CHAPTER 2
LEGAL RELATIONS: FROM THEORY TO PRACTICE

CIVIL AND TAX ASPECTS OF ALIENATION OF CORPORATE RIGHTS IN THE REORGANIZATION OF BUSINESS LEGAL ENTITIES

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Abstract. *The article examines the peculiarities of the alienation of corporate rights in Ukraine during the reorganization of business legal entities. The purpose of the article is to determine the legal and economic essence of corporate legal relations during the reorganization of an entrepreneurial legal entity, as well as the influence of tax and civil legislation on the alienation of corporate rights. The methodological basis of the research is a system of complementary general scientific and special methods, which is a means of obtaining objective and reliable results. The following methods were used during the research: comparative-legal, dialectical, formal-legal, logical and systemic-structural analysis. The legal regulation of the reorganization of legal entities is determined by the Civil Code of Ukraine and the internal acts of these organizations, depending on the type and organizational and legal form of the legal entity formed according to one or another classification criterion. The existing state of legal regulation of the liquidation of entrepreneurial legal entities requires a scientific analysis by updating the legislative provisions in this area. In particular, considering the Civil Code of Ukraine and the Tax Code of Ukraine, we will pay attention to the lack of harmonization of tax and civil law regarding corporate legal relations during reorganization and alienation of corporate rights and protection of investors' interests. Termination of corporate legal relations during the reorganization of a legal entity for the purpose of taxation is the transaction of alienation of corporate rights. For the purpose of taxation, the tax law regulations provide for the tax-legal qualification of private-law property relations as objects of taxation and grounds for the emergence of tax liabilities.*

Keywords*: corporate rights, alienation of corporate rights, investment asset, investment, income, corporate law, reorganizations.*

JEL Classification: G12, K22, M14

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Introduction. The topic of the rights and obligations of participants and creditors during the reorganization of business legal entities is very relevant, since reorganization can happen to any company and at any stage of its development. Reorganization of a business legal entity can take various forms, such as merger, merger, separation, transformation, division and liquidation. Each of these forms of reorganization has its own requirements and procedures that must be followed by the participants and creditors of the entrepreneurial legal entity. Alienation of corporate rights (for example, as a result of alienation of shares in the authorized capital of an LLC) is quite common. The very procedure of their alienation (sale/donation/inheritance, etc.) is extremely complicated from the point of view of the

Civil and Tax Code. Corporate rights and relations arising in relation to them do not always have the object of taxation, but only in those cases when their subject has certain economic assets, improvement of his property status as a result of his receiving certain economic benefits from ownership such corporate rights.

Literature review. Modern studies do not sufficiently cover the aspect of alienation of corporate rights during the reorganization of legal entities, therefore the question of harmonization of tax and civil law regarding corporate legal relations is relevant. Scientists who devoted their research to identifying the causes, essence and consequences of tax conflicts, є M. Aharkov, Ye. Porokhov, I.Spasybo-Fatieieva, F. M. Khaniieva .

Aims. The purpose of the article is to determine the legal and economic essence of corporate legal relations during the reorganization of an entrepreneurial legal entity, as well as the influence of tax and civil legislation on the alienation of corporate rights.

Methods. The methodological basis of the research is a system of complementary general scientific and special methods, which is a means of obtaining objective and reliable results. The following methods were used during the research: comparative-legal, dialectical, formal-legal, logical and systemic-structural analysis.

Results. Restructuring procedures are complex, so it consists of several stages. For example, it is worth considering the stages of mergers and acquisitions of corporate legal entities defined at the legislative level and summarized in legal literature in order to outline the details of their application. In particular, O. A. Belyanevich noted that reorganizational relations during a merger go through certain stages of development, each of which is based on legal facts:

1) adoption of a decision by the founder (participants) of legal entities to merge;

2) the stage of activity of a specially created body - commission on termination (and/or formation of a new company);

3) state registration of a newly formed legal entity and state registration of its termination in the Unified State Register of a legal entity - legal predecessor (legal predecessors) [1]

First of all, it is about the right to know, because regardless of which entity initiated the reorganization, questions about the possibility and expediency of its implementation are submitted to the meeting of shareholders of the company for consideration and subsequent decision-making. Accordingly, all participants have the right to be notified and receive the draft agenda of the general meeting, the date and venue, etc., as well as other documents on the issues under consideration. It should be noted that for the participants of the startup company, the right to information is most fully realized through familiarization with the terms of the joining agreement, which establishes the basic conditions for the transfer of rights and obligations from the company being reorganized to the company created in the process of reorganization. As T. D. Aitkulov commented, the main feature of the merger (joining) agreement is that such an agreement is concluded by companies that cease to exist after the creation of a new company, and the members of the merged companies become its members [2].

