

DOI: <https://doi.org/10.34069/AI/2022.52.04.16>

How to Cite:

Tatarova, T., Sabluk, S., Chubenko, A., Kozin, S., & Kobylnik, D. (2022). To the issue of the classification of administrative and legal methods of fiscal control. *Amazonia Investiga*, 11(52), 148-154. <https://doi.org/10.34069/AI/2022.52.04.16>

To the issue of the classification of administrative and legal methods of fiscal control

До питання класифікації адміністративно-правових методів фіскального контролю

Received: March 15, 2022

Accepted: April 17, 2022

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Abstract

In the article, based on the analysis of scientific views of scientists and the norms of the current legislation, the scientific task, which is to establish a circle and classify the administrative and legal methods of fiscal control, is solved. The methodological basis for the article is a number of methods of scientific knowledge, including: logical and semantic, monographic, logical, dialectical methods, methods of analyses and synthesis, systematization and classification, method of summarization. The scientific novelty of the article is that it presents the author's classification of methods of fiscal control. The results of the study can be used to conduct further research on fiscal control methods, enabling the scientists to develop their own classifications and generalizations of such methods. The originality of the article is that the proposed groups of fiscal methods, according to the view of the researches, are also divided into voluntary, voluntary and compulsory one, and strictly coercive ones.

Анотація

У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, було вирішено наукове завдання, яке полягало у тому, що встановити коло та здійснити класифікацію адміністративно-правових методів фіскального контролю. Методологічну основу статті складає низка методів наукового пізнання серед яких: логіко-семантичний метод, монографічний, логічний, діалектичний методи, методи аналізу та синтезу, систематизації та класифікації, метод узагальнення. Наукова новизна статті полягає в тому, що в ній представлена авторська класифікація методів фіскального контролю. Результати дослідження можуть бути використані для подальших досліджень методів фіскального контролю, що дасть змогу вченим розробити власні класифікації та узагальнення таких методів. Оригінальність зводиться до того, що запропоновані групи фіскальних методів, відповідно до думки авторів дослідження, також поділяються на добровільні, добровільно-примусові та примусові.

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Keywords: actors, administrative and legal methods, classification, fiscal control, methods.

Ключові слова: суб'єкти, адміністративно-правові методи, класифікація, фіскальний контроль, методи.

Introduction

Modern processes of State formation, which take place in all spheres of political and economic life of the country, cause systemic changes in social relations, which relate to the management of certain industries and spheres of Ukraine's activity. The sphere of activity of fiscal bodies of the State is no exception, as the development of small and medium business, filling the State budget. The sphere of activity of fiscal bodies of the State is no exception, as the development of the sphere of small and medium business, filling the State budget of the country depends on the coordinated, systematic and appropriately organized work of these agencies. For this reason, the key issue, which, in our opinion, requires appropriate research and regulation, is the procedure for applying relevant methods of fiscal control in the activities of relevant agencies and institutions.

It should be noted that there is no single established definition of the term «methods of fiscal control» in the current legislation of Ukraine and scientific works in the area of tax and customs. This is primarily due to the author's various approaches to the list of actors of State fiscal policy implementation, as well as to the very concept of fiscal control. Most scholars consider control over the collection of taxes, fees and mandatory payments in relation to the activities of the State Tax Service. In our opinion, administrative and legal methods of fiscal control are the set of techniques and methods used by authorized actors of fiscal policy to comply with the rules of customs and tax legislation, international instruments of fiscal policy, ratified in the prescribed manner, as well as the requirements of specific regulations by controlled objects. The methods of fiscal control should be defined in regulations, as well as formed in the field of scientific activity; they should also be used exclusively within the competence of fiscal authorities. Therefore, an important task of scientists is to expand the circle, as well as improve understanding of the content of administrative and legal methods of fiscal control.

In view of the above, the purpose of the article is to classify the administrative and legal methods of fiscal control. Given this goal, it is necessary to solve the following tasks: to analyze the scientific views of scientists on the range of

relevant methods; provide a description of separate methods of fiscal control; to classify the latter.

Methodology

The methodological basis for the article consists of both general and special methods of scientific knowledge.

Thus, the use of logical and semantic method allows to reveal the essence of administrative and legal methods of fiscal control.

With the help of monographic method the views of scholars on the content and classification of fiscal methods are studied.

Logical method, as well as dialectical method helps to determine general and special methods of fiscal control.

The methods of analyses and synthesis are applied to provide the description of the above methods.

The use of methods of systematization and classification makes it possible to group these administrative and legal methods.

The method of summarization is used to formulate the conclusions and the prospects for further research.

