



The legal nature of value-added tax

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ABSTRACT

The author analyzed in this article the history of the emergence of the value added tax, its features as a type of tax. This article also analyzes the legal nature of the value added tax, in particular, the concept of value added, subjects-taxpayers, as well as theoretical, scientific and legislative issues of the object of taxation. The content of the special laws of certain foreign countries on value-added tax is analyzed.

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Қўшилган қиймат солиғининг юридик табиати

АННОТАЦИЯ

Калит сўзлар:

қўшилган қиймат,
қўшилган қиймат солиғи,
айланма маблағ,
импорт,
товар,
иш,
хизмат.

Муаллиф ушбу мақолада қўшилган қиймат солиғининг пайдо бўлиш тарихи, солиқ тури сифатида ўзига хос хусусиятларини таҳлил қилган. Шунингдек, мазкур мақолада қўшилган қиймат солиғининг юридик табиати, хусусан қўшилган қиймат тушунчаси, солиқ тўловчи субъектлар ҳамда солиқ солиш объектининг назарий-илмий ва қонунчилик масалалари таҳлил қилинган. Қўшилган қиймат солиғи бўйича айрим хорижий давлатларнинг махсус қонунлари мазмуни таҳлил қилинган.

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Правовая природа налога на добавленную стоимость

АННОТАЦИЯ

Ключевые слова:

добавленная стоимость,
налог на добавленную
стоимость,
оборотный капитал,
импорт,
товары,
работы,
услуги.

Автор проанализировал в данной статье историю возникновения налога на добавленную стоимость, его особенности как вида налога. Также в данной статье проанализирована правовая природа налога на добавленную стоимость, в частности, понятие добавленной стоимости, субъекты-налогоплательщики, а также теоретико-научные и законодательные вопросы объекта налогообложения. Проанализировано содержание специальных законов отдельных иностранных государств по налогу на добавленную стоимость.

INTRODUCTION

Value-added tax (VAT) is the youngest type of tax compared to other types of tax. In its essence, this type of tax is similar to excise tax, which covers not only the type of goods, but also work and services.

The value-added tax is the latest fiscal innovation of general scope. It has been in force for so short a time and in so few jurisdictions that many questions regarding its nature and possible effects remain unsettled [1].

The origins of the VAT have never been decisively settled. Attribution is variously accredited to one of two sources: the German businessman Wilhelm Von Siemens in 1918, or the American economist Thomas S. Adams in his writing between 1910 and 1921 [2].

However, the VAT was invented by a French economist in 1954. Maurice Lauré, joint director of the French tax authority, the Direction générale des impôts, astaxe sur la valeur ajoutée (TVA in French) was first to introduce VAT with effect from April 10, 1954, for large businesses, and extended over time to all business sectors. In France, it is the most important source of state finance, accounting for approximately 45 percent of state revenues. West Germany adopted VAT in 1968, and subsequently most other Western European countries also implemented some form of VAT. Many countries in Africa, Asia, and South America have also followed suit. Although the States as a whole has not, the state of Michigan has used a value added tax [3].

The original interest in the value-added tax stemmed from the desire for a general sales tax which would avoid the “cascade” feature of a general turnover tax. Under the latter, the amount of tax borne by any particular final good depends upon the number of intermediate stages of production which precede it. Since final products differ in the degree to which they are vertically integrated, the turnover tax would create distortion in the pattern of relative goods prices. This effects would be offset somewhat since there would be a tendency for firms to vertically integrate. Because some industries are more easily vertically integrated than others, this force could not fully offset the initial distortion in relative goods prices. A value-added tax on the other hand, is independent of the degree of vertical integration within an industry. Each firm is taxed only on that portion of its final product which is over and above what it has purchased from other value-added tax paying units. Hence, final goods will be taxed proportionally to their selling prices; there will result no distortion of relative goods prices [4].

The benefits of the VAT can be manifold: cascading of indirect taxes is avoided, it is perhaps harder to evade than other forms of taxation, and it can easily be made compatible with international trade. In an empirical macro study by Keen and Lockwood (2010), it is found that the VAT is also a “money machine”: it has helped countries generate more revenues than they would have had without the VAT in place [5].

