

INTERNATIONAL EXPERIENCE IN TAXATION OF INCOME FROM LEGAL ACTIVITIES

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Annotation. The relevance of the study of foreign experience in taxation of income from legal activities stems from the fact that it is dynamically developing and the relevant scientific knowledge requires constant deepening and updating. Moreover, the best international experience is a fundamental source for legislative proposals aimed at improving approaches to taxation of income from legal activities. The main methods that the author relies on in this study are the formal-legal method, the comparative method and the method of generalization. The study resulted in a number of outcomes. For instance, it was found that in some states there is a special taxation regime for income of lawyers, which may provide for the recognition of half of their total (gross) income as general taxable income (India) or the right of a lawyer to opt for a simplified system of taxation of their income with the application of a reduced rate (Poland). Moreover, special rules for determining the amount of total opposition income from advocacy provide for: (1) the possibility of deducting from the total income received by a lawyer during the tax period the amount of expenses incurred by him or her in connection with the legal practice (for the purchase of office supplies, for the rental of premises for the legal practice, for banking, utility bills for workplaces, for business trips, for tax software and a tax consultant, etc.), depreciation deductions during the tax period (in the amount of part of the value of property used in legal practice, including computer equipment, safes, etc.), the amount of remuneration for assistants and other employees, as well as incentive deductions in connection with the performance of socially useful activities under the circumstances established by law, as well as some other amounts subject to their proper documentary confirmation (Kazakhstan, United Kingdom, Croatia); (2) payment of tax in advance monthly with the possibility of reducing the amount of these advance payments by tax authorities in special cases (Croatia), quarterly (Moldova, Germany) based on the indicators of taxable income of previous tax year broken down by the relevant months/quarters (with a refund of excessively paid amounts) or annually on the day of submission of the tax reporting document (Kazakhstan, Kyrgyzstan); (3) taxation of income from legal practice at a fixed rate (10 % in Kazakhstan and Kyrgyzstan, 18 % in Moldova and India, 20 % in the United Kingdom) or a progressive (differentiated) rate ranging from 9.5-20% to 45% depending on the amount exceeding certain threshold values for the rate by a particular amount (France, Germany, Norway, Poland, Sweden) along with the determined non-taxable annual income threshold.

Key words: income tax, tax on income from legal practice, comparative tax law, special regime for taxation of income from legal practice, mechanism of tax on income from legal practice.

1. Introduction.

The interdependence of vectors and dynamics of evolutionary processes in the tax administration system and the peculiarities of the economic, political and social environment of business activities in a particular state at a particular time result in a fact that governments accumulate largely unique experience in regulation of taxation issues and administration of taxes and fees. Traditionally, on platforms of international organizations and in other ways, governments exchange advanced and effective practical solutions to tax administration issues, thereby strengthening their ability to move closer to a more complete implementation of the tasks assigned to it by tax law in order to achieve a balance between

budget expenditures and its revenues in a way that is the least economically and administratively burdensome for taxpayers. The task of the scientific community against this background is to study relevant international experience for its generalization and evaluation as a potential source for legislative proposals. In light of this, it is necessary to get acquainted with the rules for taxation of income from legal practice in foreign countries to clarify their features from the point of view of introducing a special tax regime for lawyers, as well as the features of the tax rate on income from legal practice, the procedure for determining the amount of tax liability for this tax and its payment.

2. Analysis of scientific publications.

The rules for taxation of income from legal practice in certain countries are receiving increasing attention in the scientific literature. The works of such scientists as O. Bukhanevich, V. Ostapchuk, E. Postoronko, F. Tkachyk and O. Chernykh are fully or partially devoted to clarifying its aspects from the point of view of introducing a special tax regime for lawyers, as well as the peculiarities of the tax rate on income from legal practice, the procedure for determining the amount of this tax and its payment. At the same time, scientific knowledge about the relevant international experience needs to be deepened and updated in light of the high dynamism of the development of tax legislation in the part that concerns the taxation of income of persons engaged in independent professional activities.

3. The purpose of the work.

The purpose of the study is to highlight and summarize foreign experience in taxation of income from legal activities.

4. Review and discussion.

The proper way to begin this is to discover the structure and procedure for paying mandatory payments to budgets by lawyers from income from their professional activities in accordance with the legislation of the member states of the European Union and of the United Kingdom.

