PROBLEMATIC ASPECTS OF TAX INNOVATIONS IN UKRAINE DURING THE MARTIAL LAW PERIOD

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Abstract. *To effectively counter Russia's aggression against Ukraine, it is necessary to reform the tax system. In such circumstances, it is relevant to study the current state of Tax Policy and innovations introduced in the Tax Code of Ukraine during the martial law legal regime. Using quantitative methods, the study analyzes tax revenues from the single tax and the single contribution to mandatory state social insurance paid by taxpayers. According to the results of the analysis of laws that introduced amendments to the Tax Code of Ukraine in 2022, it was revealed that almost all of them related to tax preferences. Some problems were also identified as the results of an analysis of the laws adopted in 2022 in the field of preferential tax policy in terms of their harmonization with EU law. Most of the legislative acts in 2022 were adopted without obtaining the conclusion of the Committee on Ukraine's integration into the European Union. Also draft laws were implemented in the presence of a conclusion about their non-compliance with the norms of the "acquis EC". The negative consequences of the Ukrainian preferential wartime tax policy are also the lack of compensatory mechanisms to reduce budget losses from the introduced benefits. Taking into account these circumstances, it is recommended to conduct a mandatory examination of the draft law's compliance with the "acquis EC" standards when preparing legislative acts. The proposed recommendations have a practical focus and can be implemented in rule-making practice in Ukraine.*

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Introduction. Effective counteraction to the military aggression of the Russian Federation against Ukraine requires reforming the tax system, which ensures the receipt of tax payments to the budget.

Russian aggression in 2022 reduced Ukraine's GDP by 30 % [27]. The negative factors of the current state of the Ukrainian economy include the imbalance of the national financial system, non-transparency and corruption schemes in certain sectors of the economy, illogicality and inconsistency of government reforms [23].

Against the background of Russian armed aggression, there is an urgent need for balanced strategic state regulation to ensure sustainable development in Ukraine in the short- and long-term periods [10].

Consequently, there is a need for an adequate restructuring of the entire system of state regulation of the economy, including its tax component.

Changes in taxation in Ukraine were made almost in the first days of military aggression – starting from the beginning of March 2022. At the same time, adjustments to preferential policies were carried out mainly intuitively, without their thorough theoretical and methodological justification. This has led to excessive losses in budget revenues and failure to meet the goals of relevant regulatory measures.

At the moment, there are already appeared certain results of research on the ideology, directions and sequence of state regulation against the background of Russian armed aggression [10, 11, 26]. However, there is a need for an in-depth analysis of the impact of legislative reforms on the condition of tax payment receipts in Ukraine and the compliance of adopted legislative acts with EU law. This determines the relevance of the research topic chosen.

The purpose of the article is to research tax innovations introduced into the legislation in Ukraine during the period of the legal regime of martial law and analyze the consequences associated with it, including in the context of harmonization with EU law. The objectives of the study include the following: research of the state and trends of preferential policy development in Ukraine during the martial law, as well as identification of problems and prospects for the development of taxation.

The scientific novelty lies in the formulation of recommendations for making changes to the current legislation, which make it possible to reduce budget losses during the martial law legal regime in Ukraine. Problematic aspects of non-compliance of legislative acts adopted in 2022 in Ukraine with the norms of EU law are identified.

Literature review. The latest scientific works deal with various aspects of the state of the Ukrainian economy during the legal regime of martial law and in the post-war period.

Thus, Lysyak, L. and others (2022) study the reform of tax policy in general and preferential foreign economic policy in particular in the context of creating conditions for the current stabilization of socio-economic processes and the revival of the Ukrainian economy in the post-war period [21].

Voloshyna-Sidei, V. and others (2023) identify strategic guidelines for the development of the Ukrainian economy in the context of global challenges [27].

Romanovskaya, Yu. and others (2022) refer to the challenges to the economic security of Ukraine as an imperfect legislative framework, fragmentation and imperfection of the laws of Ukraine in the development of modern spheres of the economy [23].

Ivanova, V. and others (2022) hold the position that drivers for ensuring sustainable development are both financial and non-financial in nature [10].

Argevitin, S. and others (2023) determine in a study of the impact of martial law on the productivity of the banking sector of Ukraine that in order to ensure credit activities, it is advisable to develop credit support for ESG's goals of diversification of energy production, housing and Infrastructure Construction [1].

