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PERFORMING OF FORENSIC ECONOMIC EXAMINATIONS ON TAXATION OF OPERATIONS ASSET MANAGEMENT, WHICH MANAGES ASSETS OF MUTUAL FUNDS – MUTUAL VENTURE INVESTMENT FUND AND CORPORATE INVESTMENT FUNDS

The order of taxation of operations of company is considered from the management of asset-mi, that carries out a management the assets of institute of the general investing – a ration venture investment fund and corporate investment fund during realization of judicial economic examinations.

At determinations of accosts got from the sale of the real estate by property of institute of the joint investing upon termination of building of dwelling-house; warranty payments for the objects of the real estate, that is got on the basis of previous agreements of purchase-sale and after entering into the contracts of purchase-sale of apartments on the basis of preliminary agreements of payment of cost of such apartments.

For example, the operation of taxation is considered on the basis of preliminary agreements of purchase-sale in future after entering into the contracts of purchase-sale of apartments on the basis of preliminary agreements that is set off in payment to the cost of such apartments.

During realization of research on the indicated question an important value has, circumstances, that the facilities got by preliminary agreement of purchase-sale join in the assets of institute of the joint investing after their put in paying for the principal contract of purchase-sale of the real estate confess incomes from operations with the assets of fund in accordance with the international standards of record-keeping and fall under the action of privilege and indicated methodical approach it is appropriate to use for conducted corresponding economic researches after materials of tax verifications.

Keywords: mutual fund, previous contracts, general investment funds, assets of the common investment institute, common investment institute, venture fund assets, asset, liability, tax advice.

Formulation of Research Problem. The study of the procedure for taxing the operations of an asset management company that manages the assets of a joint venture – a unitary venture investment fund and a corporate investment fund is important when conducting judicial economic examinations, because when conducting ex-post audits by authorized bodies of the State -In order to draw up acts of checks on the amount of taxes and expert institutions receive a large number of requests from law enforcement agencies and courts for conducting economic and economic examinations on the issues of documentary confirmation of the conclusions of acts of audits (inspections) of bodies of the State Fiscal Service of Ukraine (hereinafter DFS) regarding the established violations in taxation of the said transactions.

Analysis of recent researches and publications. The order of taxation of the operations of an asset management company that manages the assets of a joint venture – a unitary venture fund and a corporate investment fund when conducting judicial economic examinations is relevant, since in the aspect of changes in the current legislation of Ukraine on taxation, this issue is mentioned the provision of justice was not considered before.

The **Article Purpose** is to substantiate the procedure for conducting research on taxation of operations of an asset management company that manages the assets of a joint venture: a unitary venture investment fund and a corporate investment fund during forensic economic examination.

Main Research Content Presentation.

The procedure for taxation of the above is governed by the provisions of the Tax Code of Ukraine (hereinafter referred to as the TCU[1]) by tax authorities authorized by the State Tax Administration that sometimes do not meet the requirements of the said TCU and regulatory documents of the respective ministries and departments.

Control and performance of tax audits of the operations of the asset management company, joint venture – unit trust and corporate investment fund in accordance with the requirements of the CFC, are entrusted to authorized DFS bodies, which during audits (audits) establish the facts of violations in spending these funds and determining the amount of losses.

Subsequently, inspection materials are forwarded to the relevant law enforcement agencies for registration of criminal proceedings. During the pre-trial investigation, the materials of these inspections are assigned forensic expertise on the documentary confirmation of the conclusions of the inspection acts regarding the amounts of the assessed accrued taxes.

Provisions governing the taxation of assets of an asset management company (hereinafter referred to as AMC), a joint venture – a unit investment venture fund and a corporate investment fund, set out in the Permanent Standards of the TCU, which determines the complexity of conducting expert researches.

