

## **Application of Administrative Procedures in Tax Law as a Means of Unloading the Judicial System**

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### **Abstract**

*The relevance of the chosen issue lies in the need for general unification of administrative procedures. The Law of Ukraine "On Administrative Procedure" provides for the unification of administrative procedures (with certain exceptions), which also applies to administrative procedures in tax law – tax procedures. Accordingly, this necessitated changes to the Tax Code of Ukraine. The purpose of our research is to provide a comprehensive analysis of the current state of legal regulation of administrative procedures in Ukraine, as well as the peculiarities of application of such procedures in tax law as a method of pre-trial dispute resolution. The methodological basis of this study is a set of techniques and methods of modern scientific knowledge, which include: the method of comparative analysis in law, synthesis, analysis, analogy, modeling, induction, deduction, hermeneutic method and systematic approach. As a result of the research, the impact of the Law of Ukraine "On Administrative Procedure" on administrative procedures in tax law was determined. Separate provisions of the Tax Code of Ukraine, which must be brought into compliance with the requirements of the administrative procedure, have been analyzed. The main attention is paid to the provisions of Art. 56 of this Law, which regulates the procedure for appealing decisions of supervisory bodies. It is this procedure that will require conceptual changes – the expansion of the object of appeal. Currently, the Tax Code of Ukraine provides for the possibility of administrative appeals only against the decisions of the controlling body. Instead, according to the requirements of the Law of Ukraine "On Administrative Procedure", not only decisions, but also actions and inactions are subject to appeal. In addition, the provisions on the procedure for filing a complaint, the terms of appeal and review, as well as the*

renewal of missed terms must be brought into line. The situation when changes to the Tax Code of Ukraine to unify administrative procedures will not be made on time has been investigated. In the context of promising areas of scientific research, it is stated that the Law of Ukraine "On Administrative Procedure" should regulate the possibility of establishing the peculiarities of administrative proceedings for certain categories of administrative cases. At the same time, the specifics must correspond to the principles of the administrative procedure, which is also established in this Law. The expediency of the principles of the administrative procedure was considered from the point of view of the possibility of monitoring compliance with them and the consequences of violation.

**Keywords:** administration of taxes and fees; alternative remedies; administrative procedure; administrative procedures in tax law; legislative regulation; legitimate interest; public administration; subjective rights; remedies, taxpayers; tax system; tax procedures.

## **Застосування адміністративних процедур у податковому праві як засіб розвантаження судової системи**

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### **Анотація**

Актуальність обраної проблематики полягає в необхідності загальної уніфікації адміністративних процедур. Закон України «Про адміністративну процедуру» передбачає уніфікацію адміністративних процедур (за певним винятком), що стосується й адміністративних процедур у податковому праві – податкових процедур. Відповідно, це зумовило необхідність внесення змін до Податкового кодексу України. Мета дослідження полягає в проведенні комплексного аналізу сучасного стану правового регулювання адміністративних процедур в Україні, а також

особливостей застосування таких процедур у податковому праві як способу досудового вирішення спорів. Методологічною основою цього дослідження є сукупність прийомів і методів сучасного наукового пізнання, до яких віднесено: метод порівняльного аналізу в праві, синтез, аналіз, аналогія, моделювання, індукція, дедукція, герменевтичний метод та системний підхід. У результаті проведеного дослідження визначено вплив Закону України «Про адміністративну процедуру» на адміністративні процедури в податковому праві. Проаналізовано окремі положення Податкового кодексу України, які мають бути приведені у відповідність до вимог адміністративної процедури. Основну увагу приділено положенням статті 56 цього Закону, що регламентує процедуру оскарження рішень контролюючих органів. Саме ця процедура потребуватиме концептуальних змін – розширення об'єкта оскарження. Наразі у Податковому кодексі України передбачено можливість адміністративного оскарження виключно рішень контролюючого органу. Натомість за вимогами Закону України «Про адміністративну процедуру» підлягають оскарженню не тільки рішення, а й дії та бездіяльність. Крім того, мають бути приведені у відповідність положення про порядок подання скарги, строки оскарження та розгляду, а також поновлення пропущених строків. Досліджено ситуацію, коли зміни до Податкового кодексу України для уніфікації адміністративних процедур не будуть внесені вчасно. У контексті перспективних напрямів наукових досліджень зазначено, що Законом України «Про адміністративну процедуру» має бути врегульовано можливість встановлення особливостей адміністративного провадження для окремих категорій адміністративних справ. При цьому особливості мають відповідати принципам адміністративної процедури, що також закріплено в цьому Законі. Доцільність принципів адміністративної процедури розглянуто з позиції можливості здійснення контролю за їх дотриманням та наслідків порушення.

