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## MARTIAL LAW AND VALUE ADDED TAX: PROBLEMATIC ISSUES

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**Abstract.** The article explores problematic issues of a regulatory and legal nature related to the imposition of martial law in Ukraine, which relate to the taxation and ensuring revenues to budgets of all levels, in particular, the introduction of changes in the administration of value added tax, their regulation and compliance from a legal point of view with the realities of today and the needs of taxpayers. The study was carried out based on the general scientific and special methods of scientific cognition. The introduction of the legal regime of martial law necessitated the rapid settlement of issues of constant filling of the state and local budgets. The above-mentioned also implies the use of effective and understandable tax collection procedures by the state, in particular, value added tax. Analysis of the regulatory and legal provisions of the amendments made to the Tax Code shows that the legal norms, governing the procedure for administering value added tax, particularly in terms of the tax credit formation, have an ambiguous interpretation, which leads to a violation of the balance of relations between the entities of legal relations of taxation.

**Key words:** martial law, value added tax, tax credit, Unified register of tax invoices, primary documents, possibility/impossibility of fulfilling tax duty.

**Introduction.** The imposition in Ukraine (caused by the military aggression of the Russian Federation) of the legal regime of martial law (Decree of the President of Ukraine No. 64/2022, 2022; Law of Ukraine No. 2102-IX, 2022) since 24.02.2022 necessitated the rapid settlement of issues of sufficient and systematic filling the state and local budgets in appropriate amounts, including through the payment of taxes and fees. Constant receipt of taxes and fees provides significant opportunities for the rapid response of the state to the solution of relevant issues and the proper meeting the national defense needs. In turn, the value added tax (hereinafter referred to as VAT) is considered one of the most efficiently working taxes from the fiscal point of view due to its high effectiveness and a wide tax base, which includes not only goods, but also works / services, ensures constant revenues to the budget. At the same time, in today's realities, tax receipts are possible from the business entities who are trying to continue their activities under martial law.

The main legal act regulating the general principles of the rights and obligations (the limits of necessary/ possible behavior) of entities of tax legal relations (taxpayers and controlling bodies), including the VAT administration in Ukraine (determining tax liabilities and formation of a tax credit), is the Tax Code of Ukraine (Tax Code of Ukraine, 2010) (hereinafter referred to as the Tax Code).

Taking into account the need to adapt the existing relations in the field of value added tax collection to the realities of martial law, the relevant legislative acts amended the Tax Code (Law of Ukraine No. 2118-IX, 2022; Law of Ukraine No. 2120-IX, 2022; Law of Ukraine No. 2260-IX, 2022). The amendments concerned a significant number of issues, but we will focus on those that in our opinion are essential particularly in terms of the formation of tax credit. Such changes initially provided for exemption from liability for non-registration of tax invoices/ adjustment calculations (if a taxpayer does not have the opportunity to fulfill his tax obligation in a timely manner), and the possibility of forming a tax credit based on primary (calculation) documents (Law of Ukraine No. 2118-IX, 2022; Law of Ukraine No. 2120-IX, 2022). In fact, the Unified Register of Tax Invoices (hereinafter referred to as the Unified Register of Tax Invoices) did not work at that time. Subsequently, the

work of the Unified Register of Tax Invoices was resumed, and the legislator returned the condition for the formation of tax credit based on received and registered tax invoices (Law of Ukraine No. 2260 IX, 2022). However, there are taxpayers who (due to certain circumstances) cannot currently register tax invoices, which subsequently affects the possibility of their counterparties (Buyers) to include the amounts of value added tax in tax credit.

Since the amounts of VAT included in tax credit in the future may reduce tax liabilities payable or can be reimbursed, the property benefits of obtaining the right to tax credit are obvious (especially for actually paid VAT in the cost of the goods/ services).

**The aim of the article is** determined by the need for scientific research into the legal regulation of the mechanism of tax credit formation during the legal regime of martial law, in particular based on primary (calculation) documents and/ or received and registered tax invoices. To date, given the introduction of changes in terms of value added tax collection, no research on this issue has been conducted.