The overwhelming majority of experts note the need to adopt reforms in the field of tax policy in order to ensure the functioning of the Ukrainian economy during the active phase of military operations and in the post-war period. At the same time, it should be noted that the adopted legislation in Ukraine should be harmonized with EU law, which is stipulated in the terms of the association agreement between Ukraine and the European Union [2]. Researchers draw attention to certain problems in the application of EU law. In Particular, Doeleman R. (2023) examines the problems of applying the "arm's length" principle in EU member states and draws attention to the fact that although all EU member states have implemented the "arm's length" principle in their internal transfer pricing rules, differences regarding the application of this principle persist [7].

Jeroen Bijl, Joël de Vries (2023) in their study conduct a critical analysis and categorization of EU legislation regarding the VAT regime when purchasing goods and services by businesses, when third parties (also) have benefit from these purchases [4].

Thomas Bieber, Denise Schmaranzer (2023) recearch the provisions of the EU Directive 2020/262, which are aimed at linking Excise and customs legislation and further promoting the digitalization of excise processes. The authors argue that, despite the revision of the directive, harmonization has not yet reached its full potential due to the numerous options provided to member states [3].

Therefore, it can be concluded that the provisions of tax legislation in Ukraine need harmonization with EU law. At the same time, based on the results of the research, experts draw attention to the imperfection of the norms of EU law regarding the regulation of direct and indirect taxes (value added tax, excise duty, customs duties).

Materials and methods. The methods of analysis, synthesis, comparison, and generalization were used to study problematic aspects of taxation of single tax payers in Ukraine. The abstract-logical method is used to substantiate the directions of development of the Ukrainian legislation in wartime and in the postwar period.

The method of statistical analysis are used to analyze tax revenues from the payment of a single tax and a single contribution to mandatory state social insurance from individuals who pay a single tax and the structure of legislative acts adopted in 2022. Calculations were performed using Excel based on data from the Ministry of Finance of Ukraine.

Results and discussion. To overcome the negative phenomena in the economic, social and defense spheres caused by the military aggression of the Russian Federation against Ukraine, it was urgently necessary to make changes to the tax legislation. The first innovations were adopted on March 3, 2022 by Law No. 2118-IX [12]. In the future, legislative changes to the Tax Code of Ukraine [24] were introduced repeatedly. 22 of 26 legislative acts that amended the Tax Code of Ukraine in 2022 [24], concerned tax preferences, 13 laws regulated changes in the tax administration process, and only 4 laws had a fiscal orientation (fig. 1).

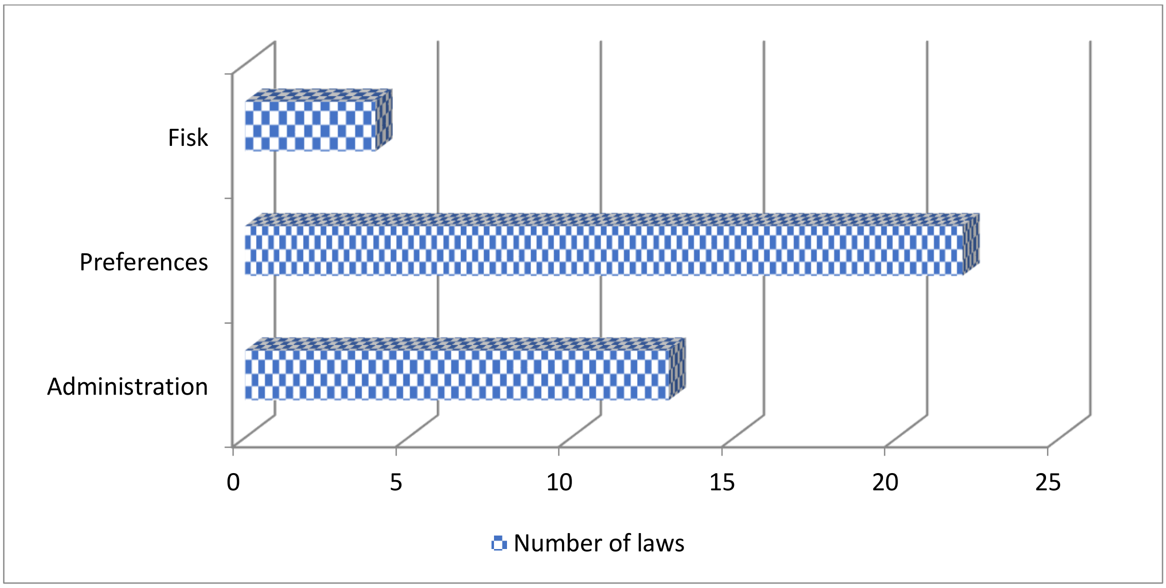

Fig. 1. Quantity of laws that amended the Tax Code of Ukraine in 2022 by directions.

