибыль», Национальный реестр правовых актов Республики Беларусь 2 августа 2001 г. N 2/794.

7 Комментарий к налоговому кодексу Республики Беларусь. Общая часть / А.Б. Дробыш, Л.Н. Добрынин, Е.А. Панасюк; Под общ ред. канд. экономич. Наук. О.А. Леоновича, канд. юрид. наук Л.И. Липень. – Мн.: Дикта, 2003. – 288с.

extend to all. The application of economic stimulus should be strictly selective. Privileges should be granted under absolute control of the state;

- simplification of taxes calculation techniques;
- application of the identical mechanism of taxation with regard to all taxpayers and objects of the taxation;
- unification of the procedure of execution of tax obligations.

First of all, the mechanism of external unification should include the reduction of the operating tax system of the Republic so that it conforms to the tax systems of foreign countries. For this purpose decisions solving the following problems are necessary:

- a possibility of concluding international contracts on avoidance of double taxation without damage to national economy;
- further integration of the Republic's economy;
- the creation of favorable conditions of taxation for foreign investors;
- the creation of equal conditions of functioning for domestic commodity producers both inside the country and on foreign markets.

The problem of repeated taxation

It is necessary to point out the problem of double taxation. One of the reasons for the occurrence of double taxation is that majority of countries, despite economic development, purposes and priorities of financial policy in the tax systems, combine residency (that is taxation of individuals having permanent residence in these countries under all incomes, including those received abroad) and territorial area (that is a collection of taxes from the incomes obtained in the territory of a given countries irrespective of permanent residence of an individual obtaining incomes).

There are two ways of elimination of double taxation or reduction of its burden. The first way involves the acceptance of internal acts unilaterally by the state; the second - in the regulation on double taxation by the conclusion of international agreements. The majority of countries practically combined both directions which supplement each other and at the same time cannot be completely interchangeable. Frequently, unilateral methods of elimination of taxation duality offered by the national legislation (full or partial clearing, the tax credit), coincide with the mechanism stipulated in international agreements. However, a complete solution of

the problem itself is not possible as there always is a dual problem: on the one hand – the maintenance of a sufficient level of receipts in the budget, and on the other – the creation of optimum conditions for stimulation of economic development, especially in the sphere of the movement of capitals. Granting tax privileges under the national legislation in a greater degree is focused on the creation of favorable conditions for taxpayers - residents of these countries where the expansion of tax privileges for foreign companies and citizens always has a specific goal and attracts foreign investors and development of bilateral trading, economic, financial and other agreements.

Belarusian tax laws contain provisions to adjust to this issue⁸. In general or under a unilateral order they provide clearing of double taxation. In particular, Article 5 of the Law of the Republic of Belarus «On surtax from natural persons» provides that the sums of taxes paid abroad according to the legislation of foreign states by persons who are taxpayers of the Republic of Belarus and have permanent residence there, are deducted from payment of surtax they pay in the Republic of Belarus⁹. Concerning legal persons such mechanism is absent. A unique source of establishing an opportunity for and adjusting {regulating} the mechanism of elimination of double taxation in the Republic of Belarus are special international agreements. If an international contract establishes other rules, than the rules established by the legislation of the Republic of Belarus on international contract are applied.

All agreements are subject to ratification, that is they are accepted by the parliaments of the agreeing states. Before an agreement comes to force and a real application of its provisions starts, there can be a significant time interval as these provisions are applied only to incomes which are obtained after 1st January of the year following a year when the agreement came to force.

The international agreements on avoidance of double taxation the Republic of Belarus is a party to can be divided into two groups:

1. Those that have actually been concluded by the Republic of Belarus (as of now nine agreements has come into force and nine has been signed)¹⁰;

8 Комментарий к налоговому кодексу Республики Беларусь. Общая часть / А. Дробыш, Л. Добрынин, Е. Панасюк; Под общ ред. канд. экономич. наук. О. Леоновича, канд. юрид. наук Л. Липень. – Minsk: Dikta, 2003. – С.28-29.

