

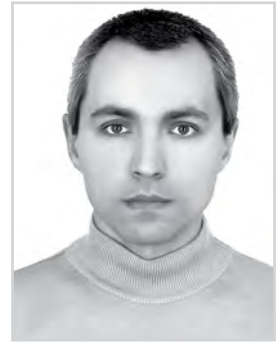
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## Economic and legal issues of rural and recreational land use in Ukraine<sup>1</sup>

### Abstract

*Introduction.* The issues of land use are among the key in directing our country towards sustainable development that is possible only if the appropriate reforms and strengthening of the legal framework for macro- and micro-economic systems and the industrial and territorial aspects of national economy are linked. In this, agricultural lands are traditionally in the focus of domestic scientists. At the same time, the need to improve social standards in the country actualises the issues related to recreational land. Thus, the issues related to synergies of land use processes are of particular interest.

*The purpose* of the article is to investigate economic and legal issues regarding the rural and recreational land use in Ukraine, especially in the context of synergy of industrial economic processes.

*Results.* The article offers a methodological approach to forming of the economic and legal mechanism for land use with a focus of attention for its regulatory functions in the national economy system, namely in agriculture and recreation industries. The synergy in the use of recreational and rural lands is considered by the example of opportunities of the rural green tourism and recreation in Ukraine. We have investigated the factors of determining the legal grounds of land use and the related economic activity of agricultural enterprises. We have analysed the existing special tax regime and the features of state support that ensure sustainable development of production and processing of agricultural products.

*Conclusions.* The described approach to the formation of economic and legal mechanism of rural and recreational land use takes into account the transitional nature of socio-economic and natural ecological processes of sustainable development in Ukraine. The authors suggest two ways in which economic and legal transformations could be implemented. Firstly, it is necessary to create regulatory legal and organisational prerequisites for the regulation of land use processes considering the specificity of the temporary crisis state of the national economy. Secondly, it concerns the implementation of the special tax regime and state support that ensures sustainable development of agriculture production and also contributes to the development of the rural green tourism and recreation in Ukraine.

**Keywords:** Land Use; Recreational Land; Rural Land; Economic and Legal Mechanism; Tax Regime

**JEL Classification:** K23; L83; O13

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### Економічні та правові питання використання земель сільських населених пунктів і земель рекреаційного призначення в Україні

**Анотація.** У статті досліджено найбільш актуальні питання економічного та правового характеру щодо використання земель сільських населених пунктів і рекреаційних земель в Україні, передусім у контексті синергізму господарчих процесів у галузевому розрізі. Запропоновано методологічний підхід до формування економіко-правового механізму землекористування з акцентом уваги на його регулятивній функції в системі національної економіки, а саме в галузях сільського господарства та рекреації. Синергізм у процесах використання рекреаційних земель і земель сільських населених пунктів розглянуто на прикладі можливостей розвитку сільського зеленого туризму та рекреації в Україні. Досліджено чинники визначення юридичних підстав землекористування та відповідної господарської діяльності сільськогосподарських підприємств. Проведено аналіз особливостей спеціального режиму оподаткування та державної підтримки, що дозволяє забезпечити сталий розвиток виробництва та переробки сільськогосподарської продукції.

**Ключові слова:** землекористування; землі рекреаційного призначення; землі сільських населених пунктів; економіко-правовий механізм; режим оподаткування.

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**Экономические и правовые вопросы использования земель сельских населенных пунктов и земель рекреационного назначения в Украине**

**Аннотация.** В статье исследованы наиболее актуальные вопросы экономического и правового характера, касающиеся использования земель сельских населенных пунктов и рекреационных земель в Украине, прежде всего в контексте синергизма хозяйственных процессов в отраслевом разрезе. Предложен методологический подход к формированию экономико-правового механизма землепользования с акцентом внимания на его регулятивной функции в системе национальной экономики, а именно в отрасли сельского хозяйства и рекреации. Синергизм в процессах использования рекреационных земель и земель сельских населенных пунктов рассмотрен на примере возможностей развития сельского зеленого туризма и рекреации в Украине. Исследованы факторы определения юридических оснований землепользования и соответствующей хозяйственной деятельности сельскохозяйственных предприятий. Проведен анализ особенностей специального режима налогообложения и государственной поддержки, что позволяет обеспечить устойчивое развитие производства и переработки сельскохозяйственной продукции.

