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**TAXATION OF TAXPAYER INCOMES THAT ARE OBTAINED FROM THE
SALE OF INHERITED PROPERTY: ASPECTS OF FAIR TAX REGIME**

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The author considers the issues of normative regulation in the taxation of income obtained by taxpayers-residents from the sale of inherited property in the countries-participants of the Customs Union and Ukraine. Notes the existence of different tax approaches to the taxation of income from the sale of physical persons' property. The fairness of the normative regulation of providing tax benefits in respect of income from the alienation of property inherited by a taxpayer is questioned. Amendments to the Tax Code of the Russian Federation, which enshrine more equitable tax regime with regard to inherited property, are suggested in the article.

Keywords: property tax deductions, tax benefits, inheritance, inherited property, division of inheritance, taxation of the sale of inherited property, incomes that are not subject to taxation.

Most often the theme of justice of the current legislation on the taxation of individuals was discussed by A. V. Bryzgalin [5; 6; 11]. However, in all his works, as well as in studies of other legal scholars, the main emphasis was put on the study of the issue of fair income tax rates. And as a result of such a study it was concluded, “the main drawback of the existing system of taxation of individuals is the failure to comply with the principle of social justice and the absence of progressive taxation. It is a turn back to progressive taxation should allow for a more equitable approach to the taxation of income of citizens” [11].

In our opinion, the issue of fair taxation should not be limited just to justification of the selection specific types of bets. Among acute discussions of economists and politicians on the choice of income tax rates we lose the problem of determining the object of taxation, by which we mean the *net* income of a taxpayer. As we believe, the decision of the Constitutional Court of the Russian Federation No. 5-P from March 13, 2008 [3] also provides the legal position that coincides with ours, that the burden of tax on personal income imposed on a taxpayer shall be determined in such a way that the object of taxation is so-called net income (see paragraph 3 of the decision).

There is no doubt that a fair taxation should be based on the harmonious combination of the financial interests of the State, society and taxpayers. And that’s why the process of continuous determination balance of private and public interests in the tax area is inevitable, and the confrontation between private and public interests will have a direct impact on the development of the legislation on taxes and fees.

We believe that the problem of defining the principles of justice is due to the specific vision of fairness of the majority of individuals. But if we talk about views of Russians, these views hardly differ from the views of citizens of the states created by the decay of the Soviet Union. Therefore, differences of national tax legislations in Russia, Ukraine, Belarus, Kazakhstan and Kyrgyzstan, in our opinion, are not due to views of citizens regarding fair taxation, but due to public interests. We agree with A. V. Bryzgalin who states that “formation of a fair system of income taxation is a serious social problem, the solution of which is associated with the level of economic development of society and the historically specific visions of justice of the majority of individuals” [11].

The principle of proportionality of taxation to constitutionally significant objectives of limitation of rights and freedoms was considered by D. M. Shchekin [12]. This principle, in our opinion, must ultimately ensure fair taxation, which should not interfere with the constitutional rights and legitimate economic activities of

business entities. For example, A. V. Bryzgalin and A. N. Golovkin note that this principle “ is particularly applicable for taxation of a family, since excessive taxation may make family and children suffer: the family could channel funds withdrawn as taxes into the development of children and the family” [5].

Examining implementation of this principle in relation to the taxation of family in the national legislation of a number of countries -participants of the CIS, you find yourself wondering that the Russian government is not interested in giving the right of free disposal of inherited property and heirs’ receiving income from its sale. Whether the enshrined in the Tax Code of the RF re-emergence of economic benefit, taxable by personal income tax, from the sale of real estate property, which has been inherited, is a violation of paragraph 3 article 3 of the Tax Code of the RF [1], according to which taxes and fees should have an economic ground and cannot be arbitrary? And whether taxes and fees that prevent citizens to exercise their constitutional rights are inadmissible? Whether application of sub-paragraph 2 paragraph 1 article 228 in the amount of personal income tax in regard of the sale by an individual of real estate property, which has been inherited, interferes with the exercising of a citizen’s right to inherit in accordance with paragraph 4 article 35 of the Constitution of the RF?”