The article, based on the analysis of the provisions of the relevant regulatory legal acts, examines the impact of introducing amendments to the Tax Code on the relationship between the entities of tax legal relations, and identifies problematic issues of legal regulation and ways to solve them. In addition, scientifically grounded conclusions on the outlined issues were made.

**The main part. Tax credit under martial law.** As already mentioned, the Tax Code of Ukraine (2010) regulates the administration of value added tax (hereinafter referred to as VAT), including determining tax liabilities and tax credit formation.

According to the definition contained in the Tax Code, tax credit from value added tax is the amount by which a payer of value added tax has the right to reduce the tax liability within the reporting (tax) period. In addition, this regulatory act defines the conditions under which the corresponding amounts of VAT on purchased goods/services can be included in tax credit, in particular, solely on the basis of tax invoices received and registered in the Unified Register of Tax Invoices. Tax invoices received from the Unified Register of Tax Invoices are the basis for a recipient of goods/services to calculate the tax amounts, related to the tax credit.

That is, tax credit includes the amount of tax paid/accrued in the event when a taxpayer carries out transactions for the acquisition or manufacture of goods and services, purchasing (building, construction, creation) of non-current assets, the import of goods and/or non-current assets into the customs territory of Ukraine. In addition, the amounts included in tax credit must be confirmed by properly drawn up and registered tax invoices. The absence of properly drawn up and registered tax invoices for transactions for the purchase of goods and services does not give the right to include the corresponding amounts of VAT in tax credit.

Given the imposition of the legal regime of martial law in Ukraine, the operation of the Unified Register of Legal Entities was suspended. The Tax Code was amended (Law of Ukraine No. 2118-IX, 2022; Law of Ukraine No. 2120-IX, 2022) and supplemented with new norms, according to which:

- if a taxpayer does not have an opportunity to fulfill his tax obligation in a timely manner, in particular, to comply with the deadlines for paying taxes and fees, submit reports, including reports provided for in paragraph 46.2 of Article 46 of this Code, registration in the relevant registers of tax or excise invoices, adjustment calculations, submission of electronic documents containing data on actual fuel balances and the volume of circulation of fuel or ethyl alcohol, etc., he is exempted from liability provided for by this Code with the obligatory performance of such obligations within three (six) months after the termination or abolition of martial law in Ukraine (*subparagraph 69.1 of paragraph 69 of subsection 10 of Section XX of the Transitional Provisions of the Tax Code* (Tax Code of Ukraine, 2010));

- temporarily, for the period of the legal regime of martial law, taxpayers for transactions for the purchase of goods/services, for which no tax invoices and/or adjustment calculations to them

were registered by suppliers in the Unified Register of Tax Invoices, include in the tax credit for the reporting period the amount of value added tax paid (accrued) as part of the cost of purchased goods/ services, based on the primary (calculation) documents available to a payer, compiled (received) by a taxpayer on transactions for the purchase of goods / services in accordance with the Law of Ukraine On Accounting and Financial Reporting in Ukraine (*paragraph 32 2 of subsection 2 of Section XX Transitional provisions of the Tax Code (Tax Code of Ukraine, 2010)*).

That is, from the beginning of the imposition of the legal regime of martial law, taxpayers (Suppliers) were exempted from liability for non-registration of tax invoices in the Unified Register of Tax Invoices. In turn, taxpayers (Buyers) had the opportunity, for transactions for the purchase of goods/ services for which the suppliers did not register tax invoices and/or adjustment calculations to them, to include in the tax credit of the reporting period the amounts of VAT paid (accrued) as part of the cost of purchased goods/services, based on the primary (calculation) documents available to a payer. However, after the termination or cancellation of the legal regime of martial law, payers are obliged to ensure registration in the Unified Register of Tax Invoices and adjustment calculations, the registration of which is postponed for the period of martial law, and the tax credit declared by payers during martial law based on the primary (calculation) documents available to a payer is subject to mandatory clarification (bringing into compliance) taking into account the data of tax invoices and adjustment calculations registered in the Unified Register.

