

UDC 342.9

DOI <https://doi.org/10.32849/2663-5313/2022.1.07>**Andrii Lohvyn,***PhD in Law, logvin.andrey80@gmail.com***ORCID:** orcid.org/0000-0003-4373-375X

Lohvyn, Andrii (2022). Terms of tax credit formation: genesis and problems of today. *Entrepreneurship, Economy and Law*, 1, 39–46, doi: <https://doi.org/10.32849/2663-5313/2022.1.07>

TERMS OF TAX CREDIT FORMATION: GENESIS AND PROBLEMS OF TODAY

Abstract. *The purpose of the article* is to study the problematic issues of a regulatory and legal nature related to the formation of value added tax credit, in particular, the formation of terms of attributing the relevant amounts of tax to its composition, their regulation and compliance with the realities of today from the legal point of view. **Research methods.** The work was carried out based on the general scientific and special methods of scientific cognition. **Results.** The possibility of attributing the corresponding amounts of value added tax to the composition of tax credit, both in the current and subsequent tax periods, affects both the reduction of tax payment liabilities and the possibility of receiving a budget refund. Thus, the property benefit of obtaining the right to tax credit (especially on the actually paid value added tax in the price of goods /services) is obvious. At the same time, the introduction of a reduction in stocks from 01.01.2022 (up to 365 days), during which a taxpayer has the right to attribute value added tax amounts to composition of tax credit, leads to the violation of the balance of relations between tax legal entities. **Conclusions.** The performed analysis of the provisions of normative legal acts regulating the procedure for the formation of value added tax credit, including determining the terms for attributing the relevant amounts of tax to its composition, made it possible to identify urgent legal issues. These issues are related to the reduction of the terms for the tax credit formation from the beginning of 2022, which in some way affects the possibility of attributing the relevant tax amounts to its composition based on registered tax invoices, in particular, on those actually registered on the basis of the entry into force of a court decision. In addition, the article made scientifically based conclusions on the identified issues and proposed possible solutions.

Key words: value added tax, VAT electronic administration system, system of automatic monitoring the criteria of risk level assessment, tax credit, tax invoice, Unified Register of Tax Invoices.

1. Introduction

The main legal issue of the tax sphere is mainly determining and effective ensuring the limits of freedom and the necessity in the behavior of tax entities through relevant legal, legislative norms, the protection of ownership rights of individual payers and public interests that are implemented in the financial and tax activities of the state.

The main normative legal act regulating the general principles of rights and obligations (limits of obligatory/ possible behavior) of tax entities (taxpayers and regulating bodies), including the administration of value added tax in Ukraine (determining tax liabilities and the formation of tax credit), is the Tax Code of Ukraine (Tax Code of Ukraine, 2010) (hereinafter – the Tax Code). Besides, this normative act determines the terms, within which the amount of value added tax (hereinafter referred to as VAT) for purchased goods/services based of received and registered tax invoices may be attributed by a taxpayer to the composition of tax credit.

In addition, the system of electronic administration of value added tax (hereinafter referred to as VAT SEA) was introduced from 01.01.2015 (Law of Ukraine No. 71-VIII, 2014), and from 01.07.2017, the system of automated monitoring of compliance of tax invoices / adjustment calculations with the risk assessment criteria sufficient to stop the registration of a tax invoice / adjustment calculation in the Unified Register of Tax Invoices (hereinafter referred to as the Monitoring system) (Law of Ukraine No. 1797-VIII, 2016). These systems in totality (most of all the Monitoring system) in some way affect the procedure and terms of formation of tax liabilities and the value added tax credit, including attributing tax amounts to tax credit through registered tax invoices, which, taking into account the suspension of their registration and the “unblocking” procedure, may be registered on the date of their actual submission for registration, however, after a certain period of time (may be more than 365 days).

Since the amounts of value added tax attributed to the composition of tax credit in future may reduce tax liabilities to be paid or reimbursed, the property benefit from obtaining the right to a tax credit, especially on the actually paid value added tax in the price of goods/services, is obvious. In this regard, there is a need for scientific research into the issue of legal regulation of the mechanism of tax credit formation, in particular, the terms for attributing the amounts of value added tax to the composition of tax credit based on drawn up (registered) tax invoices.