**Ключові слова:** адміністрування податків і зборів; альтернативні засоби правового захисту; адміністративна процедура; адміністративні процедури в податковому праві; законодавче регулювання; законний інтерес; публічна адміністрація; суб'єктивні права; засоби правового захисту; платники податків; податкова система; податкові процедури.

## Introduction

Administrative procedure contains the best principles, practices of public administration, which allow to implement the concept of good administration in practice; administrative procedure allows to protect a person from arbitrariness of public administration [1]. One of the ways to protect the rights and interests of taxpayers is to appeal against the decisions of tax authorities in an administrative procedure. This method of protection is a pre-trial procedure for resolving a dispute between the tax payer and the controlling authority. Its advantages include absence of

court fees and saving of taxpayer's resources, simplicity of the procedure, collection of evidence, short terms of appeal, confidentiality of the decision, etc. It should be noted that this method of protection of taxpayers' rights is implemented through the application of appropriate administrative procedures. As it seems, their application in tax regulation, in particular, is one of the means of unloading the judicial system and has a positive impact on the regulation of relevant legal relations.

Quite a long time in Ukraine there is a discussion about the need to introduce a single legislative act that would unify administrative procedures. Back in 2018, a draft law on administrative procedure was submitted to the Verkhovna Rada of Ukraine [2].

The adoption of an act that would regulate administrative procedures corresponds to several documents of the Council of Europe. These are Resolution (77) 31 on the protection of a person in relation to acts of administrative authorities [3], and Recommendation No. R (80) 2 on the exercise of discretionary powers by administrative bodies [4], etc.

The adoption of the Law on Administrative Procedure determines the need to determine the procedure for agreeing with it other regulatory legal acts, which include the Tax Code of Ukraine. In this situation, two options are possible. The first, when the tax regulations of Ukraine and the relevant tax by-laws will be amended, which would take into account the provisions of the Law on administrative procedure. The second option, when administrative procedures in tax law will not apply to the provisions of the Law on administrative procedure. Undoubtedly, issues of administrative procedures, given one denominator, which is of public interest, will affect tax procedures.

This is important in the context of increasing the investment attractiveness of Ukraine. Transformation processes in tax and legal regulation should ensure not only balancing budgets due to tax revenues, but also establishing fair conditions for doing business, taking into account the needs of economic development. The formation of investment attractiveness of Ukraine should solve the problem of reducing the budget deficit and, as a result, the qualitative development of the economy, establishing fair conditions for management business [5, p. 107; 6]. Moreover, in the context of the taxpayer's optimization of his tax burden within the framework of international tax planning measures, the issue of regulating the principles of implementation of administrative procedures is significantly expanded. In this case, it is necessary to consider not only the provisions of the national tax legislation, but also the principles of implementing tax procedures on the verge of national and foreign regulation. This is due to the need for

the effective action of two mechanisms: a) elimination of double taxation; b) combating tax evasion [7-10].

Problems of administrative procedures were dealt with by a number of scientists, in particular, V. Averyanov [11], D. Luchenko [12], D. Sushchenko [13], I. Boyko [14], V. Tymoshchuk [15] and others. At the same time, the category "administrative procedure" for domestic legal science is a novel. Scientists have not reached a single understanding of its essence and content. Administrative procedure is defined as a normative procedure for consideration and resolution of administrative case and adoption of individual administrative act, and in some cases execution of such act [16, p. 18-19].

In tax law, there are also administrative procedures that have been considered traditionally by scientists separately as tax procedures or tax processes. Among the scientists who dealt with the problems of the tax process and tax procedures, it should be noted, first of all, M. Kucheryavenko [17]. It is necessary to mention the specialized work of I. Pudelka devoted to comparative analysis of administrative procedures in resolving tax disputes (on the example of Germany and Ukraine) [18].

In 2020, the Draft Law of Ukraine on Administrative Procedure [19] was submitted to the Verkhovna Rada of Ukraine, which was adopted on February 17, 2022, but this regulatory act enter into force on December 15, 2023 [20].

Traditionally, tax procedures were reasonably considered as independent procedures, which are fully regulated by tax legislation. However, among the relations that are not covered by the Law on Administrative Procedure, there is no tax relationship. This means that the provisions of the Law on Administrative Procedure will be extended to the procedures regulated by the Tax Code of Ukraine, and therefore it is advisable to speak about administrative procedures in tax law.

## **Materials and Methods**

This scientific article is devoted to determining the place of administrative procedure in tax law. The normative basis of the study was the Tax Code of Ukraine [21], the Law of Ukraine on Administrative Procedure [22], the Fiscal Cod of Germany [23] and the Administrative Procedure Act of the Federal Republic of Germany [24]. The research issue, taking into account national legislative changes and innovations, foreign experience is problematic, since the attention of scientists requires both the basis (background) of such changes, and the nature of the consequences of their adoption and application, and requires comprehensive understanding.