In the United Kingdom, according to information from O. Chernykh, registration of a self-employed person is carried out through the GOV.UK website and the person must control the receipt of a UTR code, under which he then submits reports. All income in the amount of more than 1,000 pounds is subject to declaration. Income up to 12,570 pounds per year is not taxed, on income above this amount it is necessary to pay 20 % and 40 % on income over 50,270 pounds to 125,140 pounds per year. Amounts above are taxed at a rate of 45 %. The advantage of the self-employed taxation system is that it is possible to include business travel expenses, utility bills, equipment purchases and other items designated for activities of a solicitor or a barrister [1].

In this regard, E. Postoronko and O. Bukhanevich emphasized that under provisions of the United Kingdom Income Tax Act, if a lawyer works independently, he or she is entitled to tax deductions for expenses related to their activities, such as office rent, purchase of necessary equipment and software. They can also deduct expenses for professional insurance and registered charitable contributions. If a lawyer works in a joint practice or in a law firm, then tax deductions for expenses are distributed between partners or shareholders depending on the agreement between them. Usually, joint practices and law firms keep records of income and expenses separately for each partner or shareholder. If a lawyer has low income, they can choose a simplified form of taxation, which allows them not to pay tax on a certain amount of income [2, p. 75].

Thus, it can be stated that the legislation of the United Kingdom provides for a non-taxable threshold for lawyers' income from their professional activities, as well as a progressive tax rate on personal income in range from 20 % to 45 %. Lawyers are also granted the right to deduct from their taxable income their expenses for business trips, payment of utility bills, purchase of equipment and other essential items for the lawyer's activities.

A similar approach to income taxation is introduced in a significant number of European countries, which is confirmed by the conclusions of comparative legal studies on this matter.

F. Tkachyk and V. Ostapchuk in this context draw attention to the fact that in France, which has a progressive tax system, there is a lower limit of income from which tax is not levied, and in case of its exceeding, the tax rate gradually increases depending on the amounts of income received above the specified level. Similarly, in Sweden, income tax is calculated on a progressive scale – the total maximum rate is 56.9%, while in Norway income tax on annual wages is at a rate of 9.5% if the income is in between 220,501 and 248,500 Norwegian kroner [3].

The Croatian experience of taxation of income from legal activities is also of significant scientific interest. Thus, having studied the rules for taxation of the activities of Croatian lawyers, N. Korinna found that income tax in this country is calculated and paid in accordance with the Law of the Republic of Croatia 'On Income Tax', which entered into force on 1 January 2021. Income from professional activities (activities of representatives of independent professions such as medical professionals, veterinarians, lawyers, notaries, auditors, etc.) is the difference between operating revenues and operating expenses incurred in the tax period. In this regard, the provisions of the Croatian tax legislation, among other things, establish a list of self-employment expenses that are not fully or partially recognized for tax purposes when determining income from self-employment, including 50 % of entertainment expenses (meals, gifts with or without an embossed company logo, expenses for holidays, sports, recreation, expenses for the use of personal vehicles, boats, airplanes, vacation homes), etc. Furthermore, attention is drawn to the provisions of Article 44 of the Law of Croatia 'On Income Tax', which provide for the stimulation of employment, including legal practice, by additionally reducing one's income from professional activity in the tax period by the amount of wages paid and contributions paid to wages to new employees. In addition, individual income tax payers who are engaged in independent activities may additionally reduce their income from self-employment by the amount of government aid for education and training and by the amount of small-value assistance for practical training and training of participants in certain economic areas in accordance with special rules [4, p. 263].

Personal income tax is paid by monthly advance payments. The tax administration may, at the request of the taxpayer, change the amount of an advance payment. A taxpayer who starts independent activity shall not pay advances on income tax before submitting the first annual tax return. Advances on income tax shall be paid monthly by the last day of the month for the previous month, based on the data specified in the annual tax return for the previous tax period by dividing the last year's taxable income by the number of months of the same period in which the professional activity was carried out. If the taxpayer also declares income from other sources in the annual tax return, in addition to income from independent activity, the advance tax for the following period shall be determined only from the tax charges arising from independent professional activity. The tax administration may, based on the verification of data from processed annual tax returns or other data on the taxpayer's business transactions, change the decision on the specific sum of advance payments or issue a new one and determine new amounts of monthly advance payments [4, p. 264].