At present, taking into account the introduction of new terms from 01.01.2022 (reduction from 1095 to 365 days) of attributing the amounts of value added tax to the composition of tax credit based on registered tax invoices, research into this issue has not been carried out.

Based on analysis of the provisions of the relevant normative legal acts, the paper explores the formation of the terms for the tax credit formation, as well as identifies problematic issues of legal regulation on the formation of tax credit, in connection with a decrease in the terms of attributing to its composition of the relevant amounts of value added tax, and the ways to solve them. In addition, scientifically based conclusions on the outlined issues have been made.

2. Establishment of terms of tax credit formation

As already mentioned, the Tax Code regulates the issue of administration of value added tax, including the terms for attributing the amounts of tax in received tax invoices to tax credit. In our previous publications, we have repeatedly focused on the issues related to the study of the legal mechanism of value added tax (tax liability, tax credit, legal personality of taxpayers, etc.). In this paper, we will dwell solely on the terms of tax credit formation.

Currently (from 01.01.2022), taking into account the amendments to the Tax Code introduced by the Law of Ukraine No 1914-IX of 30.11.2021 (Law of Ukraine No. 1914-IX, 2021) (hereinafter referred to as Law No. 1914-IX), in case a taxpayer did not include in the corresponding reporting period the amount of value added tax based on received tax invoices/ adjustment calculations to such tax invoices, registered in the Unified Register of Tax Invoices (hereinafter referred to as URTI), he has the right to do it within 365 calendar days from the date of drawing up a tax invoice/adjustment calculation.

It will be appropriate to pay attention that since the Tax Code was enacted (from 01.01.2011), it is the third time there has

been a change in the terms, within which a taxpayer can exercise the right to attribute the VAT amounts for purchased goods/services to the composition of tax credit.

Since the Tax Code was enacted (from 01.01.2011), this term made up 180 days. Given the amendments to the Tax Code based on the Law of Ukraine No. 643-VIII of 16.07.2015 (hereinafter referred to as Law No. 643-VIII) (Law of Ukraine No. 643-VIII, 2015), this term was increased from 180 to 365 days. Subsequently, under the Law of Ukraine No. 2198-VIII of 09.11.2017 (hereinafter referred to as Law No. 2198-VIII) (Law of Ukraine No. 2198-VIII, 2017), the term of attributing the amount of value added tax to the composition of tax credit by received (registered) tax invoices was increased from 365 to 1095 days.

As we can see, since enacting the Tax Code, by the corresponding changes (Law of Ukraine No. 643-VIII, 2015; Law of Ukraine No. 2198-VIII, 2017), the legislator has gradually introduced an increase in the term (from 180 to 365 and from 365 to 1095 days), within which a taxpayer has the right to attribute the relevant amounts of value added tax to tax credit. This is quite logical in terms of the statute of limitations under Article 102 of the Tax Code (Tax Code of Ukraine, 2010), and the elimination of relevant contradictions between the term for the possibility of clarifying tax reporting indicators and the term of attributing the relevant VAT amounts to the composition of tax credit.

At the same time, from 01.01.2022, taking into account the amendments to the Tax Code (Law of Ukraine No. 1914-IX, 2021), a reduction in the term (from 1095 to 365 days) was introduced, during which a taxpayer, in case he did not attribute the amount of VAT based on received tax invoices / adjustment calculations to such tax invoices, registered in the URTI, to tax credit in the relevant reporting period, may attribute VAT amounts to the composition of tax credit in the following tax (reporting) periods.

In this case, it should be noted that an increase in terms took place for the first time on the ground of the *“improvement of VAT administration”*, and for the second time as *“stabilization of calculations in the electricity market”*. In turn, the current reduction (by three times) of the terms for the possibility of attributing VAT amounts to tax credit based of registered tax invoices was solely due to the good intentions of *“ensuring the balance of budget revenues”*. That is, every time amendments to the Tax Code are introduced, the legislator finds an appropriate worthy substantiation (justification) for his actions. Apparently, payments on the electricity market have already been stabi-

lized, so it is necessary to take care of the balance of budget revenues.

As one can see, the terms of attributing the corresponding VAT amounts to tax credit in the following tax periods based on tax invoices drawn up and, first of all, registered in previous periods is limited to 365 days.