VAT can be defined as a tax on consumption or spending in all its forms and imposed on the value added at each stage of production. In theory, it can be considered a tax on public spending in all its forms. It is a tax borne by the final consumer of the good or the last beneficiary of the service. Therefore, it is considered a transfer tax. To understand the nature of this tax, it should be noted that the goods go through different and multiple stages since they were raw materials (primary commodities) until they reach the consumer as finished goods. Through these different production stages each person has added-value, whether during the production stage or during the retailing stage, known as production cost factors (materials, salaries, wages, rents, profit margins, etc.). At this level, the tax is imposed on this added value or on this difference between the production value at the beginning of the stage and its value at the end of the stage [6].

METHODS

The research used such methods as historical, system-structural, comparative-legal, logical, sociological, complex study of scientific sources, induction, deduction and analysis of statistical data.

DISCUSSION

B. Tashmuradova stated value-added tax has become the most important part of the tax system providing budget revenues in Uzbekistan since 1992. In its successful implementation in the tax system, the Uzbek specialists are trained. Sh. Gataulin, E. Gadoev, I. Zavalishina has scientific research on improvement of tax recovery [7].

L. Khvan said that Value-added tax is one of the most complex in terms of composition, since it takes into account the principles of curve taxation and territorial integrity of the state tax jurisdiction, therefore, it is necessary to pay special attention to its elements, methods of taxation, legal structure. Value Added Tax is a tax imposed on the activities of the subject in a commercial direction. Hence, the tax obligation of the subject arises as a result of the implementation by him of activities on the sale of tangible assets for the purpose of obtaining material benefits. This rule arises from the fact that the tax on its behalf is “Value-added tax” and the distribution of its weight among different persons; formally it is a subject of taxation and is considered to be subjects of commercial activity, but the real weight falls on individuals who consume the purchased goods (works, services), that is, the user for subsequent commercial turnover [8].

According to Sh. Toshmatov, value added means the value added by the economic entities to the purchase price of the goods and services, the value of the master entered into the sale price of the goods and services on the market is understood, and the cost of the goods, the usefulness of which is recognized by the market and indicates that their monetary equivalent is given. Determine the amount of value added to goods and services, the validity of which can be increased only after the goods have been sold [9].

M. Kamilov stated that value-added tax is the consumption tax. Therefore, these conclusions are the same with respect to consumption taxes:

- introduction of tax will lead to an increase in price and a decrease in demand for taxable products;
- the scale of price change will depend on production, the elasticity of demand and supply;
- the tax burden is distributed between buyers and sellers in relation to the elasticity of demand and supply;
- in the process of raising tax rates, to some extent, tax revenues can be reduced;
- at the same rates of personal and real taxes, the tax revenues of the state are the same;
- to some extent, the impact of the redistribution of taxes on consumption will also be relevant to the income and expenses of taxpayers [10].

A. Jurayev stated value added is an expression from the difference in the value of goods, raw materials and services consumed in the production process with the value of products sold, works performed and services rendered in accordance with its economic essence. Naturally, in the process of production and subsequently as a result of the division of labor, a certain commodity passes through several stages in the process of production and treatment until it is brought to the market, in each of these stages the added value is created [11].

A number of scientific results have been obtained as a result of scientific research work carried out to improve the methodology of accounting and analysis of Value Added Tax in the world. In particular, the optimal rate of Value-added tax is 15–20 per cent, the reduction in the rate leads to a lack of budget revenues, the introduction of a higher rate has been proven to lead to business concealment (KPMG, London), the avoidance of Value Added Tax has been proven to have an impact on economic growth on macroeconomic stability (George State University, USA), the basic tax costs of business entities are based on the amount of value-added tax that is incurred – NERI, Economic Research Institute, Ireland), the reduction of the value added tax rate in the Republic of Uzbekistan to the two-percent is based on the fact that GDP (General domestic product) will lead to an increase of 0.56 percent (UNDP) [12].

In our opinion, the financial source of the state budget revenues should rely not on the direct taxes, but on indirect taxes. Through this, the state shall count on indirect taxes levied in small percentages but with a broad tax base, reducing the overall tax burden of the direct taxes.

LEGAL FRAMEWORK

According to the decree of the President of the Republic of Uzbekistan “on the concept of improving the tax policy of the Republic of Uzbekistan” dated June 29, 2018, PF-5468, it is stated that the inefficient system of levying Value-added tax, the existence of mandatory payments that attract taxpayers’ working capital, as well as lead to the increase in the intermediate and final value of consumer.

In addition, with this decree, for taxpayers whose annual turnover (turnover) is up to 1 billion soums, the possibility of voluntary payment of the turnover tax, as well as the procedure for calculation and payment of the turnover tax due to the base rate in the amount of 4 percent was established [13].