The response of the Tax and Customs Tariff Policy Department states the following:

“According to paragraph 1 article 210 of the Code, while determining the tax base of personal income tax, account shall be taken of all income of a taxpayer, which it has received in monetary form or in kind, or the right of disposal of which it has acquired, and of income in the form of material gain as defined in accordance with article 212 of this Code.

However, in accordance with paragraph 18 article 217 of the Code, income in monetary form and in kind, which is received from physical persons by way of an inheritance, with the exception of remuneration, which is paid to the heirs (legal successors) of authors of works of science, literature and art and of discoveries, inventions and industrial samples, shall be exempt from tax on personal income.

Thus, in accordance with the Code, real estate, received by individuals by way of inheritance, while being recognized as an economic benefit (income), is not subject to income taxation of individuals.

Sale of property by inheritance is carried out outside the framework of the relations of its inheritance.

In this case, here are applied the general rules of taxation of incomes of physical persons from the sale of real estate, providing, in particular, in accordance with subparagraph

1 paragraph 1 article 220 of the Code, the possibility of receiving a property tax deduction of up to one million rubles.

At that, if real estate has been owned by a taxpayer for more than three years, then, in accordance with paragraph 17.1 article 217 of the Code, income received by individuals, who are tax residents of the Russian Federation, for the relevant tax period from the sale of houses, apartments, rooms, including privatized dwellings, villas, garden houses or land plots and shares in the said property shall be exempt from taxation regardless the grounds of their acquisition.

That is, if the real estate property acquired by the taxpayer by way of inheritance, has been in its ownership for more than three years, the income from its sale is not subject to taxation” [2].

It should be noted that neither the question nor the answer take into account the different circumstances of entry into the inheritance, for example:

- entry into inheritance with assumption of obligations to pay the debts of the testator (in this case the amount of money paid by commitments of the testator can and should be attributed to the property tax deductions of taxpayer in the sale of inherited property), practically, payments are made for inherited property;
- entry into inheritance after the sale of pledged assets and discharge of testator's liabilities at the cost of this property;
- entry into inheritance of a spouse (when during the lifetime the ownership has been registered just for one spouse).

And in the above examples we may have problems in determining the tax base for the income of a taxpayer from the sale of inherited property.

Formally, the response of the Tax and Customs Tariff Policy Department of the RF Ministry of Finance is fully consistent with the Tax Code of the RF. The taxpayer could avoid taxation of income derived from the sale of inherited property, if it would sale it after the three-year period. The right to dispose of inherited property of the taxpayer is not limited, except that the sale of property within the three-year period of ownership will be burdened by tax payments, besides without taking into account the valuation of the inherited property at the date of death of the testator. As we see it, this is exactly why there was a question about “reappearance of economic benefits” in the sale of inherited property. Obviously, this question has a right to exist, particularly if compare the norms of the Tax Code of the RF and tax legislation of Kazakhstan, in which to certain articles they allocate income from the sale of property by a taxpayer – a physical person.

Property income of a physical person, which is subject to taxation, includes income from increase in the value when the sale of property located in the territory

of the Republic of Kazakhstan by a physical person:

1) dwellings, suburban buildings, garages, private part-time farm facilities that are on the right of ownership less than one year from the date of registration of property rights;

2) land plots and (or) land shares, designated purpose of which from the date of occurrence of property right till the date of sale is individual housing construction, country house construction, personal subsidiary economy management, for a garage, on which the objects referred to in subparagraph 1) of this paragraph are located, which are on the right of ownership less than one year from the date of registration of property rights;

3) land plots and (or) land shares, designated purpose of which from the date of occurrence of property right till the date of sale is individual housing construction, country house construction, personal subsidiary economy management or gardening, for a garage, on which the objects referred to in subparagraph 1) of this paragraph are not located, if the period between the date of drawing up of title certificates for the acquisition and alienation of a land plot and (or) land share is less than one year" (part 1 article 180-1 TAX Code of the Republic of Kazakhstan [7]).

Moreover, income from increment of value when selling property specified in subparagraphs 1) - 3) is a positive difference between the price (cost) of the property sale and the price (cost) of its purchase, unless otherwise provided in paragraphs 3 - 7 article 180-1 of the Tax Code of the Republic of Kazakhstan. Increment of value in the sale of inherited property in the Republic of Kazakhstan is determined according to the following provisions of article 180-1 the Tax Code of the Republic of Kazakhstan:

"6. In case of sale of an individual dwelling house, built by the seller, as well as property referred to in subparagraphs 1) - 7) of paragraph 1 of this article, which has been received in the form of inheritance, charity support (except for the case provided for in paragraph 5 of this article), income from increment of value is a positive difference between the price (cost) of the sale of property and the market cost on the property to be sold at the date of emergence of ownership right.