According to the Article: 41 of the Law of Ukraine: *On Mutual Funds (Share and Corporate Investment Funds)* dated on July 5, 2012 N 5080–VI (hereinafter referred to as the Law of Ukraine № 5080[2]); mutual fund is a set of assets belonging to the members of such a fund

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[1] Podatkovyi kodeks Ukrainy [Tax Code of Ukraine] № 2755–VI vid 02.12.2010. Holos Ukrainy, 2010, 12, 04.12.2010 № 229–230 [in Ukrainian].

[2] Pro instytuty spilnoho investuvannia [About Joint investment institutions] : Zakon Ukrainy vid 05 lypnia 2012 roku № 5080–Vi. Holos Ukrainy, 2012, 08, 18.08.2012 № 153–154 [in Ukrainian].

under the right of joint private ownership managed by the asset management company and accounted for separately from the results of its business activities.

Peculiarity of taxation of assets management operations is that the entity manages the assets of the joint venture institute: unit trust and corporate investment fund and acts on its own behalf but in the interests and at the expense of the assets of the unit venture investment fund.

Mutual Venture Investment Fund or Corporate Investment Fund (hereinafter referred to as ICI), on behalf of and in the interest of which the Asset Management Company operates, is an investor in the construction of residential buildings through the conclusion of investment contracts with the developers of the facilities, and upon completion construction of an apartment building the first transfer of finished newly built housing (object of housing stock) is carried out in the ownership of ICI in interests of which AMC operates.

That is during the period of construction of residential buildings, ICI concludes with other persons who are not participants of ICI, preliminary sale and purchase contracts, according to which ICI as seller and other persons as buyers are obliged upon completion of the construction of a dwelling house and state-owned registration of ownership of ICI for apartments to conclude contracts for the sale of such apartments based on previous agreements. Under preliminary agreements, ICI receives from the potential buyer's security / guarantee payments to ensure fulfillment of obligations under the previous agreement, which after the conclusion of the sale and purchase contracts for apartments are credited to pay the cost of such apartments.These transactions are carried out within the framework of contracts, namely:

1. Within the contract of organization of construction of real estate objects, concluded between the builder and the asset management company acting on its own behalf but, in the interests, and at the expense of the assets of the unit trust investment fund. Thus, ICI on behalf of and in the interests of which the asset management company operates, is an investor in the construction of residential buildings and non-residential premises based on concluded investment contracts with the developers of the construction sites.

Upon completion of the construction of a residential building, the first registration of the ownership of the finished newly constructed real estate (residential / non-residential buildings) is carried out by the ICI. Accordingly, the real estate ICIs obtained by the ICI are assets of the joint venture.

2. Within the framework of the previous contracts of purchase and sale of apartments, concluded by an asset management company acting in its own name but in the interest and at the expense of the assets of a unit venture investment fund, to fulfill the terms of the Agreement for the organization of construction of real estate objects, with several Ukrainian citizens. That is, during the term of real estate construction, ICI concludes

preliminary sales contracts with third parties, according to which ICI as seller and third parties as purchasers, upon completion of real estate construction and state registration of ICI ownership, conclude sale contracts such housing / non-residential property based on prior agreements.

It should be noted that according to the Preliminary Real Estate Purchase Agreements, the ICI and the counterparty to the Contract, subject to the terms of the respective Real Estate Organization, are bound to conclude a Non-Mobile Property Purchase Agreement in the future, not housing) under the terms and conditions specified in the Preliminary Contract. Payments under the previous Purchase and Sale Agreements shall be made by means of (security / guarantee) payments, which are credited to the real estate payment account when signing the Purchase and Sale Agreement for the immovable property. That is, when a preliminary agreement is concluded, the transfer of real estate is not yet carried out, but such an agreement is identified as a contract with a client in accordance with International Financial Reporting Standard 15 «Revenue from Contracts with Customers«[1], and such an agreement is also recorded as a contract with a client.

That is, the requirements of Article 635 of the Civil Code of Ukraine stipulate that the obligation of the parties to the preliminary contract is the obligation to conclude the main contract within a specified period (term) stipulated by such preliminary agreement, and the parties agree in advance that paid security payments will be credited as payment for the real estate transferred. As the preliminary real estate purchase agreement establishes the seller's obligation to enter into the real estate sale contract and the sale of the real estate is a transaction with the assets of the fund, and the funds received under such preliminary contract are included in the assets of the fund.