According to the decree of the President of the Republic of Uzbekistan № PF-5837 “on measures for further improvement of tax policy of the Republic of Uzbekistan” on September 26, 2019, in order to ensure the stability of the consumer market, to create conditions for increasing the competitiveness of local producers, as well as to form a

continuous chain of Value-added tax, the rate of Value-added tax has been reduced from 20 percent to 15 percent since October 1, 2019, and the simplified procedure for calculating and paying value added tax has been abolished [14].

In the Republic of Uzbekistan, the tax legislation has been formed over the years, new editions to the tax code have been adopted in 1997, 2007 and 2019.

In particular, according to Article 65 of the Tax code of the Republic of Uzbekistan in 1997, the value added tax is the allocation of part of the added value to the budget in the process of production of goods (performance of works, provision of services), their realization and import of goods (works, services) into the territory of the Republic of Uzbekistan.

Legal entities engaged in entrepreneurial activities, which are subject to or must take into account the value added tax, are taxpayers of Value-added tax. Legal entities and individuals that import commodities (works, services) are the payers of Value-added tax on those goods that are imported. Value-added tax is paid at a rate of twenty percent. Value-added tax on some socially significant food products is paid at a rate of ten percent. The list of such tokens is determined by the Cabinet of Ministers of the Republic of Uzbekistan [15].

In addition, the Tax code of the Republic of Uzbekistan in 2007 emphasized its subject and object without bringing the concept of Value-added tax. According to its Article 197, the payers of Value-added tax are: 1) legal entities with taxable facilities; 2) legal entities that are obliged to pay Value-added tax for taxable facilities implemented by non-residents of the Republic of Uzbekistan; 3) Legal entities and individuals importing the goods into the territory of the Republic of Uzbekistan, with the exception of individuals who import the goods within the framework of the norms of duty – free importation for their own needs; 4) a simple company is a legal entity (a reliable person), which is imposed on carrying out its work when carrying out taxable activities. The object of taxation is as follows: taxable turnover and taxable imports [16].

According to Article 237 of the Tax code of the Republic of Uzbekistan for 2019 (in force), the following persons who carry out entrepreneurial activities in the Republic of Uzbekistan or carry out trade (services) shall be recognized as taxpayers of Value-added tax: 1) legal entities of the Republic of Uzbekistan; 2) individual entrepreneurs whose income from the sale (services) of goods; 3) foreign legal entities that carry out activities in the territory of the Republic of Uzbekistan through permanent institutions; 4) foreign legal entities that carry out activities in the Republic of Uzbekistan through permanent institutions; 5) on activities that are carried out within the framework of the contract of a simple company (the contract on joint activities) – a reliable person assigned to the task; 6) persons carrying out customs formalities through the customs border of the Republic of Uzbekistan. These persons are recognized as payers of Value-added tax in accordance with the legislation on customs.

Taxpayers shall stand on the account of special registration as a taxpayer of Value-added tax in the tax authorities in accordance with the procedure established by the State Tax Office of the Republic of Uzbekistan.

The following is the object of taxation: 1) turnover for the realization of tokens (services), the place of realization of which is the Republic of Uzbekistan; 2) import of tokens into the territory of the Republic of Uzbekistan. The tax rate is set at the rate of 15 percent [17].

It can be seen that the obligation to pay Value-added tax will depend on the size of the working capital of taxpayers, as well as on the legal regime (import or export) of their tokens to be realized.

In the Republic of Latvia, according to Value-added tax law, taxable person shall be any person who independently performs any economic activity in any place, irrespective of the purpose or results of that activity. Taxable persons are divided as follows:

1) inland taxable persons: a) registered taxable persons – taxable persons which have been registered with the State Revenue Service Value Added Tax Taxable Persons Register; b) non-registered taxable persons – taxable persons which have not been registered with the State Revenue Service Value Added Tax Taxable Persons Register, exercising the rights laid down in this Law;

2) taxable persons of another Member State: a) registered taxable persons of another Member State – taxable persons which have been registered with the register of taxable persons of another Member State for tax payment purposes; b) non-registered taxable persons of another Member State – taxable persons which have not been registered with the register of taxable persons of another Member State and the legal address or place or residence of which is in another Member State;

3) taxable persons of third countries or third territories: a) registered taxable persons of third countries or third territories – taxable persons to whom an identification number of a taxable person or a similar number has been issued which allows to identify the taxable person for tax application purposes and is issued by the country in which the taxable person performs economic activity; b) non-registered taxable persons of third countries or third territories – taxable persons to whom an identification number of a taxable person or a similar number has not been issued which allows to identify the taxable person for tax application purposes and is issued by the country in which the taxable person performs economic activity.