Source: Developed by the authors based on the analysis of the Tax Code of Ukraine [24]

At the same time, the accelerated introduction of changes to the legislation led to shortcomings that had to be corrected later. Thus, in the accompanying materials to most of the draft laws, there was no financial, economic and scientific justification for the feasibility of adopting certain changes. The analysis of the risks and consequences that the proposed innovations may lead to, wasn't carried out, this negatively affects the rule-making practice.

The analysis of legislative acts shows that there is no systems approach to the introduction of tax benefits. For example, there were no systematic preferential rules for transactions related to the taxation of charitable assistance, which were repeatedly introduced by separate laws of Ukraine and subsequently adjusted. Moreover, some problematic issues in the application of preferential norms regarding the taxation of charitable assistance, despite the large number of adopted legislative acts, have not been resolved yet.

The research revealed some preferential norms that were implemented without proper justification and subsequently canceled. In particular, this applies to the benefits introduced by Law No. 2142-IX [13] in VAT-exempt transactions involving the import of certain goods into the customs territory of Ukraine under the customs regime of import by business entities and individuals. These benefits were abolished by Law No. 2325-IX [15] in a few months.

As it's indicated in the Explanatory Note [9] according to the results of customs clearance of vehicles by citizens during the validity period of Law No. 2142 [13], benefits for customs clearance of customs payments amounted to more than 13 billion UAH, in particular, benefits for customs clearance of phones reached the amount of more than 270 million UAH; of clothing and footwear – the amount of more than 850 million UAH. Taking into account the above, the introduced benefits for the import of goods that are not essential goods and at the same time are budget-forming, were abolished by Law No. 2325-IX [15].

A similar situation also occurred with zero excise tax rate on transactions of supply in the customs territory of Ukraine and import of motor gasoline, heavy distillates and liquefied gas (paragraph 41 of the subs.5 of Section XX of the Tax Code of Ukraine [24]), establishment by Law No. 2120-IX [16], which was repealed by Law No. 2618-IX [17].

Given the above, the implementation of some specific tax benefits during the period of martial law raises certain doubts. In particular, this applies to the benefits introduced by Law No. 2273-IX [14] regarding VAT exemption for transaction involving the supply, preparation, and distribution of audiobooks voiced in Ukrainian, except for erotic publications (Art. 197.1.251 of the Tax Code of Ukraine [24]), as well as benefits established by Law No. 2330-IX [18] for industrial parks activities in Ukraine. After all, the introduction of such benefits may lead to additional budget losses, and the urgent need to support these transactions under martial law is not obvious.

The most significant adjustments to the current taxation procedure in 2022 were made by Law No. 2120-IX [16], which defines the specifics of the administration of taxes and fees during the legal regime of martial law.

Special attention should be paid to innovations regarding the exemption of individual entrepreneurs - single tax payers of the first and second groups from paying a single tax and a single contribution to mandatory state social insurance (paragraph 9^{19} of Section VIII "Final and transitional provisions" of Law No. 2464 – VI [19]).

According to the Tax Code of Ukraine, the first group of single tax payers includes registered as an entrepreneurs individuals who do not have employees, which carry out exclusively retail of goods from trading places on the markets and/or carry out economic activities for the provision of household services to individuals under conditions that the amount of their income during calendar year does not exceed 167 times the minimum wage established by law on January 1 of the tax year (in 2023 - 1118900 UAH – over 280 00 EUR). The second group of single tax payers includes individuals - entrepreneurs who carry out their economic activities for the provision of services to single tax payers and/or individuals, production and/or sale of goods, activities in the field of restaurant business, provided that during the calendar year they meet the set of the following criteria:

the number of employees at the same time does not exceed 10 people;

the amount of income does not exceed 834 amounts of the minimum wage established by law on January 1 of the tax (reporting) year (in 2023 - 5587800 UAH – approximately 139700 EUR).