In light of the above, it can be stated that the Croatian experience of taxation of income from legal activities is notable, first of all, for the fact that the amount of their annual taxable income constitutes the difference between operating income and operating expenses incurred in the tax period, which include, in particular, the amounts of employee remuneration. There are also grounds for deductions in connection with participation in educational and charitable activities. It should also be emphasized that persons engaged in independent professional activities pay tax on their income by making monthly advance payments based on the data specified in the annual tax return for the previous tax period, with the possibility of reducing the amount of these advance payments by the tax authorities in special cases.

Continuing the comparative legal review of the legislation of European countries, it is to be noted that in Germany the main tax paid by lawyers is personal income tax at a rate of 14% to 45% of annual taxable income:

- (a) up to 9,744 euros – exempt;
- (b) 9,745-57,918 euros – from 14% to 42%;
- (c) 57,919-274,612 euros – 42%;
- (d) over 274,613 euros per year – 45% [5].

Personal income tax is paid quarterly in advance payments in an amount based on financial indicators of the previous tax year. At the end of the year, the taxpayer calculates his actual income and files an income declaration, in which he may claim a refund of the overpaid funds if the advance payments exceed the amount of tax due, determined on the basis of the actual income. These advance payments must be paid on March 10, June 10, September 10 and December 10 [5].

It is also possible to deduct expenses from the income of individuals to determine the amount of annual taxable income. The explanatory materials on this subject indicate that almost any self-employed person has many expenses that they can and should declare for tax purposes. Operating expenses cover a wide range of costs that self-employed persons incur in the course of their activities. These can include renting office space, purchasing work materials and travel expenses. If a self-employed person works from home, they can also deduct the cost of part or all of their home office. It is also possible to deduct 100 % of the fee for tax software or a tax consultant as operating expenses. Expenses up to 410 euros can be fully deducted in the same tax period. Expenses above 410 euros may have to be written off over several years. For example, laptops can be fully depreciated over 2-3 years [6].

Thus, the peculiarities of taxation of income of a lawyer under German law include: (1) a threshold of non-taxable income with a further progressive income tax rate; (2) an obligation to pay this tax quarterly in advance payments; (3) the right of its payers to deduct the amount of operating expenses regardless of the fact whether the taxpayer carries out independent professional activities at his place of residence; (4) the determination of the limits of depreciation sums within one tax period.

The next country that deserves special attention in light of the purpose of this part of the study is Poland.

The provisions of the Law of Poland 'On Personal Income Tax' differentiate the personal income tax rate, determining that for income up to PLN 120,000 the tax rate is 12 % minus the tax reduction amount of PLN 3,600, and for more, the rate is 12% of PLN 120,000 (PLN 10,800) plus 32% of the amount exceeding PLN 120,000 [7, p. 323].

At the same time, the Polish legislator has amended the tax legislation and allowed lawyers to choose the taxation system from 2022. The Polish Act on the Single Rate of Income Tax on Certain Income Received by Individuals has expanded the range of independent professions that can benefit from the single tax rate, in particular, by lawyers. According to this law, the single tax is 17 % for income received by professionals and 15 % for income from the provision of independent services. Considering whether to opt for the single tax rate, one should bear in mind an income received in the previous tax year, because the legislator, in accordance with Article 6(4) of the Polish Act on the Single Rate of Income Tax on Certain Income Received by Individuals, provides for a limit on the income received by taxpayers who can benefit from the single tax in a certain tax year. If a taxpayer receives income exceeding: EUR 2,000,000 for taxpayers who pay monthly in 2022 (PLN 9,188,200) or EUR 200,000 for taxpayers who pay quarterly in 2022 (PLN 918,820) – they cannot switch to a lump sum payment or loses the right to a lump sum taxation despite carrying out the activities specified by the legislator [7, p. 323].

Assessing this innovation, O. Borszczewski pointed out that a lump-sum tax would not be beneficial for lawyers whose income does not exceed PLN 120,000 per year. The purpose of a single tax is to tax income. In the case of taxation according to general rules, the tax base is net income (i.e. income less non-taxable expenses). Therefore, in the case of a significant share of expenses in income, the profitability of choosing a lump-sum rate will decrease. Lawyers with an annual income of more than PLN 120,000 should consider changing taxation to a lump-sum system. At the same time, opting for

a lump-sum tax involves giving up some benefits provided for by the Polish Law 'On Personal Income Tax' [8, p. 37].