Similar provisions should be contained in the division plan (separation, transformation). In particular, I. M. Kucherenko drew attention to the fact that during division and separation, each participant (shareholder, member) of a legal entity must independently decide which legal entity he should be a member of [3].

The participants of the reorganizing company have the right to information in order to make a reasoned decision regarding the reorganization ("for" or "against"). In addition, they can determine their will and interest in continuing to participate in the company, become members of the newly created company - the legal successor, or choose another form of realization of their corporate rights and obligations.

A member of an entrepreneurial partnership has the right to participate in the general meeting of the partnership, where the question of the feasibility of reorganization and the adoption of the relevant decision are discussed. This right is important because he has the opportunity to take part in making an important decision regarding the reorganization of the company. He can express his position and vote for or against the reorganization, which affects the future of the company and its members. In addition, general meetings are a place for discussion of other issues related to the company's activities, so participation in them can be useful for the participant from the point of view of obtaining useful information and making management decisions.

We will analyze some features of the reorganization procedure, which are related to the decision-making at the general meeting of participants and the approval of the terms of the merger (joining) agreement / separation plan (separation, transformation). Thus, the participants who take part in voting at the general meeting of the company make a decision "for" or "against" the reorganization, taking into account the prospects of consolidation of the company's capital and the development of various areas of business, as well as the amount of corporate rights of the participants of the newly created business entity, which depends on conversion (exchange) of shares (parts, shares) and other factors. Thus, the procedure and conditions for the conversion of shares must be defined in the merger or accession agreements and the plan of division, separation or transformation of the joint-stock company. The peculiarity of conversion as a way of placing shares is that in this case the shares are canceled, which are transferred "in payment" for previously placed shares. In this case, the sale of shares is not carried out, and therefore, the conversion by its nature does not aim to attract investors [4].

There are the following options for the transfer of rights and obligations of reorganized legal entities during reorganization:

a) in full only to one legal successor (in case of merger, accession and transformation);

b) in full, but to several legal successors in the respective parts (in case of division);

c) partially both to one and to several legal successors (in case of separation).

Therefore, the conversion of shares (parts, shares) is a process of legal succession of corporate rights of participants of entrepreneurial companies. This process is determined by the decision of the general meeting of the participants and the merger (joining) agreement / plan of division (separation, transformation) and is carried out in

accordance with the principle of "the ratio of the nominal value of the share, share (share) of the company that is being reorganized to the nominal value of the share, share (share)) of the successor company" [5].

Corporate property rights may include the right to receive assets in the event of liquidation of an economic organization.

For its implementation, a number of conditions must be met: a) adoption of a decision on the reorganization of the company; b) compliance with the reorganization procedure established by law; c) repayment by the economic organization of debts to all creditors; d) availability, after settlement with creditors, of funds or property that will be distributed among the owners of corporate rights.

The order of distribution between the participants of the property is determined by legislation and constituent documents of the economic organization. Owners of preferred shares in a joint-stock company and investors in a limited partnership have the right to receive the share due to them in the event of distribution of the company's property among participants

The amount of corporate property rights upon conversion of a share (share) remains unchanged, while the amount of personal non-property rights may change, depending on the proportions of corporate control in the company. At the same time, the complex of property and non-property corporate rights (their totality) during the conversion (exchange) of shares (parts, shares) remains unchanged [5].

In accordance with Part 1, 2 of Art. 135 of the Civil Code of Ukraine, non-property powers include the right to make a decision to terminate the activity of an economic organization in accordance with the requirements of the Civil Code of Ukraine and other laws.

Corporate law is a complex structural entity, the content of which is binding relationships (between corporate forms of business organization in the national economy and individual economic agents operating in the corporate sector of the national economy, as well as between individual stakeholders of the corporation, non-property, including and organizational ties.All these socio-economic relations have their own content, features of the implementation of subjective rights by their participants and the performance of subjective relations.

The grounds for termination of corporate rights present by Figure 1.

The participant has the right to alienate his fate in the registered authorized capital of the company, as well as securities confirming participation in the company. Corporate rights entities enjoy the pre -emptive right to buy the fate (its share) of the participant in proportion to their share in the registered authorized capital of the company or in others agreed amount. If the share is transferred to a third party in another way (for example, gifts), members of the company have no right to demand compliance with the requirement for the pre -emptive right of purchase.

Subject to corporate rights as a result of inheritance, almost all the rights and obligations of the individual - the heir, since the rights and obligations that are inextricably linked to the person of the heir (eg, the right to participate in the Society and The right of membership in associations of citizens, unless otherwise enshrined in law or constituent documents).