According to paragraphs. 13 clause 1 of Article 1 of the Law of Ukraine №5080, Joint Venture Funds – funds contributed by the founders of a corporate fund, funds and in the cases stipulated by this Law, other assets, attracted from participants of the Joint Venture Institute, income from transactions with assets of the Joint Venture Institute investment, income accrued on the assets of the joint venture, and other income from the activities of the joint venture (interest on loans, rent (leasing) payments, royalties, etc.). Funds raised by the founders of a corporate fund are considered joint venture funds after such a fund is entered in the Register.

Assets of a joint venture formed at the expense of joint ventures, a set of property, corporate rights, property rights and claims and other

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[1] Mizhnarodnyi standart, Rada z Mizhnarodnykh standartiv bukhhalterskoho obliku [nternational Standard, international Accounting Standards Board], vid 30.06.2017, «Mizhnarodnyi standart finansovoi zvitnosti 15. Dokhid vid dohovoriv z kliientamy» [in Ukrainian].

assets stipulated by the laws and regulations of the National Securities and Stock Market Commission (SSMCS).

Under preliminary agreements, ICI receives from the potential buyer's security/guarantee payments to ensure fulfillment of obligations under the previous agreement, which after the conclusion of the sale and purchase contracts for apartments are credited to pay the cost of such apartments. Operations for obtaining a security / guarantee payment are recorded when forming the financial result before tax in accordance with accounting rules. Such rules are established by national or international standards.

According to article 10, paragraph 10, of the Law of Ukraine N5080, a joint venture is a corporate investment or mutual fund (AMC and Mutual Fund) and, accordingly, assets (including cash) that are accounted on the balance sheet of a mutual fund are assets of the institute co-investment, which indicates the extension of the relevant benefits to transactions with the above assets.

Paragraph 1 of Article 43 of the Law of Ukraine №5080 establishes requirements for accounting of AMC and mutual fund operations.

Accounting and tax accounting of joint venture operations and results of operations carried out by an asset management company through a unit trust is carried out separately by the asset management company from accounting for its operations and results of operations and accounting for operations and results of activities of other institutions. joint ventures, the assets of which are under its management.

The assets structure of a non-diversified ICI (excluding venture ICI) must meet the following requirements:

1) value of real estate and securities, which are not admitted to trading on the stock exchange, may not be more than 50 percent of the total value of assets of ICI non-diversified type;

2) promissory notes and savings (deposit) certificates may not be more than 30 percent of the value of assets of a ICI non-diversified type.

Venture fund assets may consist entirely of funds, non-mobility, corporate rights, claim rights, and securities not previously admitted to trading on the stock exchange.

Accordingly, the assets of the venture fund also include cash. In accordance with International Financial Reporting Standards (IFRS):

An asset is a resource controlled by an entity in the wake of past events that is expected to receive future economic benefits to the entity;

Liabilities are the present debt of an entity that arises from past events and the repayment of which is expected to result in the entity being deprived of resources embodying future economic benefits.

That is, the future economic gain embodied in an asset is the potential that may contribute (directly or indirectly) to cash and cash equivalents, and based on International Standards, financial indicators are recognized on an accrual basis that provides for the recognition of the effects of operations, other events and circumstances on the economic resources of the entity and the requirements therefor, in the periods in which such effects occurred, even if the corresponding cash and payment is received in and shomu period and, when assessing compliance with Article definition of an asset or liability, should consider the economic substance of the transaction.

The decision of the National Commission on Securities and Stock Market № 2666 of November 26, 2013 approved the Regulations on the peculiarities of accounting of operations of joint investment institutions, according to paragraph 1; and what is the accounting of the activities of the joint venture institutions in accordance with the Law of Ukraine: *On Accounting and Financial Reporting in Ukraine*, International Financial Reporting Standards.