The methodological basis of this study was a set of techniques and methods of modern scientific knowledge. One of the main was the method of comparative law. By applying it, similar and different in national and foreign (in particular, Germany) regulations governing administrative procedures in tax law were found. This method made it possible to obtain results on the identification and characterization of the peculiarities of the regulation of administrative procedures in tax law, as well as to compare approaches to the legal regulation of general and special administrative procedures (in particular in tax law) in Germany.

Along with this, such general legal methods as analysis, synthesis, analogy and modeling were applied. By means of analysis and synthesis, the relationship and mutual flow of the norms of the act have been established and characterized in depth, regulating relations of executive authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, their officials, other entities, which, in accordance with the law, are authorized to carry out the functions of public administration, with individuals and legal entities regarding the consideration and resolution of administrative cases in the spirit of the democratic and legal state defined by the Constitution of Ukraine and in order to ensure the rights and the laws, as well as the obligation of the state to ensure and protect the rights, freedoms or legitimate interests of a person and a citizen, on public relations in the field of taxation; clarified the conceptual apparatus used in the content of normative legal acts that streamline procedural aspects in the field of taxation. Methods of induction and deduction made it possible to draw conclusions from facts to the hypothesis, from general to special and vice versa, to express positions on the impact of the general act of administrative procedure, to describe the state of regulation of procedural relations in tax law, in particular, on the example of administrative appeal against decisions, actions and inaction of tax authorities.

Along with these methods, a systematic approach was also applied, which allowed administrative procedures to be considered as an element of the system of tax legislation and changes, to bring the provisions of the Tax Code of Ukraine into compliance with the requirements for the general administrative procedure, as well as highlight two directions in which the provisions of the draft law on administrative procedure will relate to the provisions of tax legislation regulating administrative procedures in tax law.

The hermeneutic method allowed for its own interpretation (interpretation) of the content of the principles that administrative procedures should comply with. By modeling, tendencies of functioning and development of current norms and legislative innovations are formed, to simulate the application, first of all, of the principles enshrined in the Law on

Administrative Procedure, to administrative procedures in tax law (tax procedures) on the example of such principles of administrative procedure as good faith and prudence, openness, the principle of timeliness and reasonable time to indicate the positive and negative consequences of their application, provided that the provisions of the Tax Code of Ukraine will not be in time, that is, before the introduction of the general administrative procedure, brought in accordance with the provisions of the Law on Administrative Procedure.

## **Results and Discussion**

### ***Administrative Procedure in Germany: Experience for Ukrainian Regulation***

Compared to the approach proposed by the Administrative Procedure Act, a different approach to the ratio of "general" administrative procedure law and administrative procedures in tax law has been introduced in Germany. Administrative procedures are regulated by the Administrative Procedure Act of the Federal Republic of Germany [24]. The legislator consciously removed certain areas from the scope of the Law on Administrative Procedures (§ 2 LAP) and developed an independent special regulation for these areas. It includes social law and tax law. That is, the rules of administrative procedures applicable in tax law are not contained in the LAP, but in the independent Law on Tax Administrative Procedures, which, however, is very similar in content to the general Law of Administrative Procedures, and in some sections even identical to it [18, p. 23-24; 25, p. 997].

Administrative procedures in German tax law are regulated by the Fiscal Cod of Germany [23]. This act regulates the so-called general tax law and the right of tax procedures that govern the establishment of grounds for taxation, determination of tax amounts, tax collection rules and enforcement procedures, as well as procedural rules for the consideration of complaints [18, p. 24]. At the same time, legal mechanism of taxes is regulated by separate laws.

The German approach, when administrative tax procedures are regulated by an independent act, seems to us more balanced, for several reasons. Here we pay attention to several terminological and meaningful aspects.

### ***Administrative Procedure and Tax Regulation in Ukraine***

Art. 1 of the Tax Code of Ukraine establishes the subject of regulation by the code: "The Tax Code of Ukraine regulates relations, arising in the sphere of taxes and fees, in particular, defines an exhaustive list of taxes and fees, coping in Ukraine, and the procedure for their administration,

taxpayers and fees, their rights and obligations, the competence of the supervisory authorities, the powers and duties of their officials during the administration of taxes and fees, as well as responsibility for violation of tax legislation" [21].