Taxable transactions shall be the following transactions carried out inland within the framework of economic activity: 1) supply of goods (including supply of goods in the territory of the European Union and exportation of goods) for consideration; 2) supply of services for consideration; 3) acquisition of goods in the territory of the European Union for consideration [18].

In United Kingdom, according to Value-added tax act (1994), value added tax shall be charged, in accordance with the provisions of this Act

(a) on the supply of goods or services in the United Kingdom (including anything treated as such a supply), (b) on the acquisition in the United Kingdom from other member States of any goods, and

(c) on the importation of goods from places outside the member States]

(c) on the importation of goods into the United Kingdom,]

and references in this Act to VAT are references to value added tax.

VAT on any supply of goods or services is a liability of the person making the supply and (subject to provisions about accounting and payment) becomes due at the time of supply.

VAT on any acquisition of goods from another member State is a liability of the person who acquires the goods and (subject to provisions about accounting and payment) becomes due at the time of acquisition.

VAT on the importation of goods from places outside the member States shall be charged and payable as if it were a duty of customs [19].

In Estonia, according to Value-added tax act, the following shall be subject to value added tax: 1) supply created in Estonia, except supply which is exempt from tax; 2) import of goods into Estonia; 3) provision of services the place of supply of which is not Estonia; 4) supply of goods or services; 5) intra-Community acquisitions of goods.

“goods” means things, livestock, gas, electric power, heat and refrigeration. Immovables, as defined in the General Part of the Civil Code Act, right of superficies, utility networks and utility works, as defined in the Law of Property Act, structures as movables, as defined in the Law of Property Act Implementation Act, and apartment ownership and right of superficies in apartments, as defined in the Apartment Ownership Act, are deemed to be immovable. Data media that are freely available to all purchasers and which carry standard software or standard information intended to perform the same functions are also deemed to be goods;

“services” means the provision, in the course of business activities, of benefits or the transfer of rights, including securities, which are not goods according to clause 1) of this subsection, and obligations to refrain from economic activity, to waive the exercise of a right or to tolerate a situation for a charge. Software and information transmitted by electronic means, and data media carrying software or information that are especially compiled or adjusted according to the purchaser’s specifications are also services.[20]

In Armenia, according to law on Value-added tax (1997), Value added tax (VAT) is an indirect tax which in compliance with this law shall be paid (levied) to the State budget for imported goods at all stages of their production and turnover, as well as for the rendering services on the territory of the Republic of Armenia (RA). Individuals and organizations carrying out independent economic (business) activity in accordance with the procedure defined by the law and implementing transactions (operations) listed below shall be considered VAT payers.

The following transactions (operations) shall be subject to VAT taxation:

Delivery (supply) of goods – a transaction that is implemented by transferring the ownership right of goods (including output and real estate) to other person for compensation. Disposition of personal property of individuals, with the exception of cases defined by this law, shall not be considered as the delivery of goods.

Rendering of services – a transaction (operation) other than the delivery of goods, conducted for any form of compensation, including the sales (transfer) of intangible assets. The lease of goods and real estate shall be also considered the rendering of services.

Importing goods by “Importing for Free Turnover” customs regime, with the exception of cases specified by law [21].

CONCLUSION

Despite the fact that value added tax is the youngest type of tax, it will be the main financial source of the state budget of almost 150 countries. Now in some countries, instead of this type of tax, such terms as commodity and trade tax or service tax are used.

the first, Value-added tax is a type of indirect tax, which is paid only by the person who receives the goods and services, and the person who provides the goods and services calculates this tax as a tax agent and pays it to the budget;

the second, the subject of the taxpayer of Value-added tax has a separate legal status and must be registered with the state as the payer of this tax;

the third, Value-added tax is introduced according to the type of goods and services established by the legislation, while the tax on certain types of goods and services is minimized;

the fourth, the category of Value-added tax payers is measured by two main criteria, the first is the volume of the turnover, the second is in terms of the fact that the token is in motion in the territory;

the fifth, the Value-added tax is paid at each stage from the stage of production and distribution of goods or services of one type to the stage of production by the manufacturer, the buyer or the seller or the consumer in percentage terms of the value added;

the sixth, in general Value-added tax rate is 15-30 percent in the world. Differential rates are applied on certain goods and services.

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