Decision of the National Securities and Stock Market Commission (SSMCS) of July 30, 2013 №1336[1] approved the Regulation on the procedure for determining the value of net assets of joint venture institutions, according to which the calculation of net assets also includes cash on current and/or current assets deposit accounts.

SSMSC decision approving the Regulations on the Composition and Structure of Assets of a Joint Venture Institute (Section V.

Requirements for the Composition and Structure of Non-Diversified ICI) assets) determined that the assets of a non-diversified ICI can be all the assets defined in Section II of this Regulation, subject to the statutory limits for non-diversified ICI).

According to subparagraph 141.6.1 of paragraph 141.6 of Article 141 of the TCU, joint venture funds are exempt from taxation, namely: funds contributed by the founders of a corporate fund, funds and other assets attracted by participants of a joint venture, income from transactions with assets of a joint venture institute, income accrued on assets of the joint venture, and other income from the activities of the joint venture (interest on loans, rent [leasing] payments, royalties, etc.).

It should be noted that the accounting and tax accounting of joint venture operations and results of an asset management company through a unit trust is carried out by the asset management company separately from the accounting for the transactions and the results of its business activities and accounting for operations and the results of the activities of other joint venture institutions whose assets are under its management (Part 1 of Article 43 of the Law of Ukraine: *On Collective Investment Institutions*).

According to subparagraph 14.1.172. Article 14 of the Tax Code, tax consultation – individual tax advice and general tax advice provided in the manner provided by this Code;

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[1] Polozhennia pro poriadok vyznachennia vartosti chystykh aktyviv instytutiv spilnoho investuvannia [Regulations on the Procedure for Determining the Value of Net Assets of Joint Venture institutions]: zatv. rishenniam Natsionalnoi komisii z tsinnykh paperiv ta fondovoho rynku vid 30 lypnia 2013 roku №1336 Ofitsiinyi visnyk Ukrainy, 2013, № 72 (27.09.2013). St. 2645 [in Ukrainian].

In the tax consultation dated 30.05.2018 N2375 / 6 / 99-99-15-02-02-15 / PKI determined that according to Nos. 134.1.1 n. 134.1 Art. 134 PKU, the object of taxation of corporate income tax is profit with source of origin from Ukraine and beyond, which is determined by the method of adjustment (increase or decrease) of the financial result before tax (profit or loss) specified in the financial statements of the enterprise in accordance with national accounting standards (standards) or International Financial Reporting Standards, the differences arising in accordance with the provisions of the Code.

It is also stated that the income of a venture investment fund derived from the sale of property that is an asset of a joint venture is an income of a joint venture which is exempt from income tax in accordance with paras. 141.6.1 § 141.6 Art. 141 PKU.

That is, according to paragraphs. 141.6.1 § 141.6 Art. 141 PKU is exempt from taxation on income that is recognized in accounting rules.

Thus, ICI revenues from transactions with the assets of a joint venture institute are exempt from corporate income tax, including: income derived from the sale of real estate that will become the property of ICI upon completion of the residential building; security/guarantee payments for real estate received on the basis of previous purchase and sale contracts and after the conclusion of purchase and sale contracts for apartments based on previous contracts are credited to the cost of such apartments.

In line with the consultations of the State Fiscal Service of Ukraine and, it is specified in the State Fiscal Service of Ukraine Letter № 6557/6 / 99-99-15-03-02-15 dated on 30 March 2017[1].

The tax consultation, which is registered in the unified register of tax consultations under № 5210/6 / 99-99-15-03-02-15 / ITC dated 12.12.2018, states about the exemption from corporate income tax investment fund in the form of security payments for housing facilities received from the sale of apartments that will become the property of the corporate investment fund and the assets of ICI on the basis of the contract on the organization of construction.

In the letter of the DFS dated 30.03.2017 № 6557/6 / 99-99-15-15-03-2002-15 also stated that tax-exempt co-investment funds are exempted, namely: funds contributed by the founders of the corporate fund, funds and other assets attracted from participants of the co-investment institute, income from the operations of the assets of the joint venture, the income accrued on the assets of the joint venture, and other income from the activities of the joint venture (interest on loans, lease payments, royalties, etc.) (par. 141.6.1 p. 141.6 of Art. 141 Tax Code of Ukraine).