At that, such market cost shall be determined by the taxpayer not later than the deadline set for the submission of the declaration on personal income tax for the tax period, in which the property has been sold. For the purposes of this paragraph, the market cost is a cost determined in a report of evaluation carried out by agreement between an appraiser and the taxpayer in accordance with Kazakhstan legislation on appraisal activity.

7. In the case referred to in paragraph 6 of this article, in the absence of market cost determined on the date of emergence ownership right on the sold property specified in subparagraphs 1) - 7) of paragraph 1 of this article, or when failure to comply with the deadline for determining the market cost specified in paragraph 6 of this article, as well as in other cases of the lack of price (cost) of the acquisition of property not listed in paragraph 6 of this article, the income from increment of value is:

1) regarding the property referred to in subparagraph 1) of paragraph 1 of this article – the positive difference between the price (cost) of the sale of property and the assessed value. While the assessed value is the cost determined for the calculation of property tax by an authorized state body in the field of state registration of rights to immovable property, on the 1st of January of the year in which has emerged the right of ownership of the sold property;

2) regarding the property referred to in subparagraphs 2) - 4) of paragraph 1 of this article – the positive difference between the price (cost) of the sale of property and cadastral (assessed) value of a land plot. While the cadastral (assessed) value is the cost determined by an authorized state body on land relations, at the one of the most recent dates:

the date of emergence of the right of ownership to a land plot;

the last date prior to the date of emergence of the right of ownership to a land plot...”

As seen from the above norms of tax legislation of the Republic of Kazakhstan, the Kazakh concept of justice of personal income taxation from the sale of property differs significantly from the current concept of the Russian legislator. Firstly, the duration of property ownership, after which the revenue from the sale of property is not subject to taxation, is three times less (see paragraph 17.1 article 217 of the Tax Code of the RF). Secondly, for property acquired by inheritance, there is established a property deduction – the market cost of the property at the date emergence of the heir’s right of ownership.

Approach of Belarusian lawmakers to taxation of income of an individual from the sale of property is of interest. Belarusian legislator while preserving, like as Russian legislator, tax-exempt transfer of property by inheritance, establishes preferential treatment in respect of income from the sale of property of an individual within five years from the first sale of the property (with a separation of categories of property), at all excluding from taxation the sale of property obtained by inheritance.

According to article 163 of the Tax Code of the Republic of Belarus [9], the following incomes are exempt from income tax on individuals:

“1.17. incomes of taxpayers received from individuals in the form of inheritance, with the exception of remunerations paid to the heirs (legal successors) of the authors of works of science, literature, art, inventions, utility models, industrial designs and other intellectual property, as well as to the heirs of persons who are the subjects of related rights;

...

1.33. incomes (excluding incomes received by payers from compensated alienation of property in connection with their business activities) obtained by payers – tax residents of the Republic of Belarus from compensated alienation:

within five years (including by sale, exchange, rent) of one dwelling house with outbuildings (if available), one apartment, one villa, one garden house with outbuildings (if available), one garage, one parking-space, one land plot belonging to them by right of ownership (share in the right of ownership of the said property). Calculation of the five years period is carried out from the date of the last compensated alienation of property related to a single kind. In case of alienation within a day of two or more items of property relating to the same kind, the right to determine the order of transactions is provided to the payer;

within one calendar year of one car, technically permissible gross weight of which does not exceed 3,500 kg, and the number of seats, in addition to the driver’s seat, does not exceed eight, or other motor vehicle. In case of alienation within a day of two or more motor vehicles, the right to determine the order of transactions is provided to the payer;

other property belonging to individuals on the property right. Other property does not include securities and term transaction financial instruments, real estate objects that are not specified in paragraph two of this section, property rights, participatory share, participatory interest (parts of participatory share, participatory interest) in organizations, as well as assets previously used by the payer in enterprise activity as basic assets, and property specified in sub-paragraph 1.15 of this paragraph;

property acquired by inheritance, regardless of the order provided for in paragraphs 2-4 of this part.