Literature Review

The methods of fiscal control have repeatedly come to the attention of various scholars. For example, Lytvynchuk and Prokhorchuk (2018) point out that tax control is a complex multidimensional process, and refining its methods and developing specific recommendations for improving the conduct of various control, audit and expert activities will increase its effectiveness and efficiency by influencing the level of tax security of the State.

Shevchuk (2013) studied the forms and methods of fiscal control. The scientist notes that among the particularly important methods of tax control informative methods of tax control as the set of techniques and methods for obtaining information needed by the authorities in the

process of tax control should be distinguished. The information obtained should be objective, complete, relevant, adequate, reliable, protected from public access to information or the results of its processing, i.e. such that can be the basis for further decision-making by the actors of the tax control system.

Melnyk & Leshchukh (2015) in addition to direct and indirect methods allocated also preventive methods of tax control, such as: public awareness work; teaching; disciplinary, administrative, material methods of coercion, incentives (tax holidays, benefits).

The methods and principles of fiscal management and control were studied by Stoica (2015), who highlighted three basic principles: equity; predictability; efficiency.

Vecchio (2022) stated that correctly organized financial control (on the basis of appropriate methods and principles) improves operational efficiency, enhances profitability, simplifies resource management, improves accountability and engagement at all levels, streamlines the reporting and auditing processes.

Results and Discussion

Starting the research, we should note that the issue of administrative and legal methods of fiscal control and their classification is quite controversial in the legal literature. At the same time, it should be noted that the current normative acts, in particular the Tax and Customs Codes of Ukraine, introduce a certain contradiction in this issue. Thus, Article 62 of the Tax Code (Law of Ukraine No. 2755-VI, 2010) provides a list of ways to exercise tax control: conduct of taxpayers' records, checks and verifications of compliance with legislation, the control over which is entrusted to the relevant State authorities, monitoring controlled transactions, interviewing authorized persons or individuals. In turn, Article 336 of the Customs Code of Ukraine (Law of Ukraine No. 4495-VI, 2012) distinguishes among the forms of customs control: verification of documents and information, customs inspection, accounting of goods, commercial vehicles, interviewing citizens and officials of enterprises, inspection of territories and premises of warehouses, free customs zones, verification of the recording of goods crossing the customs border; conducting documentary inspections, sending inquiries to other government agencies, institutions and organizations, post-customs control.

In our opinion, the scientific community and the legislator should draw a clear line between the forms, methods and ways of fiscal control. Thus, form is an external expression of a certain activity, while a method is a technique or method, by which such a form is realized. An analysis of specific literature on this subject suggests that a number of scholars in the area of tax control distinguish between direct and indirect methods. They are sometimes accompanied by preventive methods of tax control, such as: public awareness work; teaching; disciplinary, administrative, material methods of coercion, incentives (tax holidays, benefits) (Melnyk & Leshchukh, 2015, p. 83). In other works, tax control methods include legal assessment of business transactions, inventory, inspection of relevant premises (warehouses, offices), logical and arithmetic verification of documents, which can also be carried out indirectly, acceptance of explanations from authorized and responsible persons on the subject control (Vasiuk, 2015, p. 132).

As for the customs sphere, researchers almost do not single out separate methods of customs control, mainly using the forms of customs control enshrined in the Customs Code of Ukraine. With regard to methods in the field of customs, it is mainly the definition of customs value of goods imported into Ukraine in accordance with the customs regime of import (the main method is the contract (contract) price for imported goods (transaction value); secondary – at the contract price for identical goods, at the contract price for goods, on a cost-deduction basis etc.).

On the basis of the above scientific works, taking into account the achievements of scientists in the administrative and legal sphere, we consider it appropriate to improve the classification of administrative and legal methods of fiscal control. Firstly, it should be noted that there can be no universal classification of methods of fiscal control, as fiscal relations are very multifaceted, they involve various government agencies, institutions and their officials. Secondly, the proposed classification will be based on the form and conditions of fiscal control, the types of objects of control, as well as the research components.

First of all, we stress that analysis is a general scientific method, the essence of which is to identify and describe individual elements or qualities of the subject matter. The analysis is used at all stages of fiscal control: in the examination of documents, in the interview of

persons, in investigations and surveys. The analysis helps to identify individual elements of the subject matter of verification in order to be able to conclude about its completeness, validity and compliance with certain requirements.

With regard to synthesis, scientists say that the reproduction of the system in its entirety through synthesis much more accurately reflects its essence than the initial, direct vision (Naichuk, 2015, p. 26).