This approach is accompanied by the risk of losing budget revenues. After all, unconditional exemption from taxation will inevitably lead to budget losses, and in the context of the legal regime of martial law, funds are needed to maintain the combat capability of the Armed Forces of Ukraine.

The dynamics of single tax payment for 2020-2022 is shown in Fig. 2:

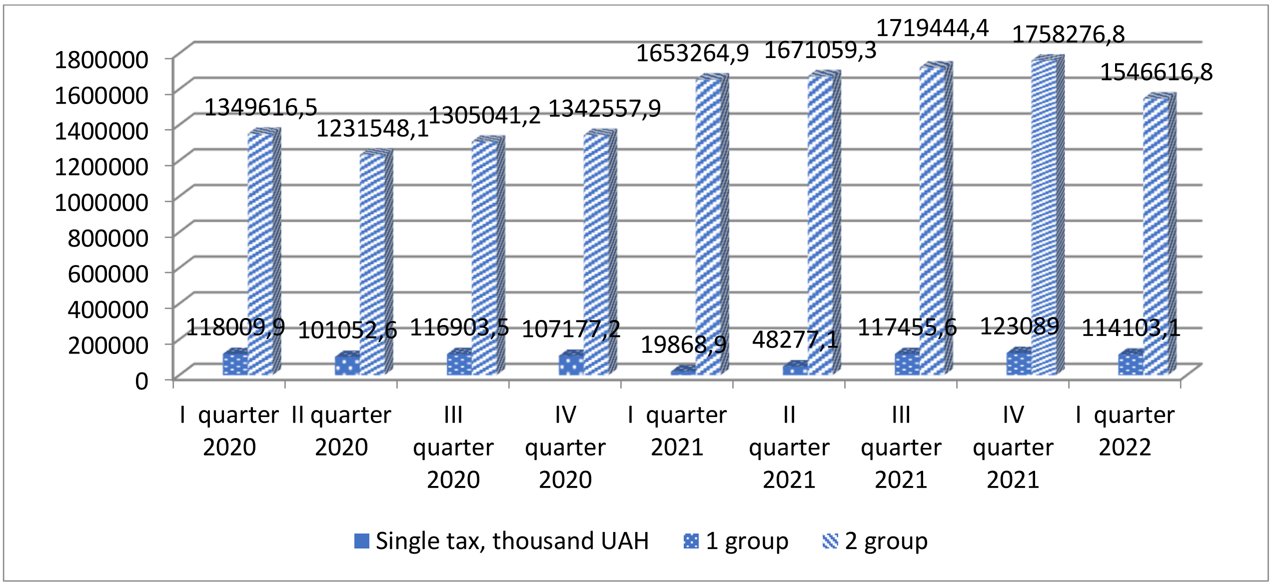

Fig. 2. Dynamics of single tax payment by group 1 and 2 taxpayers in 2020-2022.

Source: calculated by authors according to the data of the Ministry of Finance of Ukraine

As evidenced by the data of fig. 2, 1660719.9 thousand UAH were received from single tax payers of group 1 and 2 in the first quarter of 2022. Under the conditions of maintaining such a trend of paying a single tax to the budget, for 2022, 6642879.6 thousand UAH should have been received according to the forecast data. However, since these payers were given the opportunity not to pay a single tax, according to the forecast data due to the implemented benefits, the budget in 2022 theoretically may not receive 4982160 thousand UAH of a single tax.

The dynamics of a single contribution payments by group 1 and 2 payers is shown in Fig. 3:

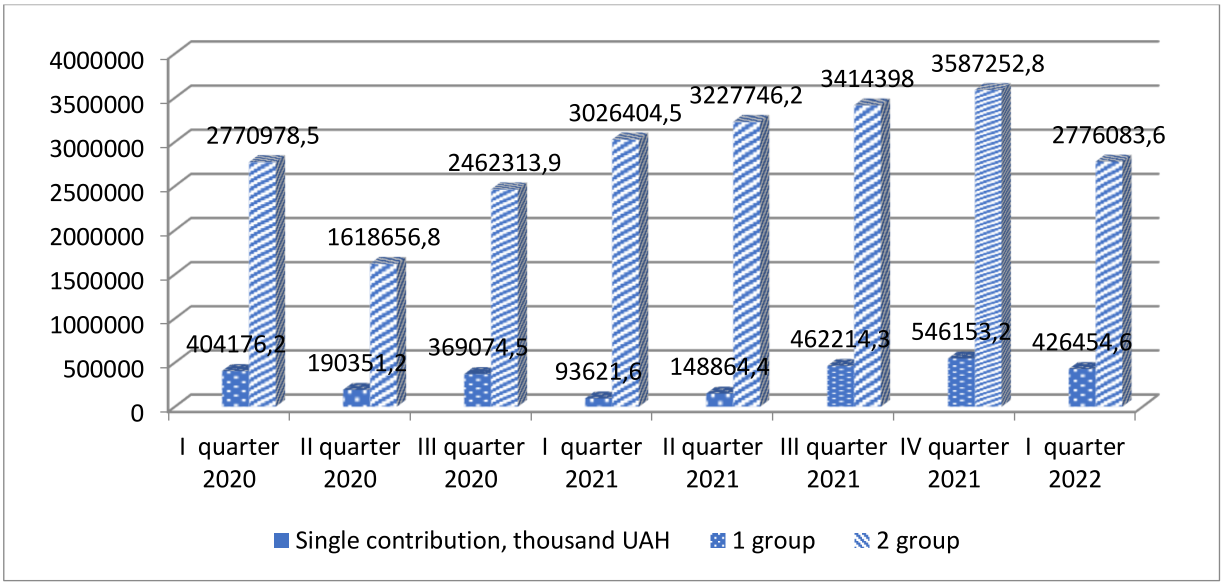

Fig. 3. Dynamics of payment of a single contribution by Group 1 and 2 single tax payers for 2020-2022.

Source: calculated by authors according to the data of the Ministry of Finance of Ukraine

According to Fig. 3 it can be seen that during 2020-2021 and the first quarter of 2022, the amount of a single contribution for group 1 single tax payers did not change significantly and reached UAH 426,454. 6 thousand in the first quarter of 2022, on average, this amounted to UAH 240 per quarter.

The amount of the single contribution for group 2 single tax payers during 2020-2021 was more significant and amounted to UAH 2776083.6 thousand in the first quarter of 2022, and on average for one single tax payer – UAH 544 per quarter.

In total, in the first quarter of 2022, single tax payers of groups 1 and 2 received UAH 3202538.2 thousand of a single contribution. Under the conditions of this trend maintaining, the payment of a single contribution to the budget for 2022 should have received, according to forecast data, 12810153 thousand UAH. At the same time, since these taxpayers are given the opportunity not to pay a single contribution, according to forecast data, , due to the introduced benefits, the budget may not receive in 2022 theoretically 9607615 thousand UAH of a single contribution.

Taking into account these losses of tax revenues to the budget, we consider that the goals declared in the Explanatory note for the Draft Law No. 2120-IX [16] will not be fully achieved. This problem can be solved by establishing a condition according to which these payments (single tax and single contribution) will not be paid by individual entrepreneurs of the first and second groups only for those months in which they do not carry out business activities in connection with the martial law introduction.

One of the most important requirements established by the association agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand [2], is the approximation of Ukrainian legislation to EU law. The document of the European Commission "Opinion on Ukraine's application for membership of the European Union" [8] on Ukraine's application for EU membership, notes the huge work that Ukraine has done in the framework of the implementation of the association agreement between

Ukraine and the EU, in particular regarding the regulatory approach to EU law acts and the implementation of a number of reforms.

The recommendations for Ukrainian public authorities on approaching EU law [22] (hereinafter referred to as the Recommendations) emphasized that Ukraine is obliged to harmonize national legislation with hundreds of EU normative legal acts (the so-called "EU acquis") from many branches of law. The Recommendations note that one of the most important procedural problems in approximating legislation is compliance verification.

In Ukraine, the Committee on Ukraine's integration into the European Union provides conclusions on the compliance of draft legislative acts.

The analysis of the laws adoption process on changes in the tax legislation of Ukraine in the field of preferential policy during the period of martial law showed the following results of their compliance to EU law (fig. 4).