At the same time, termination of operation of the Unified Register of Tax Invoices and the formation of indicators of tax reporting with VAT based on the primary (calculation) documents available to a payer, drawn up (received) by a taxpayer for transactions for the purchase of goods/services, led to certain inconveniences in the administration of VAT, both for taxpayers (*existence of discrepancies between tax reporting indicators and the data of the Unified Register of Tax Invoices, which could further affect the reduction of the registration limit; impossibility to declare (receive) budgetary compensation*) and controlling bodies (*impossibility to carry out appropriate monitoring; impossibility of comparing (confirming) tax reporting indicators, in particular, the amounts included in tax liabilities and tax credit, taking into account actually feasible business transactions on the basis of duly registered tax invoices*).

In this connection, another amendment was made to the Tax Code (Law of Ukraine No. 2260-IX, 2022) (entered into force on 27.05.2022), which in the new version sets out paragraph 32<sup>2</sup> of subsection 2 and subparagraph 69.1 of paragraph 69 of subsection 10 of section XX Transitional provisions of the Tax Code, as well as paragraph 69 of subsection 10 of section XX Transitional provisions of the Tax Code were supplemented by new subparagraph 69.1<sup>1</sup>. These changes include:

- temporarily, for tax periods of February, March, April, May 2022, for transactions for the purchase of goods/services for which tax invoices and/or adjustment calculations to them were not registered by suppliers in the Unified Register of Tax Invoices, taxpayers include in the tax credit of the reporting (tax) period the amount of value added tax paid (accrued) as part of the cost of purchased goods/ services, based on the primary (calculation) documents available to a payer, drawn up (received) by a taxpayer on transactions for the purchase of goods/ services in accordance with the Law of Ukraine On Accounting and Financial Reporting in Ukraine (*paragraph 32<sup>2</sup> of subsection 2 of Section XX Transitional provisions of the Tax Code (Tax Code of Ukraine, 2010)*);

- tax payers who have the opportunity to timely fulfill tax obligations to meet the deadlines for paying taxes and fees, submit reports, including reporting provided for in paragraph 46.2 of Article 46 of this Code, registration in the relevant registers of tax invoices, adjustment calculations, are exempt from liability for late performance of such duties, the deadline for which falls on the period starting from February 24, 2022 to the date of entry into force of the Law Of Ukraine On Amendments to the Tax Code of Ukraine and other laws of Ukraine on the specific features of tax administration of taxes, fees and single contribution during the martial law, state of emergency, subject to registration by such taxpayers

of tax invoices and adjustment calculations in the Unified Register of Tax Invoices before July 15, 2022, submission of tax reports by July 20, 2022 and payment of taxes and fees no later than July 31, 2022.

In case of self-correction by a taxpayer in tax periods before July 25, 2022, in compliance with the procedure, requirements and restrictions determined by Article 50 of this Code, errors that led to an understatement of the tax liability in the reporting (tax) periods falling on the period of martial law, such taxpayers are exempted from accrual and payment of penalties provided for in paragraph 50.1 of Article 50 of this Code, and penalties (*paragraph 3 and 6 of subparagraph 69.1 of paragraph 69 of subsection 10 of section XX of the Tax Code of Ukraine* (Tax Code of Ukraine, 2010));

- single tax payers of the third group, who use the specifics of single tax taxation at a rate of 2 percent, are exempt from liability for the late fulfillment of tax duties, the deadline for which falls on the period starting from February 24, 2022 to the day of transition of such payers to the application of the specifics of taxation by a single tax of the third group at a rate of 2 percent, provided that they fulfill such tax duties regarding registration of tax invoices/adjustment calculations in the Unified Register of Tax Invoices, submission of reports, payment of taxes and fees, within 60 calendar days from the date of transition to the taxation system which such taxpayers applied before choosing the system of taxation by single tax at a rate of 2 percent (*paragraph 5 of subparagraph 69.1 of paragraph 69 of subsection 10 of Section XX Transitional provisions of the Tax Code* (Tax Code of Ukraine, 2010));

- payers of value added tax are obliged to ensure within the time limits established by subparagraph 69.1 of this paragraph, the registration of tax invoices and adjustment calculations in the Unified Register of Tax Invoices, the deadline for registration of which falls on the periods specified in subparagraph 69.1 of this paragraph, and to clarify (bring in compliance) the tax credit declared by payers based on the primary (calculation) documents available to a payer, taking into account the data of tax invoices and/or adjustment calculations registered in the Unified Register of Tax Invoices (*subparagraph 69.1 of paragraph 69 of subsection 10 of section XX of the Transitional Provisions of the Tax Code* (Tax Code of Ukraine, 2010)).