Note that Art. 1 of the Tax Code of Ukraine uses the term "administration" [21]. Art. 14 of the Tax Code of Ukraine defines the concept of "administration of taxes, duties, customs duties, a single contribution to compulsory state social insurance and other payments in accordance with the legislation, the control over compliance of which is entrusted to the regulatory authorities". In turn, Section II of the Tax Code of Ukraine is called "Administration of taxes, fees, payments", and Art. 40 of the Tax Code of Ukraine states that Section II defines the procedure for administering taxes and fees defined in Section I of the Tax Code of Ukraine, as well as the procedure for controlling compliance with the requirements of tax and other legislation in cases when the implementation of such control is entrusted to the tax authorities. This approach indicates a lack of terminological unity over the content of the term "administration".

Separately, the term "administration" in the Tax Code of Ukraine is not defined. In subsection 14.1.11 of clause 14.1 of Art. 14 of the Tax Code of Ukraine [21], the definition is given to the concept of "tax administration, duties, customs duties, single contribution for compulsory state social insurance and other payments in accordance with the legislation, control over compliance with which is entrusted to the regulatory authorities" as a set of decisions and procedures of the regulatory authorities and the actions of their officials, determining the institutional structure of tax and customs relations, organizing identification, accounting of taxpayers and payers of single contribution and objects of taxation, provide service to taxpayers, organization and control over payment of taxes, fees, payments in accordance with the procedure established by law. A rather confusing definition that lacks clarity. However, it can be distinguished that administration in tax law are: decisions, procedures and actions.

Referring to section II "Administration of taxes, fees, payments" of the Tax Code of Ukraine will not help to find out how the decisions, procedures and actions relate. This is possible only within the framework of a separate study. Based on the definition provided in subsections 14.1.1<sup>1</sup> of clause 14.1 of Art. 14 of the Tax Code of Ukraine, the procedures of the regulatory authorities are subject to the provisions of the Law on Administrative Procedure.

Before answering this question, we propose to dwell on a meaningful aspect that has two components. The first component is the subject of regulation



of the Tax Code of Ukraine. As follows from Art. 1 of this Code, only the Tax Code of Ukraine by the administration of taxes and fees is regulated, that is, administrative procedures in tax law or tax procedures or administrative tax procedures.

That is, the question arises about the ratio of the provisions of the Law on Administrative Procedure and the Tax Code of Ukraine. On the one hand, tax procedures are regulated exclusively by the Tax Code of Ukraine, on the other hand, the provisions of the Law on Administrative Procedure apply to them. It is seen that this approach lays contradiction and can lead to conflicts. It should also be mentioned the provisions of Art. 5 of the Tax Code of Ukraine. If the concepts, terms, rules and regulations of other acts contradict the concepts, terms, rules and regulations of the Tax Code of Ukraine, the concepts, terms, rules and regulations of the Tax Code of Ukraine to regulate the relations of taxation are used [21]. The adoption of the law on law-making activities, the draft of which as a basis in November 2021 was adopted, can also bring additional complexity [26].

Nevertheless, Art. 3 of the Law of Administrative Procedure provides that the law may establish the peculiarities of administrative proceedings for certain categories of administrative cases. Such features must comply with the principles of administrative procedure defined by this Law [21]. It is certain that, according to the legislator's plan, at least the principles of administrative procedure should be unified. However, how such features are established, in which act (Law on administrative procedure or, for example, Tax Code of Ukraine) – the question is still unanswered.

However, it may not come to conflicts, because the Final and Transitional Provisions of the Law on Administrative Procedure stipulate that the Cabinet of Ministers of Ukraine within 18 months from the date of publication of this Law must:

- 1) within 12 months from the date of publication of this Law, submit to the Verkhovna Rada of Ukraine proposals for bringing legislative acts of Ukraine into compliance with this Law;
- 2) within 18 months from the date of publication of this Law, take measures to adopt and/or update regulations of executive authorities arising from this Law, ensuring that they enter into force simultaneously with the entry into force of this Law;
- 3) inform the Verkhovna Rada of Ukraine on the status of implementation of this Law in 24 months from the date of entry into force of this Law [22].

The Law on Administrative Procedure provides that for the proper application of its norms it is necessary to amend other laws. The TC of Ukraine here will not be an exception. This approach seems complex

and irrational. To do this, just pay attention to those articles of the TC of Ukraine, which should be changed.

First, Art. 1 of the Tax Code of Ukraine, which was already discussed. Although it is not clear without the Law on Administrative Procedure, especially when referring to Art. 3 of the Tax Code of Ukraine, which determines the composition of the tax legislation. The Tax Code of Ukraine regulates Art. 1 states that tax relations, and Art. 3 refers to a number of regulatory legal acts that constitute tax legislation. It would be more logical to make changes to Art. 1 of the Tax Code of Ukraine and talk not only about the Tax Code of Ukraine, but about tax legislation. In any case, the Administrative Procedure Act should be included in the tax legislation.