In our opinion, these changes (reduction of the relevant terms) may and will affect (in the short-term prospect) the balance of budget revenues (in a certain sense, will lead to an increase in revenues from value added tax), but are unlikely to lead to balanced relationships between tax entities (taxpayers and regulatory authorities). This mainly concerns the issues of attributing to the composition of tax credit of VAT amounts on tax invoices, the registration of which in the URTI is suspended in the current period, since it implies the need for the procedure of their “unblocking”, which may take some time, and registration will take place after a period of 365 days (although by the previous date of actual submission for registration).

3. Suspension of registration of tax invoices and influence on the terms of tax credit formation

As already mentioned, a system of automated monitoring of compliance of a tax invoice / calculation of adjustments with the risk assessment criteria sufficient to stop the registration of a tax invoice / calculation of adjustments in the URTI, which is part of the VAT SEA, was introduced in Ukraine from 01.07.2017. The above-mentioned automated system in some way affects the procedure and terms of formation of tax liabilities and the tax credit from the value added tax, including the terms of attributing VAT amounts to tax credit based on registered tax invoices, which, taking into account the suspension of their registration and the “unblocking” procedure, may be registered, by the date of their actual submission for registration, however, after a certain period of time (may be of more than 365 days).

At the same time, it should be noted that the relevant amendments to the Tax Code (Law of Ukraine No. 1914-IX, 2021) also stipulate that in case of suspension of registration of a tax invoice / calculation of adjustments in the URTI in accordance with point 201.16 of Article 201 of this Code, the course of the terms specified in this paragraph is interrupted for the period of suspension of registration of such tax invoices / adjustment calculations in the URTI. Will this provision really somehow eliminate problematic issues? We will dwell on the worst-case scenario, which involves making a decision to refuse to register a tax invoice by the commission of the controlling body.

In addition, we draw attention to the fact that until this time (until 01.01.2022), the Tax Code had no warning that the course of the relevant period (1095 days) is stopped for the period of suspension of registration of a tax invoice / calculation of the adjustment and the procedure for their unblocking, including for the period of judicial or administrative appeal of the decision of the tax authority to refuse to register a tax invoice. Although even in this case, taking into account the terms of 1095 days for the possibility of attributing the relevant VAT amounts to the composition of tax credit and the unblocking procedure, it might be impossible to meet such deadlines.

Thus, considering the provisions of the relevant regulations (Decree of Cabinet of Ministers of Ukraine No. 1165, 2019; Order of the Ministry of Finances of Ukraine No. 520, 2019), in case of suspension of registration of a tax invoice / calculation of adjustments in the URTI, a taxpayer can exercise his right and within 365 days (from the date of drawing up a tax invoice) to submit written explanations and copies of primary documents for consideration of the commission to make decision on registration / refusal to register a tax invoice / calculation of adjustments in the URTI.

It would be appropriate to note that preparation of written explanations and copies of the documents necessary to consider the decision of the controlling authority to register such a tax invoice takes some time (involvement of labor and material resources), since it involves writing explanations (description of the circumstances of a certain economic operation) and grouping the associated significant number of primary documents, scanning and submitting them electronically. In addition, take into account the routine activities of the personnel of the financial (accounting) department. Even assuming the situation that provides for timely (prior) submission for the registration of a tax invoice and its subsequent suspension, prompt preparation of the necessary explanations and copies of documents, their submission to the commission for consideration, the deadlines for consideration and adoption of the relevant decision on refusal, as well as its subsequent administrative appeal, which is unlikely to be positive, such terms can include from one to two months.

And if, for example, we assume that a taxpayer also has a decision on his meeting the risk criteria (inclusion in the risk list), it is not enough to count on a positive decision upon the fact of submitting explanations and documents to unblock the tax invoice. Although in our opinion, taking into account the events of December 2021 (*spreading certain informa-*

tion in business circles and in relevant information sources (Telegram channels) regarding the incomprehensible actions of tax authorities on including in the list of risky taxpayers of almost all taxpayers of the real sector of economy, meeting the risk criteria can be considered a certain quality mark (*in a good sense*).

It should be noted that this applies to one tax invoice and only the procedure of its administrative (not judicial) appeal, and if there are several such invoices and they relate to various business transactions and counterparties, you will have to “*live at work*”.