Based on the foregoing, taxpayers who have the opportunity to fulfill their tax duty in a timely manner until 15.07.2022 had to register tax invoices for tax periods February – May of the current year, submit tax reports and pay taxes for tax (reporting) periods of February – May of the current year until 20.07.2022 and until 31.07.2022, respectively, and until 25.07.2022, they had to clarify (bring in line) the tax credit declared by payers for the relevant periods based on the primary (calculation) documents available to a payer, taking into account the data of tax invoices / adjustment calculations registered in the Unified Registry of Tax Invoices.

At the same time, paragraph 1 of subparagraph 69.1 of paragraph 69 of subsection 10 of section XX of the Transitional provisions of the Tax Code, taking into account the amendments made (Law of Ukraine No. 2260-IX, 2022), provides for exemption from liability in case a taxpayer does not have the opportunity to fulfill his tax obligation in a timely manner, including the registration of tax invoices.

At the same time, in accordance with paragraph 32<sup>2</sup> of subsection 2 of Section XX of the Transitional Provisions of the Tax Code, taking into account the amendments (Law of Ukraine No. 2260-IX, 2022), for tax periods of February, March, April, May 2022, taxpayers have temporarily the right to include in the tax credit of the reporting (tax) period the amount of VAT paid (accrued) as part of the value of the purchased goods/services, based on the primary (calculation) documents available to a payer, drawn up (received) by a taxpayer for transactions for the purchase of goods/services in accordance with the Law of Ukraine On Accounting and Financial Reporting in Ukraine.

Thus, Law No. 2260-IX (Law of Ukraine No. 2260-IX, 2022), on the one hand, obliged taxpayers to clarify (bring in compliance) the tax credit declared (formed) by payers for the relevant periods (February – May 2022) based on the primary (calculation) documents available to a payer, taking into account the data of tax invoices / adjustment calculations registered in the Unified Register

of Tax Invoices. And on the other hand, it still leaves (provides for) an opportunity for taxpayers temporarily for tax periods of February, March, April, May 2022 for transactions of the purchase of goods/services, for which no tax invoices and/or adjustment calculations to them were registered in the Unified Register of Tax Invoices, to include in the tax credit of the reporting (tax) period the amounts of VAT paid (accrued) as part of the cost of purchased goods/ services, based on the primary (calculation) documents available to a payer, compiled (received) by a taxpayer for transactions for the purchase of goods / services.

It is also appropriate to note that the Information Letter of the State Tax Service of Ukraine No. 3/2022 (hereinafter referred to as the STS Information Letter) contains similar conclusions. In addition, in this letter, the corresponding position also applies to the inclusion in tax credit of VAT amounts based of primary documents on relations with taxpayers (Suppliers), which, as of 27.05.2022, apply to a simplified taxation system with specific features (they are single tax payers of the third group at a rate of 2 percent) and who were value added tax payers before the transition to the simplified taxation system.

At the same time, the Information Letter of the STS of Ukraine No. 3, 2022 does not provide an unambiguous response to this matter, since it seems to indicate that taxpayers have the right to include in the tax credit for the tax reporting periods of February-May 2022 the corresponding VAT amounts, based on the primary (calculation) documents available to a payer, drawn up (received) by a taxpayer on transactions for the purchase of goods / services in accordance with the Law of Ukraine On Accounting. However, at the same time, it contains a warning that this Letter is for informational purposes only and is not an individual consultation on taxes since it is not based on the specific features of the actual circumstances of the transactions of a particular taxpayer. The information letter is based on the provisions of the current legislation of Ukraine and the practice of its application, which may change in the future.