9 Закон Республики Беларусь от 21.12.1991г. О подоходном налоге с физических лиц. №1327 – XII (в ред. 24.07.2002) // ВНС Республики Беларусь.- 1999.- № 16-17. – Ст. 322; Национальный реестр правовых актов Республики Беларусь Республики Беларусь. – 2002.- № 87, 2/883.

10 Сборник международных договоров об избежании двойного налогообложения. Международные соглашения Республики Беларусь / сост. Л.Е. Астапович и др. – Мн.: Амалфея, 1997.; Закон Республики Беларусь «О ратификации соглашения между правительством Республики Беларусь и государства Кувейт об избежании двойного налогообложения и предотвращения уклонения от уплаты налогов в отношении налогов на доходы и капитал» // Национальный реестр правовых актов Республики Беларусь. – 2002.-№8; Закон Республики Беларусь «О ратификации конвенции между правительством Республики Беларусь и Ливанской Республикой об избежании двойного налогообложения и предотвращения уклонения от уплаты налогов в отношении налогов на доходы и имущество // Национальный реестр правовых актов Республики

2. Agreements concluded by the former USSR which are used by the Republic of Belarus as its assignee (it applies to 18 agreements, in particular the agreement on elimination of double taxation of incomes and property of natural persons of 5/27/1977 and the agreement on elimination of double taxation of incomes and property of legal persons of 5/19/1978).

All agreements concluded by the Republic of Belarus are similar in structure, their provisions are appreciably unified. As far as Belarus is concerned, these agreements refer to the following taxes: real estate tax, tax on incomes and profit of legal persons, surtax from natural persons. The main task for applying the mechanism of elimination of double taxation is the exact definition of the terms: “resident” and “permanent mission”.

The term “resident” means any person who under laws of the state is a subject to taxation there on the basis of residence, constant dwelling, place of registration, place of supervising body or any other similar criterion.

As to the persons who according to the above-mentioned term are residents of both agreeing states the basis according to which they are considered residents of one state is this state where they constantly dwell. If a natural person constantly dwells in two states, he or she is considered the resident of that state where he or she has closer personal and economic relations. If the state in which there is a center of his or her vital interests cannot be certain, or he or she has no constant dwelling in any of the agreeing states, a natural person is considered to be the resident of that state in which he or she usually lives. Citizenship is the basis for the collection of taxes and recognition of a natural person as a taxpayer. If each of the states considers him or her as its citizen, or he or she is not a citizen of any of them, competent bodies jointly solve this problem.

The term “permanent mission” means any constant place of activity through which the commercial activity of the enterprise is in full or in part carried out, and it includes: a place of management, a branch, an office, a factory, a building site or the premises used for selling products.

Беларусь. – 2002.-№8; Закон Республики Беларусь «О ратификации конвенции между Республики Беларусь и Венгерской Республикой об избежании двойного налогообложения и предотвращения уклонения от уплаты налогов в отношении налогов на доходы и капитал» // Национальный реестр правовых актов Республики Беларусь. – 2002.-№125; Закон Республики Беларусь «О ратификации конвенции между правительством Республики Беларусь и королевством Бахрейн об избежании двойного налогообложения и предотвращения уклонения от уплаты налогов в отношении налогов на доходы и имущество» // Национальный реестр правовых актов Республики Беларусь. – 2003.-№52; Закон Республики Беларусь «О ратификации конвенции между Республики Беларусь и правительством ЮАР об избежании двойного налогообложения и предотвращения уклонения от уплаты налогов в отношении налогов на доходы и капитал» // Национальный реестр правовых актов Республики Беларусь. – 2003.-№52; Соглашение между правительством Республики Беларусь и правительством Республики Армения о принципах взимания косвенных налогов при экспорте и импорте товаров (работ) // Национальный реестр правовых актов Республики Беларусь. – 2002.-№36;

In all agreements a general mechanism of elimination of taxation is applied. It involves deducting a sum that is a subject payment according to the provisions of the agreements in one state from the amount of total taxes already paid in another state. Thus the size of the subtracted sum cannot exceed the sum of the tax calculated for a given kind of tax in the first state. Concerning all other kinds of incomes which deliberately have not been included in the agreements, according to a general rule they are subjects to taxation in the state where the addressees are recognized as residents.