In turn, taking into account the decision to refuse to register a tax invoice, as well as the negative result of an administrative appeal, there remains one way out – an appeal to the court with an administrative claim on the recognition of an unlawful decision to refuse to register a tax invoice and an obligation to take certain actions (register a tax invoice by the actual date of its submission for registration).

In this case, we must hope for a quick and positive consideration of the case for a taxpayer, which in certain cases may not be so prompt, given the fact that, as a rule, before a court decision (a positive decision for a taxpayer) enters into force, the court case will be considered in the first and second instances, since the tax authorities (in case of satisfaction of the taxpayer's claim) will appeal the corresponding decision in the appeal court (Resolution of the Third Appeal Administrative Court on case No. 160/10398/20, 2021) (even in the absence of funds to pay the court fee), and if a payer is also included in the risk list, they will find funds to pay court fees. And here it is not necessary that they will be limited only to the second instance, in case of repeated loss (Resolution of the Supreme Court of Ukraine on case No. 160/6665/20, 2021).

At the same time, the entry into force of a court decision does not guarantee its mandatory and immediate implementation, as provided for by the relevant regulatory documents (Constitution of Ukraine, 1996; Code of Administrative Legal Proceedings of Ukraine No. 2747-IV, 2005), and the registration of tax invoices (Decree of the Cabinet of Ministers of Ukraine No. 1246, 2010), taking into account the study conducted in 2021 by the Business Ombudsman Council on the timeliness of implementation of relevant court decisions by the State Tax Service of Ukraine (hereinafter – the State Tax Service of Ukraine, STS bodies) (Research of the Business Ombudsman Council regarding non-implementation of court resolutions concerning the registration of tax invoices, 2021).

Thus, it can be argued that a tax invoice may be registered by the actual date of its submission

for registration, however, after 365 days. This will lead to disputes between tax entities (taxpayers and tax authorities) regarding attributing value added tax amounts to tax credit based on tax invoices, the registration of which is suspended in the URTI and are subsequently registered on the basis of a court decision, given the outright reluctance of the STS bodies to implement court decisions in a timely manner. Since not attributing VAT amounts to tax credit leads to the inability of a payer to reduce tax liabilities (the amount of tax payable) and the need to replenish the VAT account for registration of tax invoices, which, in turn, is additional revenues to the state budget. Perhaps, tax authorities have some other “*charitable*” intentions that we do not know about, however, only they know about it.

4. Discussion

The absence of registration (suspension) of a tax invoice does not entitle a taxpayer (buyer) to attribute VAT amounts to the composition of tax credit by such a tax invoice in the current (reporting) period, but this right is retained by him after its unblocking. At the same time, the absence of registration of a tax invoice not only affects the possibility of forming tax credit by a taxpayer and further reducing the tax liability (the amount of tax payable as a result of the current reporting period), but also the existence of a registration limit for the possibility of further registration of tax invoices, since it leads to the need to replenish the account in the VAT SEA (reduction of working capital for current financial and economic activities of a taxpayer).

That is, in case of stopping the registration of a tax invoice (for a supplier, these are tax liabilities, which in any case should be reflected in the reporting for the corresponding period and taxes paid), the main burden rests on a taxpayer (buyer), because he is most interested in the registration of a tax invoice (the possibility of attributing tax amounts to tax credit and, accordingly, determining the amount of tax payable to the budget, that can be reduced), however, under the considered conditions, he is less protected, since he is not involved in the process of unblocking and appealing.

It would be appropriate to pay attention to the fact that the provisions of the Tax Code (Tax Code of Ukraine, 2010) (as amended before 03.12.2017) provided for the right of a payer to register a tax invoice and/or calculation of adjustments in the URTI within 365 calendar days following the date of occurrence of tax liabilities reflected in the relevant tax invoices and/or adjustment calculations. That is, the legislator determined the period (365 days), during which a tax invoice/ adjustment