At the same time, based on the position of the State Tax Service of Ukraine (hereinafter referred to as the State Tax Service of Ukraine, the Controlling Body), which is contained in the consultation (access mode: <https://svp.tax.gov.ua/media-ark/news-ark/print-591152.html>) (Information Letter of the STS of Ukraine, 2022), it can be concluded that the tax credit formed by a taxpayer (Buyer) on the basis of the primary (calculation) documents available to such a payer for transactions for the purchase of goods/ services that were carried out in February-May 2022, nevertheless, must be confirmed by July 15, 2022 by duly registered tax invoices, if it is possible for a taxpayer (Supplier) to fulfill his tax duties. If a tax invoice was not registered before the specified date (15.07.2022), the tax credit formed on the basis of primary (calculation) documents should be excluded from the declaration for the reporting period in which the transaction for the purchase of goods/ services was carried out (February – May 2022) by submitting a clarifying calculation to the declaration for the relevant reporting period. Only in the reporting period in which the actual registration of such a tax invoice will take place in the Unified Register of Tax Invoices, a taxpayer (Buyer) has the right to include the tax amounts specified in such a tax invoice in tax credit of such reporting (tax) period.

Thus, as we can see, even the State Tax Service of Ukraine definitely cannot decide on its position, whether at present (as of 10.10.2022) a taxpayer (Buyer) temporarily (during the legal regime of martial law) has the right to form tax credit for the relevant periods (February – May 2022) on the basis of the primary (calculation) documents available to a payer, drawn up (received) for transactions for the purchase of goods / services.

Although, in our opinion, the ambiguous (veiled) position of the State Tax Service of Ukraine, regarding whether a taxpayer (Buyer) has the right to tax credit for tax reporting periods (February – May 2022) based on his primary (calculation) documents, is most likely directly related to the impossibility of a taxpayer (Supplier) to fulfill his tax obligation, including the registration of tax invoices.

**Possibility/ impossibility to perform tax duties.** With the adoption of Law of Ukraine No. 2260-IX, 2022, the legislator divided taxpayers into those who have the opportunity to fulfill a tax duty and those who do not have such an opportunity. In this case, in the context of the possibility and impossibility of fulfilling tax obligations, we will focus on the tax obligation to draw up and register tax invoices by taxpayers who carry out (carried out) the supply of goods /services, and, accordingly, the possibility of forming tax credit by taxpayers who purchase goods/ services.

In turn, taking into account the provisions of the Tax Code and the realities of today, taxpayers who do not have the opportunity to fulfill the tax obligation to register tax invoices include, *firstly*: taxpayers who actually cannot fulfill it, also due to their stay in the territories located in the war zone and / or stay in the temporarily occupied territories, *secondly*: payers who are currently single tax payers of the third group and use the specific features of single tax taxation at a rate of 2 percent.

It is appropriate to note that in accordance with the provisions of Law of Ukraine No. 2260-IX, 2022), for the first category of payers, the procedure for confirming the possibility or impossibility of performing tax duties specified in subparagraph 69.1 of paragraph 69 of subsection 10 of Section XX of the Transitional Provisions of the Tax Code and the list of confirmation documents is approved by the central executive body that ensures the formation and implementation of state financial policy. At the same time, only on 06.09.2022, the Procedure for confirming the possibility or impossibility of performing the taxpayer's duties specified in subparagraph 69.1 of paragraph 69 of subsection 10 of Section XX of the Transitional Provisions of the Tax Code came into force (approved by the order of the Ministry of Finance of Ukraine No. 225 of 29.07.2022 and registered at the Ministry of Justice of Ukraine on 25.08.2022 under No. 967/38303) (hereinafter referred to as the Procedure No. 225) (Order of the Ministry of Finance of Ukraine No. 225, 2022).