**Ключевые слова:** землепользование; земли рекреационного назначения; земли сельских населенных пунктов; экономико-правовой механизм; режим налогообложения.

### 1. Introduction

Land is the fundamental national wealth; land ownership is legally enshrined and guaranteed by the state. The subjects of land relations are citizens, legal entities, local governments and public authorities. The agricultural land market in Ukraine is characterised by mainly rental relationship and, if the moratorium on land purchase and sale is lifted, by a possible rapid development of the relevant processes. The issues of land use are among the key in directing our country towards sustainable development, which is possible only through adequate reforms in the legal sphere at the macro- and micro-levels of the economic system taking into consideration the industrial and territorial aspects of the national economy. In this, agricultural lands are traditionally in the focus of domestic scientists' attention. At the same time, the need to improve social standards in the country actualises the issues related to recreational land. Thus, the issues related to synergies of land use processes are of particular interest.

### 2. Brief Literature Review

The problems of legal regulation of land relations, as well as the definition of economic and legal grounds of land use by agricultural enterprises and enterprises of recreational industry is studied by both Ukrainian and foreign legal scholars and economists, such as V. P. Sychak (2008) [1], L. D. Tulus (2010) [2], (2015) [3], V. M. Zhuk (2011) [4], Sh. I. Ibatullin and O. V. Stepenko (2014) [5], N. Vdovenko (2015) [6], A. Moskalenko (2015) [7], R. N. Clark and G. H. Stankey (1979) [8], L. Roberts and D. Hall (2002) [9], F. Brouwer and C. Martijn van der Heide (2009) [10], R. P. Campana, L. M. Valenzuela Montes (2014) [11], J. Dehez, S. Lyser (2014) [12], S. Andkjær, J. Arvidsen (2015) [13], I. Kravcakova Vozarova, R. Kotulic, E. Sira (2015) [14], N. Srisomyong, D. Meyer (2015) [15], A. Verhoeve, V. Dewaelheyns, E. Kerselaers, E. Rogge, H. Gulinck (2015) [16]). The works of V. P. Sychak (2008) [1], L. D. Tulus (2010) [2; 3], V. M. Zhuk (2011) [4] present the authors' significant contribution to the development of agricultural taxation. In particular, V. P. Sychak (2008) [1] suggested a concept for the development of the taxation system in the agriculture of Ukraine. (2010) [2] paid considerable attention to the problems of functioning of special tax regimes' function; L. D. Tulus (2015) [3] researched the efficiency of tax policy in the agriculture of Ukraine.

Economic and political factors of multifunctional rural land management are investigated in the work of F. Brouwer and C. Martijn van der Heide (2009) [10]. R. P. Campana, L. M. Valenzuela Montes (2014) [11] presented an agro-urban open space as a component of agricultural multifunctionality. I. Kravcakova Vozarova, R. Kotulic, E. Sira (2015) [14] researched the V4 countries' agricultural sector evaluation in terms of competitive advantages. A. Verhoeve, V. Dewaelheyns, E. Kerselaers, E. Rogge, H. Gulinck (2015) [16] analysed issues of the occupation of agricultural land by non-agricultural land uses. At the

same time, a number of theoretical, scientific and practical issues related to land use and regulation of the relevant processes in agriculture and recreation industries, especially in the context of rationalisation of appropriate economic and legal mechanisms need to be comprehensively resolved.

### 3. Purpose

The purpose of the work is to investigate economic and legal issues related to the rural and recreational land use in Ukraine, especially in the context of synergy of industrial economic processes.

### 4. Results

Land relations are regulated by the Constitution of Ukraine and the Land Code adopted in accordance with the normative legal acts. Article 13 of the Constitution of Ukraine contains the following provision: «The land, its mineral wealth, air, water and other natural resources in the territory of Ukraine ... is the property of the Ukrainian people. Every citizen has the right to use the national natural property in conformity with the law» [17].

The parties to legal relations in Ukraine are citizens, legal entities, local governments and public authorities. Land relations are governed by the Constitution of Ukraine [17], the Land Code of Ukraine [18] and regulatory acts adopted pursuant thereto.

Characteristics the legal category of *land* as an object of administrative and legal protection include administrative and legal elements primarily relevant to the procedure for issuing permits related to land use, ownership or lease, and alienation of land. That is the main purpose of the administrative and legal regulation of land relations is the development, improvement and systematisation of legal provisions aimed at preventing violations in the sphere of land relations.

