

право платника бути звільненим від виконання обов'язку щодо погашення податкового боргу шляхом його списання;

7) неодноразове намагання платника, що здійснив перереєстрацію з неконтрольованої території до контрольованої території України, яка належить до території проведення АТО, зареєструвати податкові накладні та/або розрахунки коригувань у межах установлених граничних строків, а потім безпідставне їх неприйняття контролюючим органом свідчить про відсутність протиправної бездіяльності платника податків і виключає склад податкового правопорушення;

8) звільнення платника від відповідальності на підставі підпункту 38.4 пункту 38 підрозділу 10 розділу XX «Перехідні положення» Податкового кодексу України є безумовним обов'язком податкових органів, зокрема, якщо фактичним місцезнаходженням філії, представництва, відокремленого чи іншого структурного підрозділу юридичної особи є тимчасово окупована територія, а місцезнаходженням відповідної юридичної особи є інша територія України або територія населених пунктів на лінії зіткнення.

Отже, правові позиції Верховного Суду з питань оподаткування усувають суперечності правового регулювання податкових відносин, створюють передумови для правильного і одноманітного застосування податкового законодавства, а також сприяють утвердженню принципів права у податковій сфері.

Список використаних джерел

1. Про судоустрій і статус суддів: Закон України від 2 червня 2016 року № 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19> (дата звернення 22.11.2022).
2. Огляд судової практики Верховного Суду щодо оподаткування в умовах воєнного стану. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/oglyady/Ohliad_pod_voiennyi_stan.pdf (дата звернення 11.11.2022).

THE IMPORTANCE OF LEGAL PROFESSIONAL PRIVILEGE IN THE PROCESS OF LAWYER'S ACTIVITY

Ismailova Leila

Student, Institute of Law and Modern Technologies

Roienko Liudmyla

Senior Lecturer, Department of Philology and Translation

Kyiv National University of Technologies and Design (Kyiv, Ukraine)

Active changes in national legislation make certain corrections to certain provisions directly related to the concept of "legal professional privilege". The question regarding a new meaning and protection of information that constitutes lawyer's secrecy is relevant. Today, it is required to maintain attorney's secrecy, which is documented at the legislative level. Attorney confidentiality is somewhat controversial issue among lawyers. This is highlighted by the fact that the concept of lawyer's confidentiality is presented quite widely in the norms of national legislation, but the boundaries of this concept and which aspects constitute its subject haven't been defined clearly.

The purpose of the article is to study the concept of "legal professional privilege" and its main subject, to clarify the connection between the concepts of legal professional privilege and confidentiality, which are used to establish trust-based relations between a client and a lawyer.

An essential condition of the activity of the lawyer is the observance of the professional secrecy of the lawyer, which is of primary importance, because trust in the defense attorney is the main principle on which trust in the justice system as a whole is based. In order to determine the subject of legal professional privilege, it is important to consider what the concept of " legal profes-

sional privilege " means at the legislative level. The Law "On Advocacy and Legal Activity" defines this concept as any information that has become known to a lawyer, a lawyer's assistant, a lawyer's trainee, a person who is in an employment relationship with a lawyer, about the client, as well as reasons because of which the client addressed to a lawyer, law firm, lawyer association, the content of the lawyer's advice, consultations, explanations, documents prepared by him, information stored on electronic media, and other documents and information obtained by the lawyer during the performance of the lawyer's activities. [1] Based on this, we observe that the definition in the Law gives reasons to interpret the concept and use it in practice differently, because the definition gives a wide description and has a rather abstract meaning. This is explained by the fact that the legislator does not provide an exhaustive list of information that constitutes the legal professional privilege, and this list cannot be prepared and completed because each case may contain elements of individuality. The main subject of the legal professional privilege is observed precisely in any information, and not in specific information that was provided to the attorney. That is, a lawyer performing a certain assignment is obliged to maintain secrecy, regardless of where certain information was obtained. After all, the source of any information can be the client himself, who applied for legal assistance, and third parties who were involved in the implementation of the lawyer's assignment. And it does not matter whether the information is received in writing, orally, or electronically. Based on the definition of the concept of lawyer's secrecy, the subject matter is not only any information received, but also advice, consultations, clarifications and questions of persons who have applied for legal assistance to a lawyer and other information obtained during the lawyer's performance of his professional duties [2].

For a clearer understanding of what lawyer's secrecy is, it should be distinguished from the concept of "confidentiality", despite the presence of a certain analogy between these two concepts. Both concepts are significantly different in content and nature. At first, the rule of legal confidentiality, which is in effect today, functioned, and later such a concept as "confidentiality" arose. After all, confidentiality means information defined by law or another legal act, which is characterized primarily by the limitation of access to it by a certain circle of persons. As for the certain content and limits of the information received by the lawyer, it is not determined by the law or another normative legal act, this is explained by the fact that the Law "On Advocacy and Legal Activity " interprets the lawyer's legal privilege as any information that, in turn, came directly from the owner who has the information. Therefore, confidentiality is a clearer concept, which, in turn, cannot be said about the concept of attorney secrecy, which is an abstract concept that contains signs of confidentiality. The obligation to observe attorney confidentiality arises on the one hand as a consequence of concluding an lawyer's contract with a specific client, and on the other hand, observance of legal confidentiality is protected by the Law [4]. The most important component of the fiduciary relationship between an attorney and a client is compliance with the principle of confidentiality, on which the attorney's activity is based, regarding the provision of legal assistance, which consists of ensuring the protection of rights, freedoms and legitimate interests of a person. A component of the principle of confidentiality is the observance of legal secrecy, the additional grounds for disclosure of which are increasing recently, which determines the relevance of the given scientific research [3].

In order to carry out advocacy activities properly, the Law of Ukraine "On Advocacy and Legal Activity" specifies the possibility of applying liability to the advocate and third parties, in accordance with the law, on the condition of non-observance of lawyer's professional privilege, which may lead to deprivation of the right to be engaged in legal activity.

To summarise the abovementioned information it is important to mention that obeying the law regarding the lawyer's professional privilege is one of the main meanings and aspects of the lawyer's performance of his professional duty, therefore, lawyer's secrecy is an integral part of a lawyer's professional activity, which protects the rights, freedoms and legitimate interests of individuals. The foundation of the client's confidence in the lawyer is based precisely on the lawyer's non-disclosure of information, regardless of the source of the received data. Lawyer's secret consists of all materials, documents that directly relate to a certain case and must be kept confidential. In the case of a lawyer's breach of his duty, the lawyer is liable, in accordance with the law, provided that he/she is not exempted from the obligation to maintain professional secrecy related to a particular case.

References:

1. Стаття 22. Адвокатська таємниця. [Electronic resource] URL:
https://protocol.ua/ua/pro_advokaturu_ta_advokatsku_diyalnist_stattya_22/
2. Legal professional privilege: a guide for in-house lawyers. [Electronic resource] URL:
<https://www.farrer.co.uk/globalassets/clients-and-sectors/businesses/privilege---a-guide-for-in-house-lawyers-1.pdf>
3. Legal Professional Privilege in Australia (2021). [Electronic resource] URL:
<https://www.herbertsmithfreehills.com/latest-thinking/legal-professional-privilege-in-australia>
4. The law of privilege – issues for in-house legal (2013). [Electronic resource] URL:
[http://www.hfw.com/downloads/Client_Brief_The_Law_of_Privilege_\[A4_8pp\]_June_2013.pdf](http://www.hfw.com/downloads/Client_Brief_The_Law_of_Privilege_[A4_8pp]_June_2013.pdf)