Procedure No. 225 (Order of the Ministry of Finance of Ukraine No. 225, 2022) determines the sequence of actions (rules) for taxpayers and regulatory authorities to confirm the possibility or impossibility of taxpayers performing tax duties, in particular the grounds and list of documents that may indicate the existence of such circumstances, as well as the deadlines for taxpayers to submit relevant applications and for the controlling body to make a decision. At this, the obligation to confirm the possibility or impossibility of a taxpayer to fulfill his tax duty in a timely manner rests with the controlling body. However, the provisions of this regulatory act provide for the need for a payer to submit the relevant application and documents to confirm the circumstances of the impossibility to fulfill the tax obligation and for the Controlling Body to make the relevant decision. That is, we have a situation in which the impossibility of fulfilling the tax duty must be confirmed by the relevant decision of the Controlling Body based on the results of the submission by a payer of the relevant application and documents.

In addition, it is necessary to take into account the fact that some payers, due to circumstances beyond their control (being in the territories located in the *war zone, and / or staying in the temporarily occupied territories*), will be able to use the opportunity to submit an appropriate application and documents to confirm such status only after the termination of the legal regime of martial law (provided that they have such an opportunity at all). The above may be due to a significant number of different circumstances that may be the subject of a separate study (discussion).

In this regard, it should only be noted that in relation to such taxpayers, the relevant decision will actually be made only after the termination of the legal regime of martial law. In turn, the impossibility in the realities of today, the fulfillment by this category of taxpayers of the tax obligation to draw up and register tax invoices within tax periods of February – May 2022 for transactions regarding the supply of goods / services, leads to a situation in which taxpayers (buyers) may be deprived of the right to include amounts of VAT (paid during the purchase of such goods) to tax credit, reduce tax liabilities at its expense, and, accordingly, the amount of the tax payable to the budget for a certain tax (reporting) period.

When it comes to single tax payers who use the specific features of taxation at a rate of 2%, everything is clear. The situation is somewhat simpler, after the termination (abolition) of the legal regime of martial law, they will return to the usual taxation system for themselves and within 2 months must fulfill their tax obligations (for tax reporting periods February-May 2022) before switching over to a simplified taxation system, including the registration of tax invoices. Although one should not exclude the possibility that the Controlling Authorities in this case will put forward a requirement to adjust the tax credit (downwards) for the tax periods of February – May 2022 based on primary documents on relations with such taxpayers.

**Discussion.** The Tax Code of Ukraine, 2010 (taking into account the main provisions) stipulates that tax credit may include the amount of tax paid/accrued in the case of the taxpayer's transactions for the acquisition or manufacture of goods and services, the acquisition (building, construction, creation) of non-current assets, the import of goods and/or non-current assets into the customs territory of Ukraine. In this case, the amounts included in tax credit must be confirmed by properly drawn up and registered tax invoices, since the absence of properly drawn up and registered tax invoices for transactions for the purchase of goods and services does not entitle the inclusion of the corresponding VAT amounts in the tax credit.

At the same time, given the realities of today (during the legal regime of martial law), the legislator is trying to regulate in a certain way the issue of the possibility of forming tax credit by taxpayers (including the corresponding amounts in its composition). Currently, taking into account the amendments made to the Tax Code (Law of Ukraine No. 2260-IX, 2022), on the one hand, they allegedly give the right (opportunity) to taxpayers temporarily (for the period of the legal regime of martial law), for tax periods February-May 2022, to include in the tax credit the amounts of VAT paid (accrued) as part of the cost of purchased goods / services, based on the available primary (calculation) documents for transactions for the purchase of goods / services, for which no tax invoices were registered by suppliers in the Unified Register of Tax Invoices. On the other hand, they are obliged to bring in compliance the indicators of tax credit for the tax (reporting) periods of February – May 2022 formed based of primary (calculation) documents, taking into account the availability of properly registered tax invoices in the Unified Register of Tax Invoices, by submitting clarifying calculations for the relevant reporting periods (confirmation of tax credit by registered tax invoices).

In addition, as amended by the Tax Code (Law of Ukraine No. 2260-IX, 2022), the legislator divided taxpayers into those who have the opportunity to fulfill a tax duty and those who do not have such an opportunity.