calculation can be registered in the URTI even in violation of the established terms (violation of which provides for liability in the form of penalties), and after the expiration of which registration is not possible, and the corresponding period (365 days) was provided for the formation of a tax credit. At the same time, taking into account the amendments to the Tax Code introduced by Law No. 2198-VIII (Law of Ukraine No. 2198-VIII, 2017), the specified norm (paragraph 18 p. 201.10 of Art. 201) is set forth in a new edition, which does not refer to the period, during which a tax invoice/adjustment calculation can be registered, even after legally established terms (violation of which leads to occurrence of negative consequences in the form of financial liability). However, taking into account that the relevant amendments (Law of Ukraine No. 2198-VIII, 2017) enshrined the right of a taxpayer to attribute the VAT amounts to the composition of tax credit under the tax invoice drawn up in previous periods within 1095 days from the date of drawing up such a tax invoice, including tax invoices registered in violation of the established period, as well as taking into account the existing liability for violation of the terms of registration of tax invoices and the statute of limitations, determined by the Tax Code (Art. 120¹ and Art. 102, respectively) (Tax Code of Ukraine, 2010), we can conclude that a tax invoice can be registered in the URTI within 1095 days, even in violation of the legally established term.

Thus, taking into account the provisions of the Tax Code (Tax Code of Ukraine, 2010), at present (from 01.01.2022) we have a legal collision regarding the possible terms of registration of tax invoices (1095 days) and the terms, during which the relevant VAT amounts can be attributed to tax credit (365 days) on the basis of registered tax invoices. That is, a VAT invoice can be registered (even in violation of the established terms, the violation of which causes the application of penalties) within 1095 days, however, VAT amounts on such an invoice can be attributed to tax credit only within 365 days. It would be logical in this case, taking into account the reduction of terms (up to 365 days) for the possibility of attributing the corresponding amounts of value added tax to tax credit, to provide similar 365 days for the possible registration of a tax invoice in the URTI (even despite the established legislative terms for its registration, violation of which provides for financial liability).

It should be noted that the norms of the Tax Code (Tax Code of Ukraine, 2010) determine the general terms of registration for tax invoices (depending on the date of drawing up in the relevant period), however, a tax invoice according

to the general rule can be registered within 1095 days from the date of its drawing up (even in violation of the established terms and of course will have legal consequences in the form of penalties). In addition, the issue of timely registration of a tax invoice is still the responsibility of a taxpayer (violation of registration terms is a kind of inaction of a taxpayer). Thus, there may be different circumstances that cause violations of the terms of registration of tax invoices. At the same time, the situation regarding the need to carry out the procedure of “unblocking” a tax invoice is more specific and depends entirely on certain circumstances, even regarding timely measures by a taxpayer.

In addition, the legislator does not specify how the amounts of value added tax can be attributed to the composition of tax credit on the tax invoices, which (taking into account their suspension) were registered based on the court decision by the actual date of their submission, but still after a certain period of time (365 days after). Besides, the legislator does not indicate from which day to extend the countdown (365 days) to attribute VAT amounts to tax credit after the procedure of “unblocking” a tax invoice:

- from the date of entry into force of the relevant court decision;
- from the date of actual submission by the controlling authority of the relevant information to the URTI on the registration of a tax invoice on the basis of a court decision.

In our opinion, there are two possible options for attributing tax amounts to tax credit:

1) in the current (reporting) period, taking into account the receipt of information on the registration of the relevant tax invoice from the URTI based on a court decision;

2) by submitting a clarifying calculation to tax reporting for the previous tax period of drawing up a tax invoice and sending it for registration (the tax invoice is registered after 365 days, but still, taking into account the provisions of the Tax Code, by the date of its actual submission for registration).

Both options are reasonable and logical, however, there are certain nuances related to how each of them will affect the indicators of VAT SEA of a particular payer.

It is a positive fact that though the existence of a registered tax invoice, even after 365 days, taking into account the “unblocking” procedure, does not allow exercising the right to a tax credit, it will at least extend the registration limit.

At the same time, it is necessary to pay attention to the judicial practice regarding attributing value added tax amounts to tax credit after 365 days based on clarifying calculations submitted within 1095 days. Of course,

it concerns the previous version of the Tax Code, but it is appropriate to take into account the introduced changes. Thus, the Supreme Court in the resolution of 26.04.2018 in case No. 803/839/14 (Resolution of the Supreme Court of Ukraine on case No. 803/839/14, 2018), taking into account the fact that Art. 50 of the Tax Code is a general norm that determines the procedure for amending tax reporting on any tax, and Art. 198 of the Tax Code is a special norm regulating the procedure for referring the amounts of value added tax to tax credit, concluded that the right of a taxpayer to attribute the amount of value added tax to tax credit on the basis of the received tax invoices is limited to a period of 365 calendar days from the date of drawing up tax invoices, that is, to the term specified in p. 198.6 of Art. 198 of the Tax Code.