It is certain that individual positions of the article require changes. Articles 16, 17, 20, 191, 193 of the Tax Code of Ukraine defining the rights and obligations of taxpayers, functions of regulatory bodies, functions of state tax inspections and rights of regulatory bodies [21]. For example, in subsection 20.1.17 of paragraph 20.1 of Art. 20 of the Tax Code of Ukraine it is about the right to involve specialists, experts and translators in case of need. The Law on Administrative Procedure does not contain the term "specialist" at all [22]. The involvement of a specialist, expert and translator should be consistent with the Law on Administrative Procedure.

It will require clarifications and the procedure for correspondence between taxpayers and regulatory authorities. In paragraph 42.2 of Art. 42 of the Tax Code of Ukraine, it should be noted that bringing an administrative act to the attention of a person should take place in accordance with the requirements of the Law on Administrative Procedure (Art. 75) [22]. A number of other articles of section II "Administration of taxes, fees, payments" of the Tax Code of Ukraine should or should it be desirable to receive clarification. That is, not always the lack of clarification, a reference to the need to comply with the requirements of the Administrative Procedure Act is critical.

It is necessary to focus on certain clarifications (changes) on the example of Art. 56 of the Tax Code of Ukraine, which regulates the appeal of decisions of regulatory bodies [21]. We are interested in those provisions concerning the administrative appeal itself. According to paragraph 56.1 of Art. 56 of the Tax Code of Ukraine and by the very name of Art. 56, the taxpayer can appeal administratively only the decision of the supervisory authority and cannot appeal actions and inaction. Instead, part 1 of Art. 78 of the Law on Administrative Procedure has the right to administrative appeal by a person who believes that, among other things, the action, inaction of the administrative body negatively affects his rights, freedoms or legitimate

interests [22]. In fact, the whole concept of appeal in the administrative order of decisions (actions, omissions) of the supervisory authority needs to change. It is necessary to make appropriate changes in Art. 56 of the Tax Code of Ukraine and bring into compliance with the requirements of Part 1 of Art. 78 of the Law on Administrative Procedure and "allow" taxpayers to appeal administratively not only decisions, but also actions and inactions of the supervisory authority.

In paragraph 56.3 of Art. 56 of the Tax Code of Ukraine, the terms for filing a complaint against the decision of the supervisory authority to the supervisory authority of the highest level are regulated. The Tax Code of Ukraine provides 10 working days following the day the taxpayer receives a tax notification-decision or other decision of the supervisory authority, which is disputed [21].

At the same time, according to the general rule provided for in Part 1 of Art. 80 of the Law on Administrative Procedure, a complaint against an administrative act can be filed within thirty calendar days from the date of bringing it to the attention of a person who was a participant in the administrative proceedings for the adoption of this act. Logical step in terms of unification of administrative procedure. However, such changes are not consistent with the provisions of paragraph 57.3 of Art. 57 of the Tax Code of Ukraine, which fix the term of payment of the monetary obligation within 10 working days, which come after the day of receipt of the tax notification-decision [21]. That is, that the taxpayer within 10 working days either pays the amount of the monetary obligation defined in the tax notification decision, or submits a complaint in administrative order. This is important in terms of the possibility of imposing a fine and charging penalties for late payment. The taxpayer has 10 working days to decide whether to pay or appeal administratively. The change under clause 56.3 of Art. 56 of the Tax Code of Ukraine will lead to the fact that the payer still has a term for appeal, but negative consequences (fine and penalty) may be applied to it in connection with the late payment of a monetary obligation. Thus, it is necessary to amend clause 57.3 of Art. 57 of the Tax Code of Ukraine and to unify the period for payment and appeal.

Indeed, another way is possible, which is provided in Part 2 of Art. 3 of the Law on Administrative Procedure: "The Law may establish the peculiarities of administrative proceedings for certain categories of administrative cases" – and Part 1 of Art. 80 of the Law on Administrative Procedure: "For certain types of cases, the Law may establish other terms of filing a complaint" [22]. However, what then is the unification of administrative procedures.

Draws attention to another provision of paragraph 56.3 of Art. 56 of the Tax Code of Ukraine, which regulates the renewal of the missed period for filing a complaint in administrative order. In this situation immediately need changes and deadlines, and the procedure for renewal. Currently, the taxpayer within 6 months from the date of expiration of the administrative appeal period (10 working days following the day of receipt of the tax notification-decision or other decision) has the right to file a complaint together with a petition for renewal of the missed period for filing a complaint administratively and copies of supporting documents of the validity of the reasons for its admission (if any). The complaint may contain a request for renewal of the missed period for filing a complaint administratively [21].