In our opinion, taking into consideration elimination of double taxation, the criterion of residency has that advantage that owing to it such elements as material and social status of a taxpayer in the country of his constant residence provide for a possibility to estimate his net profit in the best and fairest way. From the point of view of corresponding tax bodies, especially in connection with a problem of double taxation evasion, the criterion of territorial area is more preferable provided that its application will not lead to superfluous taxation of cumulative income. Work on the unification of tax laws within the limits of integration of Belarus and Russia in the Eurasian economic union has been conducted.

The main task of reforms in the sphere of taxation is to create accessible, clear and simple tax laws of Belarus. Therefore the tax system reform involves various parameters, including budget execution or taxes administration. In order to improve the system of taxation it is necessary to gradually cancel turnaround taxes, reorient the structure of taxes towards direct taxation, and decrease tax loading in wage fund.

Thus, canceling turnaround taxes will considerably enable enterprises to simplify the mechanism of tax calculations. Positive dynamics of the receipts of direct taxes and their relative density in tax loading as a whole will enable to accelerate the tax rates and withdraw from turnaround taxes. With a view of simplification of the tax laws, it is expedient to consider the problem of association of taxes having a similar taxable base. Thus, the distribution of tax revenues should be settled by inter-budgetary relations.

Conclusions

To reach the perfection of the tax system of the Republic of Belarus, it is necessary to consider basic tendencies of development of the international tax rights, the achievement of the world legal science and legal tax practice, and to observe the priorities of national interests of the country. The list of the taxes raised in the Republic of Belarus annually is concretized (as a rule, aside reduction) at the acceptance of the law on the budget of the Republic of Belarus for the next fiscal year. With the purpose

of the creation of a favorable tax climate and the optimization of the procedure of the execution of tax obligations for separate categories of payers, special tax modes work: a simplified system of taxation for subjects of small business, taxation within the limits of free economic zones, a uniform tax for manufacturers of agricultural production, a uniform tax from individual businessmen and other natural persons. Optimally, such a tax system should be capable of harmonizing economic interests of the state and payers. It is expressed in the maintenance of modern receipt of taxes in the budget in compliance with budgetary needs without essential influence upon the financial position of organizations and citizens. As far as the implementation of the reform is concerned, a complex of social guarantees of free-of-charge formation of public health services and a developed system of pensions and social services provision should be introduced.

Work on tax laws' simplification, among the others, by reducing the list of taxes and the amounts of tax rates, is constantly conducted in the Republic of Belarus. Ineffective deductions in inappropriate funds have been cancelled, VAT rates, profit tax, income and extreme taxes are reduced, taxes with similar tax base are incorporated into uniform payments.

The General Part of the Tax Code of the Republic of Belarus is actually applied in whole. Work on its Special Part regulating the mechanism of calculation and payment of separate taxes is actively conducted.

The tax system has become more stable, liberal and pragmatic. It confirms not only the stable positive dynamics of tax revenues of last years, but also tactile increase of the general level of tax culture and social responsibility.

Streszczenie

Głównym zadaniem reformy opodatkowania na Białorusi jest zachowanie przejrzystości, przejrzystości i prostoty przepisów prawnych. Z tego powodu reforma objęła różne sfery, włącznie z regulacjami dotyczącymi budżetu i administracji skarbowej. W celu poprawy funkcjonowania systemu podatkowego koniecznym jest stopniowe usuwanie obciążeń okołopodatkowych, zmiana struktury podatków na rzecz podatków bezpośrednich, obniżanie opodatkowania wynagrodzeń. Z kolei mając na uwadze uproszczenie regulacji podatkowych, wskazanym jest rozważenie kwestii ujednoczenia (zwiększenia spójności) podatków mających podobną bazę podatkową.

System podatkowy na Białorusi staje się stabilny, liberalny i racjonalny. Potwierdza to nie tylko dynamika wzrostu dochodów podatkowych w ostatnich latach, ale również wzrost ogólnego poziomu kultury podatkowej i odpowiedzialności w społeczeństwie.