Having considered the above, one could approve the legislative framework enabling for lawyer to choose between the general system of taxation of income at a base rate of 12% and its increase upon reaching higher values of annual income established by law (with the tax base covering net income, i.e. gross income less professional expenses, and with the provision of tax discounts and other benefits to the taxpayer) and a special taxation regime (annual lump-sum tax) at a rate of 15-17% of total annual income.

Moldovan tax legislation also provides for a special taxation regime for lawyers as persons engaged in professional activities in the field of justice.

Analysis of the Moldovan tax legislation shows that these professionals are subject to the personal income tax rate of 18% of the annual taxable income (Article 69-4 of the Tax Code of the Republic of Moldova). At the same time, deductions are allowed for ordinary and necessary expenses related to professional activities in the field of justice incurred by the taxpayer during the tax period, in accordance with the provisions of Chapter 3 of the Tax Code of the Republic of Moldova, including deductions for:

- ordinary and necessary expenses paid or incurred by the taxpayer during the tax period solely for the purpose of carrying out activities in the field of justice (not personal expenses);
- undocumented ordinary and necessary expenses incurred by the taxpayer during the tax period, in the amount of 0.2% of taxable income [9].

According to the rules for calculating, declaring and paying income tax by persons engaged in professional activities in the field of justice, this tax is calculated annually, while it is paid in advance payments quarterly – by the 25th day of the month following the relevant quarter. The income tax return is submitted no later than March 25 of the year following the declared tax period (Article 69-5 of the Tax Code of the Republic of Moldova) [9].

For comparison, in the Kyrgyz Republic, according to the Tax Code of the Kyrgyz Republic, lawyers are payers of personal income tax, according to the provisions of which the lawyer's income is taxed at a rate of 10 %. The tax period is the calendar year [4, p. 260].

Kazakhstan as well deserves special attention as a country with modern and comprehensive legislative framework for taxation of income from legal activities. On 1 January 2025 special provisions of the Code of the Republic of Kazakhstan of 25 December 2017 no. 120-VI 'On Taxes and Other Mandatory Payments to the Budget (Tax Code)' came into force and establish the foundations of a special regime of taxation of income of persons engaged in private practice and individual entrepreneurs.

The part of these legislative provisions that relates to lawyers primarily sets out the rules for determining a lawyer's total taxable income by outlining the sources of income and expenses in the lawyer's activities.

Thus, according to Article 364(1) of the Tax Code of Kazakhstan, the taxable income of a lawyer for the tax period shall be determined as the amount of income to be received (obtained) from the performance of legal activities, reduced by the amount of the lawyer's professional deductions. Income from carrying out advocacy activities shall include: (1) income from the provision of legal assistance by a lawyer; (2) income in the form of reimbursement of expenses related to protection and representation, legal information and legal advice, including at the expense of budgetary funds, in accordance with the legislation of the Republic of Kazakhstan on state-guaranteed legal assistance; (3) other income to be received (obtained) in the course of carrying out legal activities. The date of recognition of income of an individual engaged in private practice is:

- (1) the date of provision of services specified in the signed act of services rendered;
- (2) the date of receipt of money in the absence of an act of services rendered in the reporting tax period, but not less than the amount of expenses incurred for such period;

(3) the date of provision of services specified in the document confirming the fact of provision of services, drawn up in accordance with the legislation of the Republic of Kazakhstan on accounting and financial reporting, in the absence of an act of services rendered (Article 361(2) of the Tax Code of Kazakhstan) [10].

On the other hand, the law establishes the right to make deductions for expenses that are provided for in Article 364(4) of the Tax Code of Kazakhstan and meet all of these conditions: (a) made in connection with legal activities; (b) proven by respective documents; (d) reflected in the lawyer's tax registers. The law includes the following as professional deductions for a lawyer:

- expenses for the purchase of stationery;
- expenses for renting (leasing) premises for legal activities;
- depreciation deductions calculated at 25% of the value of assets at the end of the tax period (computers, laptops, monitors, projectors, devices for printing, viewing, copying, faxing, safes);
- expenses for paying for bank services, organizations that carry out certain types of banking operations, communication services, and utilities;
- compensation for business trips (actually incurred travel expenses to the place of business trip and back, actual expenses for renting (rental) housing, daily allowances in the amount of no more than 6 times the monthly calculation index);
- membership fees paid to the bar association, etc. (Article 361(4), Article 364 of the Tax Code of Kazakhstan) [10].

The basic income tax rate of 10% is applied to the total taxable income of a lawyer (Article 320(1) of the Tax Code of Kazakhstan) [10].