The Law on Administrative Procedure in Part 2 of Art. 80 provides for a fundamentally different procedure for updating the missed deadline for filing a complaint against an administrative act. It is assumed that the complaint against the administrative act and the application for renewal of the deadline for filing the complaint are filed separately. A petition is submitted for renewal of the term, and it is submitted within ten working days from the date of termination of the circumstances that were a valid reason for missing the deadline for filing a complaint, but no later than one year from the date of adoption of the administrative act, and not within 6 months as provided for in the Tax Code of Ukraine. At the same time, a decision should be made on such a petition and the complainant should be notified. Within ten working days from the date of receipt of the notification of the renewal of such a period, the complaint itself is filed [26]. Such harmonization will lead to the need to exclude the provision of paragraph 56.7 of Art. 56 of the Tax Code of Ukraine, which provides for the prohibition of consideration of the complaint, in case of refusal to the taxpayer to resume the missed period [21]. The Law on Administrative Procedure provides for first consideration of the issue of renewal of the term, and only then filing a complaint [22].

In this article, we do not analyze the contradictions (conflicts) of the Administrative Procedure Act itself. Just pay attention to one thing. In para 2 part 2 of Art. 80 states: "In case of renewal of the deadline for filing a complaint, the subject of consideration of the complaint notes this in a separate decision or in the decision on the complaint with the indication of valid reasons for missing the deadline for filing a complaint and documents or other evidence confirming the existence of valid reasons". If the deadline for filing a complaint requires first filing a request for renewal and sending a notice of such renewal, how can there be an alternative for the subject of the complaint to indicate the renewal of the term with an indication of the

valid reasons for missing the deadline for filing a complaint and documents or other evidence, confirming the existence of good reasons when the decision to renew the deadlines should be motivated.

The following provision of paragraph 56.3 of Art. 56 of the Tax Code of Ukraine, which requires changes, defines the body to which the complaint should be sent [21]. Currently, a complaint against the decisions of the territorial bodies of the central executive body implementing the state tax (customs) policy by the taxpayer is submitted to the central executive body implementing the state tax (customs) policy.

However, Art. 82 of the Law on Administrative Procedure provides that a complaint is submitted to the administrative body that has adopted an administrative act, procedural decision and/or has committed a procedural action or has failed to act, which is appealed, which not later than the next day (sends) it along with the materials of the case to the subject of the complaint – the administrative body of the highest level [22]. Such changes in paragraph 56.3 of Art. 56 of the Tax Code of Ukraine should result in the cancellation of the provisions of paragraph 56.5 of Art. 56 of the Tax Code of Ukraine, which the taxpayer must simultaneously submit a complaint to the supervisory authority of the highest level in writing to notify the supervisory authority whose decision is appealed.

Examples of other provisions as Art. 56 of the Tax Code of Ukraine, and other articles of the Tax Code of Ukraine requiring unification with the provisions of the Law on Administrative Procedure. However, it is possible that the relevant unification will not take place under different circumstances and then the provisions of Art. 3 of the Law on Administrative Procedure should be applied to administrative procedures in tax law. This provision provides for the possibility of establishing special procedures of administrative proceedings for certain categories of administrative cases in compliance with the principles of administrative procedure.

The Law on Administrative Procedure in its Art. 4 provides 13 principles of administrative procedure, namely: the rule of law, including legality and legal certainty; equality before the law; reasonableness; impartiality (impartiality) of the administrative body; good faith and prudence; proportionality; openness; timeliness and reasonable time; efficiency; presumption of legality of actions and claims of a person; formality; guarantee of the right of a person to participate in administrative proceedings; guarantee of effective remedies; and other principles. According to A. Osadchyi, the approach to consolidation of the above principles of administrative procedures is somewhat destructive, since the system of principles includes guarantees and presumptions. At the same time, the researcher points out that the

principles on which administrative procedures are based are nothing more than a special set of objective and subjective principles, guiding ideas and cognized regularities that are enshrined or require regulatory consolidation aimed at achieving optimal results of the activities of public administration entities in the adoption of regulations or consideration of administrative cases. Each principle of administrative procedure has its own clearly defined role in the organization and implementation of role in the organization and implementation of administrative and procedural activities. On the other hand, the principles of administrative procedure cannot be considered without taking into account their overall unity and interdependence. They do not act separately, but taken together, closely intertwined and interact, pass into each other, and flow from each other [27].

Of course, some principles are provided by the Constitution of Ukraine [28] and do not require additional legislative consolidation. It should be noted about their logic and expediency of extension to administrative procedures in tax law, because the principles of tax procedures are not enshrined in the Tax Code of Ukraine at all. Let us put only some accents.