For the purposes of this subparagraph, the date of compensated alienation of property is the date of signing the contract of alienation of property.

In determining the order of alienation of property to comply with the conditions stipulated by the second and third paragraphs of the first part of this subsection, shall not be taken into account:

transactions of compensated alienation of property derived by inheritance”.

In contrast to the Russian tax legislation, article 172 of the Tax Code of Ukraine [10] that enshrines the period of ownership of property (over three years), after which the sale of the property is carried out without taxation of an individual, contains a provision that excludes this regime for inherited property: “Income derived by a taxpayer from the sale (exchange), not more than once during a reporting fiscal year, of a dwelling house, apartment or parts thereof, room, garden (suburban) house (including the land on which there are such objects, as well as household structures and buildings located on such land plot), as well as land plot that does not exceed the norm of free transfer specified in article 121 of the Land Code of Ukraine, depending on its purpose, and subject to hold such property owned by the taxpayer for more than three years, is not taxed.

The condition of owning such property by the taxpayer for more than three years does not apply to property received by such payer by inheritance”. That is, the sale of inherited property is implemented without taxation. Such an approach stems from the fact that the moment of taxation of an heir in Ukraine is associated not with the sale of property, but with its obtaining.

Ukrainian legislator defines regime of inheritance taxation in special articles of tax legislation, with separation the objects of inheritance:

- a) real estate objects;
- b) objects of movable property, in particular:
 - antiques or works of art;
 - natural gemstones or precious metal, jewelry with use of precious metals and/or natural gemstone;
 - any vehicle and its accessories;
 - other types of movable property;
- c) commercial property objects, namely: securities (except deposit (savings), mortgage certificates), corporate law, ownership of an object of business as such, i.e. the ownership of an entire property complex, intellectual (industrial) property or the right to receive income from it, property and non-property rights;
- d) amount of insurance indemnity (insurance premiums) under insurance contracts, as well as the amount stored respectively in pension deposit account, saving pension account, individual pension account of testator – participant of funded pension system;
- u) cash or funds deposited in the accounts of testator, which are opened in bank and non-bank financial institutions, including deposit (saving), mortgage certificates, real estate fund certificates (article 174.1 [10]).

However, Ukrainian legislator (we have to pay tribute to its understanding of justice) has set different tax rates for objects of inheritance, depending on the category of an individual, who is an heir. According to article 174.2 of the Tax Code of Ukraine, objects of inheritance are taxed:

“174.2.1 under zero rate:

a) cost of property inherited by first-degree relatives of testator;
 b) cost of property specified in sub-paragraphs “a”, “b”, “u” paragraph 174.1 of this article, which is inherited by a person, who is disabled person of group I or has the status of orphan or child deprived of parental care, and the cost of property specified in sub-paragraphs “a”, “b” paragraph 174.1, which is inherited by a disabled child;

c) monetary savings deposited before January 02, 1992 in establishments of the Savings Bank of the USSR and the USSR National Insurance, which functioned on the territory of Ukraine, as well as in government securities (bonds of the State target interest-free loan of 1990, bonds of the State domestic lottery loan of 1982, state treasury obligations of the USSR, the USSR Savings Bank certificates) and monetary savings of Ukrainian citizens deposited in establishments of the Ukraine Savings Bank and the former Ukraine National Insurance (Ukrgosstrah) during 1992-1994, repayment of which did not take place, that are inherited by any successor;

174.2.2. under rate as defined in paragraph 167.2 of article 167 of this Code, the cost of any inheritance object that is inherited by heirs, who are not first-degree relatives of the testator;

174.2.3. under rates specified in paragraph 167.1 of article 167 of this Code, for any inheritance object, which is inherited by a heir from the testator-non-resident, and for any inheritance object, which is inherited by a heir-non-resident from the testator-resident.

174.3. Persons responsible for the payment (transfer) of tax in the budget are heirs who have received an inheritance.

...

174.6. Taxation of income received by taxpayer as a gift (or as a result of the donation contract conclusion) from individuals.

Funds, property, property or non-property rights, cost of works and services donated to a taxpayer are taxed according to the rules established by this section for taxation of inheritance.