Using the method of deduction, control agencies and their officials can draw conclusions from general to specific, when, on the basis of a certain fact, the conclusion on the failure to comply with the requirements of the individual actions subject to such control can be made. For their part, controlling entities, applying this method of fiscal control and based on the study of individual controlled operations or measures, conclude whether or not all such operations are in conformity with the regulatory requirements.

Such a general scientific method of fiscal control as comparison helps to identify differences or similarities of certain things, objects or processes. This method can be used to compare quantitative data over several years or to verify the facts revealed during the inspection for compliance with the requirements of tax or customs legislation.

The method of analogies is very similar to the method of comparison. Its advantage is that employees of the State Tax and Customs Services can use similar cases and samples of procedural decisions during fiscal control. The application of this method promotes the same law enforcement practice in the fiscal sphere.

The predicting method is used in particular in the decision-making process based on the results of fiscal control. It helps to set deadlines for eliminating deficiencies or to conclude the probability of bringing the controlled object into a regulatory state, to assess future benefits of implementing the recommendations of the customs and tax authorities, etc. At the same time, the forecast of the actors of fiscal control should be based on reliable information, taking into account material, legal, personnel and other capabilities of the object of fiscal control (Yevtushenko & Andriash, 2013, p. 148).

Statistical methods that can be used by authorized persons in carrying out fiscal control are interesting and expedient. Among such methods we can allocate the methods of

statistical observation, which perform functions in the collection and evaluation of the primary statistics quality. By studying such aggregates through mass observations, statistics reveals their inherent common features, processes, patterns.

The next stage after the observation is the application of methods of compiling and grouping the primary statistical material, which ends up with the definition of generalized summary synthetic indicators. The definition of such indicators is the third stage of statistical research, which solves the problem of identifying certain parameters or establishing certain patterns.

A separate group of universal methods consist of methods of influencing the consciousness and behavior of persons under control, namely the methods of persuasion and coercion. The classification of these methods as universal is due to the fact that they are inherent not only in fiscal control, but also in the implementation of control measures in other areas of State activity and in the performance of managerial functions by authorized officials of State agencies.

According to Alokhin, Karmolytskyi and Kozlov (2003, p. 227), persuasion stimulates the proper behavior of participants in the management of public relations by conducting educational (including legal one), explanatory, advisory, encouraging and other activities, mainly moral influence. Coercion is considered by the scientist as an auxiliary method of influence, used due to the inefficiency of persuasion.

Therefore, during tax audits and checks of compliance with tax legislation, surveys of officials, authorized persons and employees of the taxpayer, opening and inspection of duty-free shops and customs warehouses, relevant officials of fiscal authorities may influence controlled persons through legal and psychological means to ensure that they comply with the requirements of national legislation in the fiscal sphere.

In addition to direct influence, during inspections and other forms of control, employees of tax and customs authorities may carry out preliminary training of officials of controlled objects, perform legal education, conduct informational and explanatory work. The use of the method of persuasion is accompanied by such actions as: argumentation, evidence, motivation, justification, explanation of the essence, etc.

If persuasion methods have not had a certain effect, the actors of fiscal control may resort to

coercive methods. Thus, in accordance with Article 325 of the Customs Code (Law of Ukraine No. 4495-VI, 2012), the customs authorities have the right to require in writing from persons moving goods, commercial vehicles across the customs border of Ukraine, to conduct operations provided by law. Besides, the customs authority in whose area of operation the customs free zone is located, in order to properly organize customs control requires the holder of the free customs zone and management of the special (free) economic zone to ensure the construction of a fence around the perimeter of the free customs zone and appropriate equipment of crossing points.

Next, we turn to special methods of fiscal control and consider direct methods of its implementation. The peculiarity of these methods is that they are applied on the spot (area), where control measures take place (Valihura, 2016). The use of these methods is also associated with the direct contact of the actors of control with the objects under control. To such methods we have included inspection (survey), observation, questioning, timing, inventory.

Inspection (survey) is a visual observation carried out by authorized persons in the process of fiscal control. Territories or premises belonging to the subject matter of the fiscal control may be inspected and inspected. Inspections and surveys are used to establish the correspondence of the data contained in certain documents to the actual availability of material values, things, etc.

Article 338 of the Customs Code (Law of Ukraine No. 4495-VI, 2012) gives the customs authorities the right to inspect goods and commercial vehicles presented to the customs authority (including for recalculation and weighing). Inspection of goods, vehicles can be identification one – without opening the packing places and inspecting the vehicle, and partial one – with opening up to 20 % of packing places and selective inspection of the vehicle.

The survey is a method of fiscal control, which helps to identify deficiencies in the work of objects under control, to determine the circumstances relevant to a particular inspection, as well as to compare the available information with that provided to the actor of control.