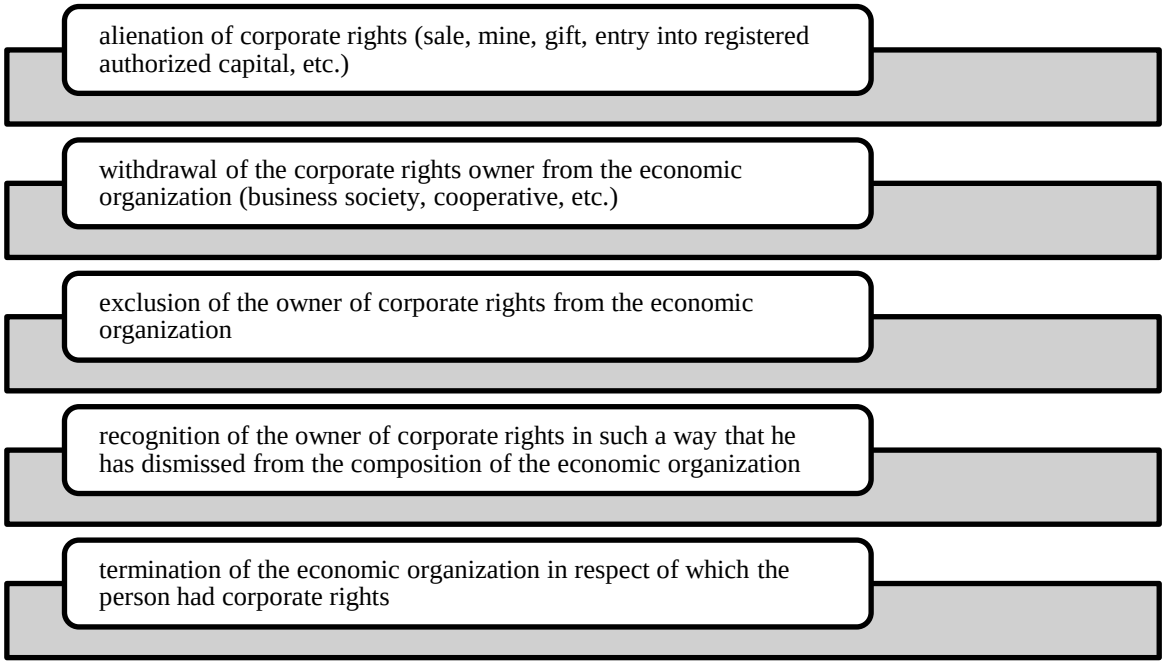

Figure 1. The grounds for termination of corporate rights

Sources: developed by authors

According to the common right, a member of the company may retreat his share (part of it) to a third party who is not a member of the company. However, the charter of the company may contain rules aimed at restricting this right.

A natural or legal entity that possesses corporate rights can exercise them by exercising their right of property, which includes the right to use and dispose of them freely.

The owner can "get rid of" his corporate rights by: withdrawing from the company

- to pick up its share (then the company will have to reduce the registered authorized capital, if this share does not find others);

– the parting of the share - to retreat (sell) the share itself, to the participants of such a company, or simply to third parties.

Consider each option for the exercise of corporate rights by a participant in the entity separately. The exit of the participant from the company is accompanied by the relevant legal obligations of the issuer to the subject of rights:

to pay the value of part of the property of the company, the proportional share of the participant in the registered authorized capital (within a period of up to 12 months from the date of exit). At the request of the participant and with the consent of the company, the deposit may be returned in whole or in kind;

to pay the participant due to him the share of profit (dividend) received by the company this year before his exit.

In case of liquidation of the company, after making payments with the budget and creditors, the remaining property is subject to distribution between its owners, which are shareholders. The distribution of property between shareholders is carried out in proportion to the share of each shareholder in the registered share capital of the joint -

stock company. However, privileged shares provide their owner with a priority participation in the distribution of property of a joint -stock company in its liquidation.

Income from corporate rights alienation, for taxation, are classified as an investment profit, which is defined as a positive difference between income, a taxpayer received from transactions, including securities and corporate rights issued in other than securities, forms, and expenses, and expenses. on the acquisition of such investment assets (пп. 14.1.811. п. 14.1. ст. 14 ПКУ).

A package of securities or corporate rights expressed in other issuer -released forms, which are issued by one issuer, are called an "investment asset" (пп. 170.2.7. п. 170.2. ст.170 ПКУ). And the profit from transactions with investment assets is included in the total monthly (annual) taxable income of the taxpayer (п. 164.2. ст. 164 і п. 170.2. ст. 170 ПКУ). In this case, the sale of the investment asset also equates operations with: exchange of investment asset for another investment asset; redemption or repayment of the investment asset by its issuer, which belonged to the taxpayer; The return of the taxpayer or property (property rights), previously entered into the authorized capital of the issuer of corporate rights, in the case of such a taxpayer from among the founders (participants) of such issuer or liquidation of such issuer.

Participants of the Company enjoy the pre -emptive right to buy a participant's share (part of it), in proportion to the size of their shares, if the statute of the company or agreement between the participants does not establish another procedure for exercising this right.