174.7. The cost of cars, motorcycles, mopeds obtained as an inheritance or gift, which shall be taxed in accordance with this article, is determined in the manner prescribed by the third sub-paragraph of paragraph 173.1 article 173 of this Code”.

Closest to the Russian tax regime of taxation of inherited property and transactions with it is the regime established in the Republic of Kyrgyzstan, according to which the cost of property, works and services received by an individual from close relatives by inheritance or donation is non-taxable, except for the property, works and services received when carrying out entrepreneurial activities. However, according to article 167 of the Tax Code of the Kyrgyz Republic [8], income from the sale of movable and/or immovable property used by a taxpayer for personal purposes and acquired not for the purposes of business is taxable, except when:

“a) income is obtained from the sale of motor vehicle owned by property right for less than one year from the date of acquisition;

b) income is obtained from the sale of real estate attributed to living-space fund in accordance with the data of the body of single system of state registration of rights to immovable property and owned by property right for less than 2 years following one after the other from the date of acquisition of this property”.

Russian legislator having set a three-year term of ownership by property right of real estate objects for purposes of distinction of taxable and nontaxable income of an individual from the sale of such an object, in fact, has limited the civil turnover of personal property of taxpayer – citizen. That is, the Russian State is not interested in the dissemination of objective market tendencies in the economy and seeks to limit them through appropriate taxation.

Returning to the response of the Tax and Customs Tariff Policy of the Ministry of Finance of the RF, it should be noted that Russian lawmakers have problems not only with the principle of taxation fairness, but also with the principle of occurring once tax imputation in taxation of one and the same object. According to legal scholars, the principle of occurring once taxation has not become so far commonly accepted and is applied in practice in inconsistent manner [6].

The originality of the Russian legislator is expressed in the fact that the reluctance to exempt taxpayer from tax on the sale of inherited property is realized in isolation from the principle of net income taxation. Legislator deliberately missed the fact that inherited property (income in kind) has valuation (market or estimative), and exactly income is subject to taxation, and not the property itself. Following the logic of taxation income received, would be fair such taxation mechanism that takes into account the valuation of inherited property and the principle by which one and the same object may be subject to tax of one kind only once for a statutory period of taxation.

In our opinion, the principle of fairness in part of taxation of income from the sale of inherited property in Russia is questionable. Just consider the situation

where an heir apparent, who lived together with the testator, receives inheritance and sells the immovable property before the expiration of three years period of ownership. Property-related tax deduction established by law in the amount of 1 million rubles hardly compensates for the expenditures of a family for the purchase of real estate (and the heir loses the right to deduct the actual costs on real estate object, the family loses the right after the death of the testator).

Norm of paragraph 18) article 217 of the Tax Code of the RF defines that should not be subject to taxation (tax exempt) “incomes in monetary form and in kind which are received from physical persons by way of inheritance, with the exception of remuneration which is paid to the heirs (legal successors) of authors of works of science, literature and art and of discoveries, inventions and industrial samples”. But the consequences of the use of income in cash and in kind received by inheritance are different due to provisions on the taxation of income from the sale of property. In fact, exercising conversion of hereditary income from natural form into monetary one before the expiration of three years period, the heir will have to pay 13% income tax from the sale of property, minus the amount of property deductions that are tax-exempt under article 220 of the Tax Code of the RF. And in this case, the assertion about the absence of taxation of incomes received by inheritance is a mockery of the principle of fair taxation.

As we see it, the position of the legislator in part of exemption of inherited property from taxation would be more consistent if in article 217 of the Tax Code of the RF the norm of paragraph 18) was formulated as follows:

“Incomes in monetary form and in kind which are received from physical persons by way of an inheritance, as well as from the sale of inherited property, with the exception of remuneration which is paid to the heirs (legal successors) of authors of works of science, literature and art and of discoveries, inventions and industrial samples”.

The said wording would allow avoidance of unfair taxation of income received by inheritance in kind and converted monetary funds. This tax regime may, in principle, be limited to by the heirs of first category. Anyway, using the experience of colleagues in the Commonwealth of independent States, the Russian legislator could establish more equitable regime than the current tax regime in respect of income from the sale of inherited property. The state cannot demand better attitude than one that it shows in respect to its citizens.

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