Under Article 19 of the Land Code of Ukraine, lands are divided into the following categories according to their main purpose: agricultural land, land for residential and public buildings, land of the natural reserve and other environmental purposes, land for health improvement, recreational land, land of historical and cultural significance, forest reserve land, water reserve land, land used for industry and transport.

The structure of land resources has undergone significant changes during the land reform in Ukraine. Currently, more than 50 percent of lands are privately owned (about 19,000 of newly established agricultural formations) by private rental households of market type.

In compliance with the current legislation of Ukraine (Article 22 of the Land Code of Ukraine and Article 14.1.76 of the Tax Code of Ukraine [19; 22]), agricultural lands are lands granted for agricultural production, agricultural research and training activities, placing the appropriate industrial infrastructure including the infrastructure of wholesale markets of agricultural products or intended for this purpose. This category primarily includes agricultural lands (arable land, perennial plants, hayfields, pastures and fallow land).

Agricultural lands are transferred to the ownership and use of citizens, agricultural and non-agricultural enterprises exclusively for the agricultural production (personal or subsidiary farms). The current legislation allows agricultural enterprises (farmers) to use land plots that belong to them based on the right of ownership as a legal person, lands that are owned by citizens based on private property rights and land used under a lease to conduct their economic activities.

Different mechanisms of acquisition of ownership by legal entities are legislatively defined, depending on the form of ownership.

The most important result of combining the legal and economic approaches to the regulation of rural and recreational land use processes is forming of an economic and legal land use mechanism in the system of national economy, namely in the industries of agriculture and recreation (Figure 1), which involves two stages:

Stage 1. Creation of legislative, regulatory and organisational prerequisites for the regulation of land use.

Stage 2. Implementation of the special tax regime and state support that will facilitate the creation of an attractive investment environment for the wide proceedings of agricultural and tourism and recreational production on the principles of sustainable development.

Currently, in accordance with applicable law, the land use in Ukraine is fee-based. In order to regulate land relations, rational use of land and its protection, to determine the size of the land tax and to provide necessary information to public authorities, local governments, interested companies, organizations and citizens in accordance with Article 194 of the Land Code of Ukraine, the State Land Cadastre (land registry), which contains a set of data and documents on location and legal regime of the land plots, their assessment, land classification, quantitative and qualitative characteristics, and the distribution among land owners and land users was established.

The information from the State Land Cadastre is the basis for calculating the land tax (paragraph 286.1 of Article 286 of the Tax Code of Ukraine [19, 348]).

It should be noted that the Tax Code of Ukraine omitted the discriminatory norm observed in Article 7 of the Law of Ukraine as of 3 July 1992, No. 2535-XII «On Land Use Fees» (now lost its validity). It states that in case of acquisition of land plot un-

der civil law agreement, the tax amount is calculated based on the amount equal to the monetary evaluation of land, but in any case, the amount based on which the tax is calculated cannot not be less than the price of land specified in the agreement.

Tax rates per hectare of agricultural land (regardless of location) are set as a percentage of their normative monetary value in the following sizes (paragraph 272.1 of Article 272 of the Tax Code of Ukraine [19, 343]):

- 0.1% for arable land, hayfields and pastures;
- 0.03% for perennial plantings.

According to the same rates, the tax is levied on agricultural land, provided in the prescribed manner and used for the intended purpose, including by military agricultural enterprises, regardless of the land category they belong to.

The state developed and legislatively implemented a simplified taxation mechanism, i.e. calculation and payment of fixed agricultural tax to ensure sustainable development of agricultural enterprises, which main activity is the manufacture of agricultural products. In this case, only those agricultural producers whose income from sales of agricultural products of own production for the previous reporting (tax) year exceeds 50 percent of total income are entitled to transfer to the fixed agricultural tax.

In case of provision of land plots for rent (as well as some buildings, structures or parts thereof), fixed agricultural tax payers will pay it on general grounds. This idea is described, in particular, in the letter of the State Tax Service of Ukraine as of 3 October 2011 No. 1959/7/15-2217F [20].

The research of the current legislation showed the presence of a number of issues that arise in the use of agricultural land. Inconsistency of certain provisions of land and tax legislation in this area reduces the efficiency of land use and the level of payment of corresponding taxes and fees.