Principles should not only be declared, but also provide for specific ways to monitor compliance and the consequences of their violation. Any principle should not only be formally enshrined, but also have clear criteria, limits, compliance with which is mandatory. That is, the content of the principle should be disclosed taking into account the real possibility of monitoring compliance. There are enough examples. Art. 4 of the Tax Code of Ukraine enshrines the principles of tax legislation. In particular, the principles of fiscal sufficiency and efficiency of taxation. The first one provides for the establishment of taxes and fees, taking into account the need to balance budget expenditures with its revenues, the second, the establishment of taxes and fees, the amount of revenues from the payment of which to the budget significantly exceeds the cost of their administration [21].

The sources of budget revenues are tax revenues, non-tax revenues, income from capital transactions, transfers [29]. Thus, not only taxes affect the balance of expenditures with budget revenues. The fate of tax revenues is influenced by many factors, which actually makes it impossible to arbitrarily increase taxes to cover budget expenditures. That is, the principle of fiscal sufficiency does not define specific criteria, compliance with which can be controlled by the interested person – the taxpayer.

The principle of tax efficiency provides for the availability of information on the costs of administering a particular tax. Application of the assessment category "significantly" does not allow to understand the meaning of the

principle at all. The criterion of compliance with the principle is formally fixed, but there is no real opportunity to monitor compliance. It is also complicated by the fact that taxpayers use structures involving controlled foreign companies in their activities. In this case, there may be attempts to transfer part of the economic activity to low-tax jurisdictions, which significantly changes the criteria by which the level of tax efficiency is determined.

The proposed individual principles of administrative procedure have similar shortcomings [16]. Thus, the principle of good faith and prudence stipulates that an administrative body in the implementation of administrative proceedings should act, guided by common sense, logic and generally accepted norms of morality, in compliance with the requirements of the law. As for compliance with the requirements of the law – it is clear. However, what is common sense is a question. In practice, this principle will be reduced to compliance with the law. It is impossible to prove to the interested person that the administrative body was not guided by common sense in the administrative proceedings. Therefore, the principle is purely formal.

The principle of openness also requires clarification [22]. Thus, a participant in administrative proceedings has the right to know about the initiation of administrative proceedings and his right to participate in such proceedings, as well as the right to get acquainted with the materials of the relevant case.

It is possible to draw an analogy with the taxpayer's objections to the audit report, the submission of which is provided by Art. 86 of the Tax Code of Ukraine. In case of disagreement of the taxpayer with the conclusions of the audit or the facts and data set out in the audit report, they have the right to submit their objections and additional documents and explanations. Consideration of the audit materials is carried out by the commission on consideration of objections of the tax authority within 10 working days following the day of receipt of objections to the audit report and/or additional documents and explanations. The tax authority is obliged to notify the taxpayer of the place and time of consideration of the audit materials. The taxpayer has the right to participate in the process of consideration of the audit materials in person or through his representative. Directly during the consideration of the audit materials, the taxpayer has the right to provide written and/or oral explanations on the subject of consideration [21].

However, the tight deadlines – 10 working days – cause the problem of proper notification of the taxpayer about the place and time of consideration of the audit materials. The taxpayer due to unsatisfactory work of the mail

or improper awareness of the receipt of the notification, and in the vast majority of cases the tax authority fails to send in time the notification about the place and time of consideration of the audit materials objectively does not have the opportunity to participate in the consideration of the audit materials. In accordance with subpar. 86.7.3. of para. 86.7 of Art. 86 of the Tax Code of Ukraine absence of the taxpayer or his representative, notified in the manner prescribed by this article about the time and place of consideration of the audit materials, is not an obstacle for consideration of the audit materials. Thus, on the one hand, the principle of openness, although provided for in the consideration of objections to the act of audit, but on the other hand, in practice, the absence of the taxpayer for any reason (including failure to notify of the time and place of consideration of the audit materials) leads to the possibility of consideration by the tax authority of the audit materials without the taxpayer. The taxpayer is deprived of the opportunity to provide written and/or oral explanations during the consideration of the audit materials. It should be additionally noted that the taxpayer who was not notified in due manner and in due time about the time and place of consideration of objections has no possibility to appeal the results of consideration of objections to the tax audit report on these grounds. The procedure is not provided by the legislation.

It is also difficult to agree with the content of such principle as timeliness and reasonable time. The taxpayer may appeal against the decisions taken by the tax authority in administrative procedure [22]. Paragraph 56.8 of Art. 56 of the Tax Code of Ukraine stipulates that the tax authority is obliged to make a reasoned decision and send it within 20 calendar days following the day of receipt of the complaint to the taxpayer by post [21]. It is a complex legal fact - to make a reasoned decision and send it. And all this should happen within 20 days. In practice, the tax authority, at least formally, but makes a decision within the allotted period, but sends it to the taxpayer exactly outside the allotted period. This fact can be traced through the mail.