The purchase is made at a price and on other conditions, at which the share (part of it) was offered for sale to third parties. If the members of the company do not exercise their pre -emptive right within one month from the date of notification of the participant's intention to sell a share (part of it) or within another period set by the Company's Charter or agreement between its participants, the share (part of it) may be alienated to a third party (ч.2 ст. 147 ЦК України). If the desire to buy a share in the right of joint partial ownership has been revealed by several co -owners, then the seller has the right to choose the buyer.

Coming out of the company, the participant, on the one hand, actually returns him previously issued corporate rights, and on the other hand, does not require money for it - for free. With the entry of the participant of the obligation of the issuing company regarding the rights of such a participant, they terminate. However, the company has other obligations - to pay the participant the value of the share of property, proportional to its share in the registered authorized capital. Since in our case the participant immediately states the absence of property claims, the obligations of the company are terminated in connection with forgiveness of the debt (ст. 605 Цивільного кодексу).

Solving these problems will avoid corporate conflicts and litigation with public authorities and will allow the enterprise management and development directly to be effectively engaged. Therefore, the prospects for further research are the consideration of controversial issues in accounting regarding other corporate rights transactions.

If the participant who comes out, decides to transfer his share to the company, then in the application for exit and appropriate decision, he must declare the absence of any property and non-property claims against other participants and society as a

whole in connection with his exit (that is, refusing to receive compensation for the remaining corporate rights). Having received the participant's statement about the "free" exit, the meeting of the company decide what to do with the "free" share. In order not to reduce the registered authorized capital, within the period set in the decision of the Company, the share should be transferred (sell) to other participants or third parties, if the share in the prescribed period (but not more than during the year) can not be sold, then the company will have to reduce the registered registered share capital.

It should be noted that the participant can retreat by concluding contracts of sale, mines, gifts or by a notarized application for the transfer of corporate rights to another person.

In case of violation of corporate rights of a participant in a business legal entity in the reorganization, this person has the right to go to court, which can be used in the case where there is no possibility to resolve the dispute with other means. One of the main means of protection is to go to court, which can be used when there is no possibility to resolve the dispute with other means. However, the current legislation does not provide for clear grounds and procedure for appealing decisions on reorganization. This can create some difficulties for participants who want to protect their corporate rights in this context. In such cases, it is necessary to contact legal consultants to obtain additional information and support the violation of corporate rights of a participant in a business legal entity in the reorganization, this person has the right to go to court to protect his rights. According to NI Shevchenko, in court practice, the plaintiffs often make claims for invalidation of decisions of the general meeting of participants (shareholders) related to the reorganization of companies, the constituent documents of the legal entity-successor, records of state registration created by reorganization or termination of such person, etc. [6].

Therefore, the conditions for reorganization of business legal entities give them a special complex of corporate non -property rights. These rights include the right to information, participation in the general meeting of participants, conversion (exchange) of shares (shares, shares), mandatory purchase of shares (shares, shares) and the right to protection (appeal against the decision of the general meeting of participants).

At the same time, it can be said that creditors of a business legal entity is another important subject of civil relationship in reorganization, without which it cannot take place. TE orva defines three ways of protecting the rights of creditors in reorganization. The first method is related to the reorganization procedure, according to which, first, all creditors must be informed in writing that the legal entity has made a decision on reorganization. Secondly, the reorganization notification must contain a proposal to each lender to terminate or early fulfillment of all obligations, the debtor for which is a reorganized legal entity and compensation for the losses caused [7].

Thus, as O Surzhenko notes, the lenders of the terminated legal entity acquire additional property rights in comparison with those they had in relation to this legal entity. This is the right: a) the requirements of early fulfillment of the obligation; b) termination of the obligation; c) a change in the obligation by providing it properly [8].

We believe that the assignment of a significant number of responsibilities of personal reporting and the reorganization of the entrepreneurial company after the expiration of the terms for appearing by the creditors of their claims and the response of the company - the debtor for each of the stated requirements is superfluous. This will not contribute to the effective implementation of the reorganization, but will rather lead to the interference of third parties in the internal activity of the company.

Conclusions. Therefore, from all of the above we can conclude that reorganization is an important stage in the activity of any business legal entity. In the process of reorganization, the rights and responsibilities of participants and creditors play an important role as their interests must be protected. Creditors have the right to demand the return of their funds during the reorganization, and the participants - to preserve their rights and interests in the transformation process. At the same time, the performance of responsibilities for personal reporting and interaction with creditors during the reorganization is necessary to ensure its effectiveness and prevent the possible intervention of third parties in the internal activity of the enterprise. Thus, the protection of the rights and interests of participants and creditors is an important element of successful reorganization of a business legal entity.

Author contributions. The authors contributed equally.

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