Challenging issues, in the first place, include issues related to the accuracy of determining the share of agricultural goods (services) in the total amount products (services) produced by the enterprise and study of the impact of ownership on the size of the object of taxation with fixed agricultural tax, registering the ownership of the leased land plots used by enterprises in their own production activities, and considering whether the total amount of agricultural products was harvested from leased land plots, which were not properly registered.

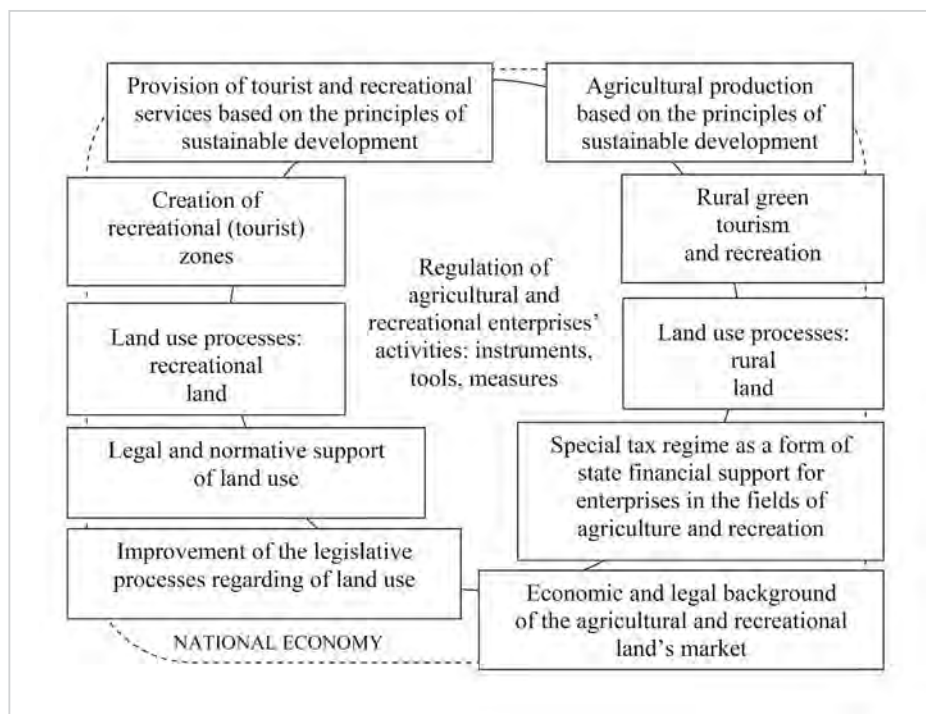


Fig. 1: Scheme of economic and legal land use mechanism in agricultural and recreational industries of national economy

Source: Own research

Given the priority of application of norms of the Tax Code of Ukraine with respect to the norms of other branches of law in the regulation of tax relations, we should recognise that failure to comply with the land law on registration of land lease cannot be a hindrance to the qualification of agricultural lands, which are in use of the manufacturer for the purposes of charging a fixed agricultural tax. Considered land will be in use of the agricultural taxpayer. It should be borne in mind that the emergence of rent relations in accordance with the requirements of land legislation is not a prerequisite for the recognition of agricultural lands as being in use of the fixed agricultural taxpayers. The above speaks that the rent is just one of the types of land use rights.

Thus, the object of taxation is agricultural land owned or used by the taxpayer on any terms, including, but not limited to rent. At the same time, this regulation does not stipulate that the right to land plots (including the right to use) should be executed in a certain way and registered. Under such circumstances, the lack of proper registration of land plots, including the absence of state registration of respective lease agreements, is not a ground for release of the fixed agricultural taxpayers from tax assessment of the area of all plots that are in the use. Thus, the fixed agricultural tax is payable on all lands that are actually used by the payer of this tax for agricultural production.

The State Fiscal Service has a different view. In particular, its position on the matter is presented in the letter of the Ministry of Income and Fees of Ukraine as of 17 September 2013 No. 12593/5/99-99-19-04-02-16 «On application of special VAT taxation regime by agricultural enterprises» [21].

In general, the criteria and mechanisms of special VAT taxation and fixed agricultural tax are imperfect and have ceased to perform the stimulating function for the development of diversified small and medium businesses in the countryside, and with the establishment of agricultural holdings and industrial agricultural enterprises, they turned into a mechanism for the tax optimisation of the latter. The currently applicable legislation is more favorable to large agribusiness, which agricultural segment is mainly specialised in the production of agricultural products. In particular, a special taxation regime for holding companies is an attractive tool for the formation of «legitimate» schemes of evasion from a considerable number of taxes. Purchase of agricultural products at prices higher than the market prices is the most common phenomenon in the agricultural enterprises controlled by the holdings. Moreover, special VAT regime does not prevent from the application fictitious schemes of procurement of agricultural raw materials by processors, when raw materials are actually imported using gray imports and are legalized at a «virtual manufacturing» of controlled agricultural enterprises.