The Tax Code of Ukraine provides for the consequences of non-compliance by the tax authority with the requirements of the procedure for consideration of the taxpayer's complaint. If the motivated decision on the taxpayer's complaint is not sent to the taxpayer within 20 days or within the period extended by the decision of the head (his deputy or authorized person) of the tax authority, such complaint is considered fully satisfied in favor of the taxpayer from the day following the last day of the specified terms. When a reasoned decision is not made and sent to the taxpayer within the allotted term (a complex legal fact), the taxpayer's complaint is automatically satisfied. Such mechanism or guarantee of the taxpayer that his/her complaint will be considered, if not within a reasonable time, then



at least within the time limit prescribed by law, and even if not, the taxpayer will receive a positive result, can only be assessed positively. The presence of clear criteria and certain consequences for the administrative authority should certainly contribute to the observance of the timeliness principle.

However, there are some problems here as well. When the tax authority makes a decision on the results of consideration of the taxpayer's complaint in time, but does not send it in time, the taxpayer's complaint seems to be satisfied, but the taxpayer does not have any documents that would formalize this circumstance.

Here it is also appropriate to return to the principle of good faith and prudence. The administrative body is obliged to act in good faith to achieve the goal defined by law. Thus, the tax authority, sending a decision on the results of consideration of the taxpayer's complaint outside the allotted period, acts in bad faith. Although for us the question about the content of good faith of the administrative body remains open.

We can dwell on other principles of administrative procedure enshrined in the Law on Administrative Procedure [22]. Nevertheless, we consider it appropriate to refer to the conditions of legality of an administrative act. An administrative act is lawful if it is adopted by a competent administrative body in accordance with the law in force at the time of adoption of the act. Art. 87 of the Law on Administrative Procedure provides for the criteria of an unlawful administrative act. Unlawful is an administrative act that does not meet the requirements specified in part one of this article, in particular:

- 1) is adopted by an administrative body that: a) did not have the authority to do so; b) used discretionary powers illegally;
- 2) contradicts the provisions of the law on the form and content of an administrative act;
- 3) such act violates the rules of substantive law;
- 4) it does not comply with the principles of administrative procedure.

The main thing to pay attention to is that the violation by the administrative body of the administrative procedure stipulated by law, if it did not and could not affect the legality of the case on the merits, does not entail the illegality of the administrative act. The principle of substance over form is laid down, which cannot be assessed positively. We believe that it is necessary to proceed from the provisions of Art. 19 of the Constitution of Ukraine, which provides that public authorities and local self-government bodies, their officials are obliged to act only on the basis, within the powers and in the manner provided by the Constitution and laws of Ukraine [29]. Non-compliance with the procedure should at least result in the recognition of the decision as unlawful. It is desirable that non-compliance with the administrative procedure has also positive consequences for the person concerned.

## **Conclusions**

Administrative procedures in tax law currently have independent legal regulation by the provisions of tax legislation. The Law on Administrative Procedure [22] should unify approaches to administrative procedure and resolution of administrative cases. Administrative procedures in tax law are no exception.

Unification of administrative procedures will require numerous amendments to the tax legislation. The Draft Law on Administrative Procedure provides for a 12-month period (and taking into account the proposals of the President of Ukraine – 18 months) from the date of publication to the entry into force. This time should be enough for the relevant provisions of the Tax Code of Ukraine to be brought into compliance. As we managed to find out, such work is quite large-scale and painstaking.

Due to various reasons, it may not be possible to make the relevant changes within 12 (18) months. The Law on Administrative Procedure provides for the possibility of establishing special procedures of administrative proceedings for certain categories of administrative cases in compliance with the principles of administrative procedure. The Draft Law on Administrative Procedure does not specify how certain categories of administrative cases will be determined. The possibility of certain categories of cases, for example, tax cases, is important to avoid gaps in regulation. It is important that in any case the administrative procedures in the tax law should be covered by the principles envisaged by the Draft Law on Administrative Procedure.

There are no principles of tax procedures in the tax legislation, which is a significant drawback. However, when enshrining any principles, it should be taken into account that the principle should not only be formally enshrined, but also have clear criteria, limits, compliance with which is mandatory. That is, the content of the principle should be disclosed taking into account the real possibility of monitoring compliance. Non-compliance with the principle should have specific legal consequences, preferably favorable for a person who is not an administrative body (tax authority). In any case, in order to extend administrative procedures in tax law to the principles of administrative procedures, it is also necessary to amend the Tax Code of Ukraine.

The idea of unification of administrative procedures seems to be logical, it will allow all participants to adapt to the uniform rules. However, at the moment of entry into force of the Draft Law on Administrative Procedure, it is necessary to amend the Tax Code of Ukraine, at least those related to the principles of administrative procedures.

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