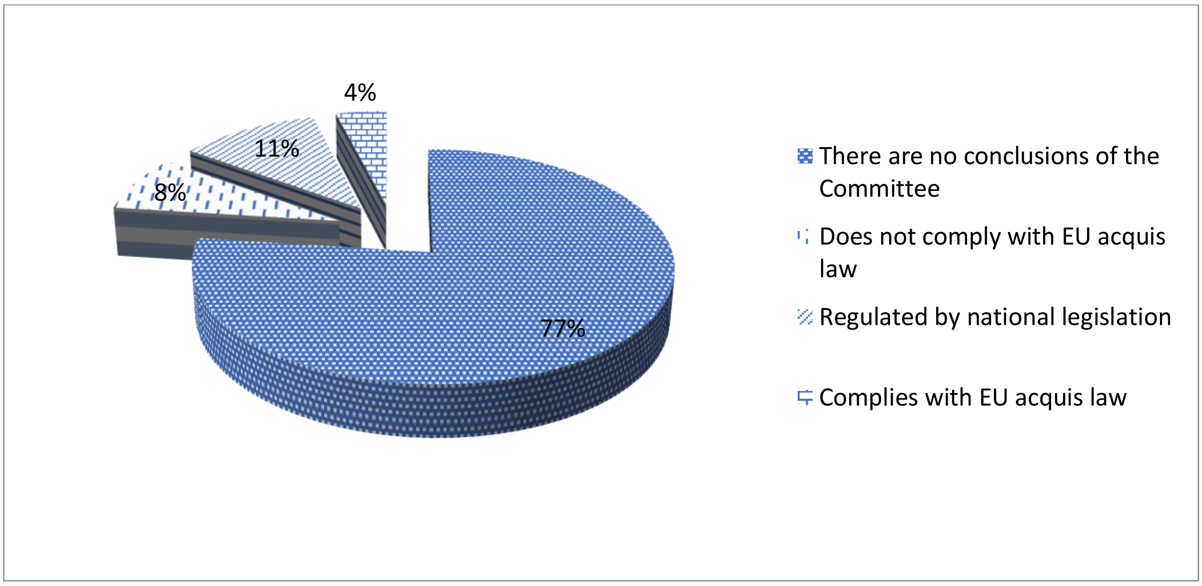

Fig. 4. Structure of the conclusions of the Committee on integration of Ukraine into the European Union on the adopted laws of Ukraine in the field of preferential policy in 2022

Source: developed by the authors based on the analysis of the Tax Code of Ukraine [24]

Figure 4 shows that 77 % (20 draft laws) did not receive the conclusions of the committee on integration of Ukraine into the European Union at all, 8 % (2 draft laws) received a negative opinion of the Committee, 11% (3 draft laws) received the conclusions of the Committee on the regulation of the draft norms by national legislation. And only 4% (1 conclusion) was positive and confirmed the compliance of the draft law with EU acquis law. This situation is unacceptable and does not meet the obligations assumed by Ukraine in the association agreement.

Thus, in the Conclusion of the Committee on the Integration of Ukraine into the European Union [5] to Law No. 2273-IX [14], it was noted that the state support for audio books provided by the provisions of the draft law, distorts economic competition. Therefore, the conclusion of the Antimonopoly Committee of Ukraine regarding the impact on competitive environment and contradicts the EU acquis was necessary. However, despite this inference, the Law was adopted.

In the Conclusion on the Draft Law of Ukraine on Amendments to the Tax Code of Ukraine on Facilitating the Restoration of the Energy Infrastructure of Ukraine [6] it was noted that according to Article 98 of Directive No. 2006/112, the basic VAT rate for EU countries is not less than 15% and the provisions of Regulation 1186/2009 do not provide for exemption from import duty of goods specified in the draft law. Taking into account the above, the Committee on the Integration of Ukraine into the European Union concluded that the provisions of the draft law contradict the acquis of the European Union, but at the same time they can be applied during the period of martial law in accordance with Articles 472 and 143 of the Association Agreement.

However, despite this conclusion, this draft was adopted and implemented in Law No. 2836-IX [20].