Accordingly, any income of a joint venture institute is exempt from corporate income tax, including: income derived from the sale of

[1] DFS, indyvidualna podatkova konsultatsiia [individual tax consultation] vid 30.05.2018 № 2375/6/99–99–15–02–02–15/iPK. URL: https://www.zakon-i-normativ.info (data zvernennia 11.08.2019) [in Ukrainian].

apartments that will become the property of a corporate investment fund on the basis of an investment agreement with a developer upon completion of a residential building; advances for housing stock received on the basis of previous purchase and sale contracts and after the conclusion of purchase and sale agreements for apartments based on previous contracts are credited to the cost of such apartments.

Separately, it should be noted that the requirements of the TCU for the time of providing tax advice from 30.03.2017 N6557 / 6 / 99-99-15-03-02-15 and № 5210/6 / 99-99-15-03-02-15 /ITC of 12.12.2018 regarding the definition of the provisions governing the issues above and mentioned the request for advice was unchanged.

Conclusions. Accordingly to the foregoing, in the course of conducting transactions on sale of real estate by concluding a preliminary contract with the subsequent conclusion of the main contract of sale and purchase of real estate the income is recognized at the moment of transfer of ownership of such property to the buyer, and in case such sale makes CII, such income shall be exempt from taxation in accordance with Article 141, Section 141.6, subparagraph 141.6.1, of the TCU.

Funds received under a preliminary sale agreement are included in the ICI assets after they are credited to the main real estate purchase agreement and are recognized as income from operations on the assets of the fund in accordance with international accounting standards and are subject to benefits in accordance with subparagraph 141.6.1 of clause 141.6 of Article 141 of Section III of the Tax Code of Ukraine and the said methodological approach should be used when conducting relevant economic studies on the material of tax audits.

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DFS, letter dated March 30, 2017 № 6557/6/99–99–15–03–02–15; https://www.zakon-i-normativ.info (data zvernennia 07.04.2019) [in Ukrainian].

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Regulations on the procedure for determining the value of Net assets of joint investment institutions, approved by the decision of the National Commission on Securities and Stock Market dated July 30, 2013, № 1336. *Official Gazette of Ukraine*, 2013, № 72 (September 27, 2013), Art. 2645 [in Ukrainian].

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С. О. Козуб

ПРОВЕДЕННЯ СУДОВИХ ЕКОНОМІЧНИХ ЕКСПЕРТИЗ З ПИТАНЬ ОПОДАТКУВАННЯ ОПЕРАЦІЙ КОМПАНІЇ З КЕРУВАННЯ АКТИВАМИ, ЩО ЗДІЙСНЮЄ УПРАВЛІННЯ АКТИВАМИ ІНСТИТУТУ СПІЛЬНОГО ІНВЕСТУВАННЯ – ПАЙОВОГО ВЕНЧУРНОГО ІНВЕСТИЦІЙНОГО ФОНДУ ТА КОРПОРАТИВНОГО ІНВЕСТИЦІЙНОГО ФОНДУ

Розглянуто порядок оподаткування операцій компанії з керування активами, що здійснює управління активами інституту спільного інвестування – пайового венчурного інвестиційного фонду та корпоративного інвестиційного фонду при проведенні судових економічних експертиз. Проблематика даного питання є вузько- спеціалізованою та в попередніх публікаціях не розглядалась, що відповідно обґрунтовує новизну даної теми. За результатами розгляду визначено певні особливості оподаткування операцій компанії з керування активами, що здійснює управління активами інституту спільного інвестування – пайового венчурного інвестиційного фонду та корпоративного інвестиційного фонду.

Ключові слова: пайовий фонд, попередні договори, кошти спільного інвестування, активи інституту спільного інвестування, інститут спільного інвестування, активи венчурного фонду, актив, зобов’язання, податкова консультація.

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