In this case, in our opinion, taking into account the information (explanatory) letters of the State Tax Service of Ukraine (Information Letter of the STS of Ukraine No. 3, 2022; Information Letter of the STS of Ukraine, 2022), a taxpayer's (Buyer's) right to tax credit (for tax (reporting) periods of February – May 2022) based on the primary (calculation) documents available to him, is not directly associated by the Controlling Authority with the inability of a taxpayer (Supplier) to fulfill his tax obligation, including the registration of tax invoices.

Nevertheless, if we take into account (assume) that the *veiled position* of the State Tax Service of Ukraine *associates the right* of a payer (Buyer) to include VAT amounts to tax credit for the tax (reporting) period of February – May 2022 on the basis of the available primary documents, *solely* with the impossibility of a taxpayer (Supplier) *to fulfill* his tax obligation, including the registration of tax invoices, then this impossibility should be confirmed by the relevant decision of the Controlling Body (Order of the Ministry of Finance of Ukraine No. 225, 2022).

In such circumstances (*this approach of the State Tax Service of Ukraine*) (Information Letter of the STS of Ukraine, 2022), a taxpayer (Buyer) becomes a hostage to the situation in which he was obliged, on the one hand, to bring into line the indicators of tax credit declared based on the primary

(calculation) documents available to a payer, taking into account the changes made to the Tax Code (Law of Ukraine No. 2260-IX, 2022), and on the other hand, allegedly has the right to form tax credit for February – May 2022 on the basis of the primary documents, **but on condition of confirmation** of the impossibility of his counterparties-suppliers to fulfill their tax duty, in particular, in terms of registration of tax invoices.

At the same time, the Procedure for confirming the possibility or impossibility of fulfilling tax obligations defined in subparagraph 69.1 of paragraph 69 of subsection 10 of Section XX Transitional provisions of the Tax Code (Order of the Ministry of Finance of Ukraine No. 225, 2022) was actually published on 01.09.2022 and entered into force only on 06.09.2022, **almost a month and a half** after the period (25.07.2022) to which taxpayers had to bring the tax reporting indicators (tax credit formed for February-May 2022 on the basis of primary documents) in compliance with the data of the Unified Register of Tax Invoices (availability of registered tax invoices).

In turn, **taxpayers** (Suppliers) who, since the entry into force (27.05.2022) of amendments to the Tax Code (Law of Ukraine No. 2260-IX, 2022) and as of 15.07.2022, could not fulfill the tax obligation in part of registration of tax invoices in the Unified Register of Tax Invoices, **were actually unable** to exercise the right and confirm the impossibility of fulfilling their tax obligation, including those in terms of ensuring the registration of tax invoices in the Unified Register of Tax Invoices, **since on the specified dates there was no** approved Procedure that would determine the procedure for confirming the impossibility of fulfilling the relevant tax obligation and obtaining a decision of the Controlling Body.

At the same time, at present (as of 10.10.2022), the current legislation **does not link the possibility** of including by taxpayers (Buyers) in tax credit (for tax periods of February – May 2022) the amounts of VAT paid (accrued) as part of the cost of purchased goods / services), based on existing primary (calculation) documents, **solely with the need to confirm the impossibility** fulfillment of the relevant tax obligation by taxpayers (suppliers of such goods).

In addition, the Tax Code of Ukraine (*paragraph 32<sup>2</sup> of subsection 2 of Section XX Transitional Provisions*) (Tax Code of Ukraine, 2010) does **not require** that a Buyer should provide (together with tax reporting and/ or separately) the appropriate confirmation of the impossibility of fulfilling the tax obligation by a Supplier due to the inclusion in tax credit (for tax periods of February – May 2022) of the amounts of VAT paid (accrued) as part of the cost of purchased goods/services, on the basis of available primary (calculation) documents.

In our opinion, the above-mentioned controversial regulation of the formation of tax credit (including in its composition the relevant amounts of value added tax) for the reporting (tax) periods of February – May 2022 does not contribute to legal certainty in these legal relations between regulatory authorities and taxpayers. In addition, this legal uncertainty may further affect an increase in administrative claims of taxpayers against regulatory authorities. Since the latter, within the framework of the verification measures, will insist on the need to reduce the tax credit indicators for the tax periods of February – May 2022, which are not properly confirmed by duly registered tax invoices, which will be expressed in the additional accrual of the corresponding amounts of tax liabilities by reducing the amount of the tax credit.