International experience in the agricultural field shows that the system of support of agricultural producers, which currently operates in Ukraine, is imperfect. Representatives of the International Monetary Fund (IMF) are also concerned about the mechanism of action of the special VAT taxation scheme in Ukraine. According to the international concept of economic development, the country should have a general taxation system that does not involve any special regimes. Instead of it, the state generally allocates direct subsidies, which size is determined based on the established criteria, to support the agricultural producers.

To improve the system of taxation of agricultural producers and reduce the negative impact of the various schemes used by agricultural enterprises on the state budget, it is proposed, at the level of legislation, to transfer to the general system taxation, including value added taxation, agricultural enterprises whose annual turnover exceeds 20 million hryvnias and with a land bank of more than 3 thousand hectares of agricultural land.

At the same time, according to the proposals submitted by the member enterprises of the European Business Association, the Association «Ukrainian Agribusiness Club», the Ukrainian Agrarian Association of the Agrarian Union of Ukraine, the Ukrainian Grain Association, the Association of Farmers and Private Landowners of Ukraine and a number of Ukrainian industry associations, it is proposed to apply the general tax system to

those agricultural enterprises, which have at least 10 thousand hectares and/or turnover of 50 million hryvnias per year. Large enterprises will not receive benefits. There are other proposed schemes, which can be used in case of cancellation of the special VAT regime, among them is the creation of the system of conditional VAT payment (where funds are sent to the special account, and at the end of the year they are distributed as subsidies), increase in the tax rate on food, etc.

The majority of national experts are convinced about the only one thing – changes must be based on new conceptual approaches, including those described in [4]. In the present case, the key ones are:

- development of a system of special taxation of the agricultural business as a component of the separate taxation subsystem in agro-industrial sector (examination of taxes in the light of the of product value formation chain);
- encouragement of the development of integration processes between producers, processors and sellers;
- application of the special taxation system only for village-forming agricultural enterprises;
- special tax incentives to diversify the agricultural business and to encourage enterprises to participate in the agricultural development;
- adherence to the principles of stability and common approaches to the implementation of the system of agricultural activities taxation;
- improvement of the level of comfort in the calculation and collection of taxes.

The result of the recreational and rural land use synergy in Ukraine is the development of rural green tourism and recreation [22]. It is about a number of actions related to the key factors of recreation and environment since the formation of the prerequisites for the creation of appropriate infrastructure and provision of a quality eco-recreational product, the implementation of which meets the needs of customers in the travel and leisure through the use of recreational and rural land and other natural and environmental factors, and the socio-economic development of territories taking holidaymakers is supported. The support by the state is apparent in improving the legal framework of regulating relations in the field of rural green tourism and recreation; in the recognition of this sector activity as an important factor in creating employment and improving the living standards of the rural population with the support of the attraction of national and foreign investments in the development of rural tourism and recreation.

## 5. Conclusions

This work shows the theoretical and practical economic and legal issues regarding the rural and recreational land use in Ukraine. The described approach to the formation of the economic and legal mechanism for land use takes into account the transitional nature of socioeconomic and natural ecological processes of the sustainable development in Ukraine. The authors have suggested two ways in which economic and legal transformations could be implemented.

The first way is to create normative legal and organisational prerequisites for the regulation of land use in Ukraine taking into account the temporary crisis state of the national economy. It means that one of the most important aspects of consideration of land relations includes legal definition of land ownership and mechanisms for its implementation, that is the right to possess, use and dispose of land.

The second way implies the implementation of a special tax regime and state support that ensures the sustainable development of agriculture production. It is assumed that the creation of an attractive investment environment and further significant increase in investment income is distributed in the following areas: wide proceedings of agricultural production on principles of sustainable development; provision of tourist and recreational services within the recreational zones; development of rural green tourism and recreation within the regulation of agricultural and recreational activities of enterprises regarding its instruments, tools, measures.

Further researches will give a more detailed analysis of the market of recreational land, including its relation to the market of agricultural land in Ukraine.



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