Taking into account the above, the norms of our laws, which have not received the opinion of the Committee on Ukraine's integration into the European Union, should be carefully analyzed for compliance with the norms of EU acquis law. After all, based on the conclusions of the main scientific and expert Department of the Verkhovna Rada of Ukraine and the Committee on finance, tax and customs policy of the Verkhovna Rada of Ukraine, two laws do not comply with the EU acquis law, since they violate the principle of legal certainty. In accordance with the requirements of Article 282 of the Association agreement (ensuring legal certainty), legal norms must be sufficiently clear and free from contradictions.

Conclusions. At the first stage of the study, all legislative acts that amended the Tax Code of Ukraine No. 2755-VI of 02.12.2010 [24] since the introduction of the legal regime of martial law in Ukraine in 2022 were analyzed. Based on the results of the analysis, the total number of legislative innovations was determined. All legislative changes are distributed according to some essential characteristics: tax preferences, tax administration process, and fiscal orientation.

At the second stage, a detailed analysis of the content characteristics of legislative acts that amended the Tax Code of Ukraine during the period of the legal regime of martial law was carried out As a result of it there were identified the shortcomings of legislative work such as: the lack of a systems approach to the establishment of benefits and proper justification of legislative innovations, which led to further cancellation of some adopted changes.

At the third stage, the consequences of preferences introduced by the Law of Ukraine "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the duration of norms for the period of martial law" of March 15, 2022 No. 2120-IX [16] in the Tax Code of Ukraine regarding preferential taxation of single tax payers of the first and second groups for the duration of the legal regime of martial law in Ukraine were investigated.

Possible budget losses from the introduction of these benefits were predicted and recommendations were given for adjusting the current legislation in order to eliminate the identified shortcomings.

At the fourth stage, the legislative acts adopted during the period of apply the legal regime of martial law in the field of preferential tax policy in terms of their harmonization with the norms of EU law were analyzed. It is revealed that most of the legislative acts adopted in 2022 did not receive the estimation of the Committee on Ukraine's integration into the European Union. In this regard, it was proposed to observe a certain balance of losses of state and local budget revenues and conduct a mandatory examination of the draft law's compliance with the EU acquis standards when developing legislative acts that amend the current legislation.

According to the results of the analysis of legislative acts in the field of preferential tax policy adopted during the period of martial law, a number of shortcomings were identified. In particular, the establishment of preferential norms regarding the unconditional exemption of single tax payers of the first and second groups from paying single tax and single contribution to mandatory state social insurance will inevitably lead to budget losses. Taking into account the above, it is proposed to establish restrictions in the application of preferential norms, in particular, to provide that single tax payers of the first and second groups do not pay only for those months in which they do not carry out business activities in connection with the introduction of martial law.

It is also noteworthy that the implemented laws do not establish any "compensatory" tools that would offset the impact of preferential norms on non-receipt of budget revenues.

The analysis of legislative acts for compliance with the norms of the EU acquis law revealed that 20 draft laws not passed through the appropriate expertise and received the conclusion of the Committee on Ukraine's integration into the European Union.

Two laws were adopted despite the existence of a negative conclusion of the Committee, which indicates shortcomings in legislative practice.

In the latest Analytical report to the Communication of the Commission to the European Parliament, the European Council and the Board of Conclusions of the European Commission regarding Ukraine's application for membership in the European Union [25], it was noted that Ukraine demonstrates a certain level of training in the field of taxation. Although Ukraine has made progress in coordinating VAT legislation with the EU acquis, there are certain legislative gaps.

Taking into account the above, we can conclude that now it is necessary to analyze why in most cases in 2022 the draft laws were adopted without conducting an expert examination of the Committee on Ukraine's integration into the European Union and in some cases were considered after receiving a negative opinion of the Committee, while the identified shortcomings were not eliminated.

In addition, official authorities should listen to the guidelines set out in the recommendations for Ukrainian public administration bodies on approaching EU law and analyze draft laws for compliance with EU acquis law even at the stage of their development. It also makes sense to provide in regulatory acts the special mechanisms that would not allow the adoption of draft laws without obtaining a positive opinion of the Committee on Ukraine's integration into the European Union. This is due to the fact that after the adoption of the relevant laws, it is very difficult to adjust them and harmonize them with the norms of EU acquis law, so it is necessary to prevent the occurrence of such situations.

These recommendations can be applied in the process of regulatory acts developing on amendments to the current tax legislation in order to overcome the negative consequences of the armed aggression of the Russian Federation against Ukraine, which will be the direction of further research.

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