In turn, the above will only complicate the already difficult situation of taxpayers in modern conditions. At the same time, state bodies are obliged to introduce internal procedures that will strengthen the transparency and clarity of their actions, minimize the risk of errors. Public authorities that do not implement or follow their own procedures should not have the possibility to benefit from their illegal actions or avoid performing their duties.

**Conclusions.** Given the above, we can state:

1. At present (taking into account the realities of today and the effect of the legal regime of martial law), the provisions of the Tax Code, on the one hand, provide for the possibility for taxpayers to



temporarily for tax periods of February – May 2022 include in tax credit the amount of value added tax paid (accrued) as part of the cost of purchased goods / services, based on primary (calculation) documents available to a payer. However, on the other hand, they oblige taxpayers to clarify (bring in compliance) the tax credit declared (formed) by them for the relevant periods (February – May 2022) based on the primary (settlement) documents available to a payer taking into account the data from tax invoices / adjustment calculations registered in the Unified Register of Tax Invoices.

2. The ambiguous (veiled) position of the State Tax Service of Ukraine regarding the right of taxpayers (buyers) to form tax credit for the tax (reporting) periods of February – May 2022 based on the available primary documents, in our opinion, links the existence of such a right solely with the inability of a taxpayer (Supplier) to fulfill his tax obligation, including the registration of tax invoices, which in turn must be confirmed by the relevant decision of the Controlling Authority.

At the same time, at present (as of 10.10.2022), the current legislation does not link the right (possibility) of taxpayers (Buyers) to include in tax credit (for tax periods of February – May 2022) the amounts of value added tax paid (accrued) as part of the cost of purchased goods/services), on the basis of existing primary (calculation) documents, solely with the need to confirm the impossibility of fulfilling the relevant tax obligation by taxpayers – suppliers of such goods.

In addition, the Tax Code of Ukraine (*paragraph 32<sup>2</sup> of subsection 2 of Section XX Transitional Provisions*) (Tax Code of Ukraine, 2010) does not require that a Buyer (together with tax reporting or separately) should provide appropriate confirmation of the impossibility of fulfilling the tax obligation by a Supplier due to the inclusion in tax credit for tax periods of February – May 2022 of the amounts of value added tax paid (accrued) as part of the cost of purchased goods/services on the basis of available primary (calculation) documents.

3. Public authorities are obliged to introduce internal procedures that will strengthen the transparency and clarity of their actions, minimize the risk of errors. However, the peculiarity of the existence of regulatory and legal support for the organization of administration (collection) of VAT in Ukraine in particular in terms of the formation of tax credit was and still is the existence of legal conflicts of certain provisions of legislative documents that lead to disputes between regulatory authorities and taxpayers and, subsequently, to an increase in court disputes, which are likely to be resolved in favor of taxpayers. In turn, the above will only complicate the already difficult situation of taxpayers in modern conditions.

4. The existence of the ambiguous, contradictory regulation of legal relations between regulatory authorities and taxpayers violates the principle of legal certainty. Therefore, it is necessary to amend the Tax Code of Ukraine and settle the issue of determining the grounds (circumstances) under which taxpayers, taking into account the requirements of paragraph 32<sup>2</sup> of subsection 2 of Section XX of the Transitional Provisions of the Tax Code of Ukraine, temporarily (for the period of the legal regime of martial law) for tax (reporting) periods of February – May 2022 still have the opportunity to include in tax credit the amount of value added tax paid (accrued) as part of the cost of purchased goods/services, based on the primary (calculation) documents available to a payer.

5. The division of taxpayers into those who have the opportunity to fulfill the tax duty, and those who do not have such an opportunity is conditional, since it implies the need for a taxpayer to submit a corresponding application and documents, as a result of which the controlling body will make an appropriate decision, which in turn can be both positive for a taxpayer (confirmation of the impossibility of fulfilling the tax duty) and negative (refusal).

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