In order to establish compliance of the conditions of controlled operations with the principle of «extended arm» the officials of the controlling

tax authority during the analysis of reports have the right to conduct interviews with authorized persons and / or employees of the taxpayer (Law of Ukraine No. 2755-VI, 2010). To ensure customs control, customs officials may conduct an oral interview of citizens and officials of enterprises, which is the receipt of information of importance for customs control from persons in possession of such information by a customs official (Law of Ukraine No. 4495-VI, 2012).

During the inspection, officials who carry out such an inspection may conduct business operations timekeeping. Based on the results of timekeeping, a certificate is drawn up, which is signed by officials of the controlling body and officials of the business entity or its representative and / or persons who actually carry out business operations (Shevchuk, 2013).

Inventory as a method of fiscal control requires verification and documentation of the availability of property, assets and other data relevant to the audit. Thus, the agencies of the State Tax Service have the right to request, when carrying out checks, an inventory of fixed assets, inventories, costs, etc. (Law of Ukraine No. 2755-VI, 2010).

Next we shall reveal the content of indirect methods of fiscal control. Expertise is the first of these techniques and can often be carried out in specialized laboratories, because sometimes it is impossible to reliably establish the presence or absence of certain data at the place of fiscal control. Article 47 of the Customs Code of Ukraine (Law of Ukraine No. 4495-VI, 2012) states that in order to establish the accuracy of the data specified in the certificate of origin from Ukraine, customs authorities may conduct research (analysis, examination) of samples of such goods in the prescribed manner.

Authorized officials of the fiscal control agencies carry out arithmetic and normative checks on the basis of the relevant customs and tax reports and documents from the controlled objects. Arithmetic verification lies in establishing the correctness of digital data and calculations performed by the objects of control. Regulatory reconciliation is performed in order to verify the compliance of the required current or reporting documents with the established regulatory requirements.

Monitoring provides the audit of the activities of the object of fiscal control in order to collect and summarize certain information and take certain measures based on its consequences: the appointment of an inspection, retrieval of

documents, etc. Thus, according to the Tax Code of Ukraine (Law of Ukraine No. 2755-VI, 2010), monitoring of controlled transaction conditions is carried out by analyzing reports on controlled transactions, transfer pricing documentation, global transfer documentation (master file) and report by international group of companies, any other information sources and by obtaining tax information.

Confirmation is a method of obtaining written or oral response from an independent third party that confirms the accuracy of the information. In practice, it is often used as conducting counter-checks of the counterparties of the inspected enterprise (Husak, & Husak, 2007). For example, the taxpayer and the supervisory authority use sources of information that contain information that compares the commercial and financial terms of transactions, including information on comparable uncontrolled transactions of the taxpayer, as well as information on comparable uncontrolled transactions of its counterparty – a controlled transaction by related persons (Law of Ukraine No. 2755-VI, 2010).

Conclusions

Concluding the research, we stress on that our classification of fiscal control methods is not universal and dogmatic one. Other researchers may develop their own classifications and generalizations of such methods. At the same time, we are confident that our achievements will allow the scientific community to take more systematic approach to the analysis of this issue.

Therefore, the main administrative and legal methods of fiscal control are the following:

- 1) universal methods of fiscal control, which are applied regardless of the peculiarities of its implementation and essentially applicable to any control procedures:
 - a) general scientific methods of fiscal control: induction, deduction, analysis, synthesis, comparison method, statistical methods, modeling and predicting methods;
 - b) methods of influencing the consciousness and behavior of persons under control: persuasion and coercion;
- 2) special methods of fiscal control related to the situation of fiscal control:
 - a) direct methods of fiscal control: included inspection (survey), observation, questioning, timing, inventory;

- b) indirect methods of fiscal control: monitoring; data comparison, arithmetic and normative reconciliations, examination (laboratory research), confirmation.

As a result, it should also be noted that the first group of these methods is voluntary one, the second – voluntary and compulsory one, and the third is strictly coercive one. In addition, we are convinced that there is a need to improve the legislative regulation of fiscal control methods, in particular in the combination of voluntary, voluntary and compulsory and coercive methods of fiscal control. It is substantiated that under modern conditions and in connection with the situation with COVID-19 (as Kharytonov et al., (2021, p. 158)) correctly point out, the COVID-19 pandemic has been going on for two years now, threatening the lives and health of people, the stable functioning of economic mechanisms, and the social existence of society), it is important to determine clear algorithm of inducement of tax subjects «to voluntariness» of fulfillment of relevant regulations at the legislative level.

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