Thus, the special rules for taxation of income from legal activities under the legislation of Kazakhstan are notable, mainly, owing to the obligation of lawyers to recognize income upon the fact of providing relevant legal services (regardless of acquiring a payment for them from the client), their right to deduct from the amount of taxable income the main expenses for carrying out legal activities, as well as to the personal income tax rate of 10 %.

A special regime for taxation of income from professional activities of lawyers has been introduced and is being continuously improved in India.

First of all, in this context, it is to be noted that the Indian Central Goods and Services Tax Act of 2017 covers legal services provided by lawyers, taxing them at a rate of 18 % [11].

At the same time, Indian legislation provides for the possibility for persons engaged in certain professional activities (lawyers, doctors, interior decorators, freelancers, etc.) to pay income tax on only half of their income. This special tax regime is called presumptive taxation scheme in Section 44ADA of the Income Tax Act of 1961. According to its rules, taxable income is a certain part of the turnover/gross income, regardless of the expenses incurred. For lawyers, as well as for some other practitioners this part of the total taxable income is 50% [12].

However, to be eligible for the presumptive taxation scheme, these persons must meet certain conditions. Only those professionals whose annual gross income is less than 5,000,000 rupees (about 60,000 US dollars) or 7,500,000 rupees (about 88,000 US dollars) can take advantage of this preferential regime if they prove that 95 % of their income was received through non-cash bank payments (using bank statements, payee checks, drafts, electronic payment system information or otherwise). Moreover, only lawyers practicing law individually and bar associations, but not law firms as limited liability companies [12].

It is worth noting that tax reporting under the rules of presumptive taxation is much simpler compared to the complex 30-page form for reporting under the general income tax system. In particular, this special taxation regime, not providing for the possibility of reducing the amount of taxable income by the amount of the taxpayer's expenses, exempts them from the need to declare the relevant expenses [13].

In addition to the general system of taxation of income of lawyers as persons engaged in independent professional activities and the special regime of presumptive taxation of income of lawyers, taxes may be levied on them as on employees. This means that if a lawyer works in a law firm, their income is considered as salary. Salary and other additional benefits are taxed as labor income. However, if a lawyer works under a contract in his professional capacity, then income from such activities is considered professional income [13].

Having considered the above, it could be summarized that presumptive taxation is a special approach to taxation of income from the activities of lawyers, which is based on granting a lawyer the right to recognize as their taxable income a half of his actual total income, regardless of their expenses, provided that their total annual income does not exceed the threshold established by law, which is differentiated depending on the share of non-cash receipts in the lawyer's income structure (which encourages the lawyer to take non-cash payments for their services).

5. Conclusions.

It was found that in some states there is a special taxation regime for income of lawyers, which may provide for the recognition of half of their total (gross) income as general taxable income (India) or the right of a lawyer to opt for a simplified system of taxation of their income with the application of a reduced rate (Poland). Moreover, special rules for determining the amount of total opposition income from advocacy provide for: (1) the possibility of deducting from the total income received by a lawyer during the tax period the amount of expenses incurred by him or her in connection with the legal practice (for the purchase of office supplies, for the rental of premises for the legal practice, for banking, utility bills for workplaces, for business trips, for tax software and a tax consultant, etc.), depreciation deductions during the tax period (in the amount of part of the value of property used in legal practice, including computer equipment, safes, etc.), the amount of remuneration for assistants and other employees, as well as incentive deductions in connection with the performance of socially useful activities under the circumstances established by law, as well as some other amounts subject to their proper documentary confirmation (Kazakhstan, United Kingdom, Croatia); (2) payment of tax in advance monthly with the possibility of reducing the amount of these advance payments by tax authorities in special cases (Croatia), quarterly (Moldova, Germany) based on the indicators of taxable income of previous tax year broken down by the relevant months/quarters (with a refund of excessively paid amounts) or annually on the day of submission of the tax reporting document (Kazakhstan, Kyrgyzstan); (3) taxation of income from legal practice at a fixed rate (10 % in Kazakhstan and Kyrgyzstan, 18 % in Moldova and India, 20 % in the United Kingdom) or a progressive (differentiated) rate ranging from 9.5-20% to 45% depending on the amount exceeding certain threshold values for the rate by a particular amount (France, Germany, Norway, Poland, Sweden) along with the determined non-taxable annual income threshold.

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