In turn, it can be argued unquestionably that these changes and reduction of the terms during which the right to attribute VAT amounts to the composition of tax credit in subsequent tax periods will lead to an increase in conflicts and tax disputes between taxpayers and tax authorities.

5. Conclusions

Taking into consideration all mentioned above, it can be stated that:

1. The introduced restriction (365 days) on the possibility of attributing the relevant amounts of value added tax to tax credit will apply to the tax invoices, which are drawn up from 01.01.2022, taking into account the provisions that laws and other regulations have no reverse effect in time. The amounts of value added tax on tax invoices drawn up before 01.01.2022 may be attributed to tax credit within 1095 days from the date of their drawing up (taking into account compliance with the registration procedure).

2. The peculiarity of the existence of regulatory and legal support for the administration of value added tax in Ukraine was and still is the legal collisions of certain provisions of regulatory legal acts that lead to disputes between regulatory authorities and taxpayers. Thus, at present (from 01.01.2022), we have a legal collision, which consists in the fact that a tax invoice under the general rule can be registered within 1095 days from the date of its drawing up (even in violation of the established terms and, of course, will have negative consequences in the form of financial liability), however, the amount of value added tax based on registered tax invoices can be attributed to tax invoice only within 365 days.

3. The main burden of introducing a reduction (limitation) of terms (up to 365 days) for the possibility of attributing to tax credit

the VAT amounts by registered tax invoices in subsequent tax periods, in case they were not attributed in the current period (drafting), in particular, due to suspension of registration of such a tax invoice, rests with a taxpayer (Buyer), since he is most interested in the registration of a tax invoice (the possibility of attributing tax amounts to the composition of tax credit and, accordingly, determining the reduced amount of tax payable to the budget).

4. It is necessary to amend the relevant normative legal acts (the Tax Code of Ukraine, the Procedure for maintaining the Unified Register of Tax Invoices) in order to bridge the gap as for the legal personality of both taxpayers and regulatory authorities mentioned above, in particular:

- elimination of discrepancies regarding the possibility to register a tax invoice (even after the expiration of the statutory terms, violation of which provides for liability in the form of penalties), actually within 1095 days, and from 01.01.2022 within the period (365 days) for the attribution of value added tax amounts to tax credit;

- the procedure of actions (limits of necessary/possible behavior) for the controlling authority and a taxpayer regarding the attribution of value added tax amounts to the composition of tax credit by the tax invoices, the registration of which (taking into account their suspension) took place based on the court decision by the actual date of their submission, but still after a certain period of time (365 days);

- determining the terms during the suspension of a tax invoice, in particular, from which the countdown period (365 days) continues to attribute VAT amounts to the composition of tax credit after the procedure of “unblocking” a tax invoice (from the date of entry into force of the relevant court decision or still from the date of actual submission by the controlling authority of the relevant information to the URTI on the registration of such a tax invoice based on a court decision);

- procedure and terms of implementation by the STS bodies (determining the necessary behavior of the relevant officials of the controlling authority) of decisions of judicial bodies that entered into force on the recognition of illegal actions of the controlling authority to stop the registration of a tax invoice / calculation of adjustments and the obligation to register them in the URTI.

5. Obviously, these changes and reduction of the terms during which it is possible to exercise the right to attribute VAT amounts to tax credit in subsequent tax periods will lead to an increase in conflicts and tax disputes between tax payers and tax authorities.

References:

Doslidzhennia Rady biznes-ombudsmena stosovno nevykonannia sudovykh rishen shchodo reiestratsii podatkovykh nakladnykh [Research of the Business Ombudsman Council regarding non-implementation of court resolutions concerning the registration of tax invoices]. (2021). *boi.org.ua*. Retrieved from <https://boi.org.ua/publications/press/1420-doslidzhennya-radi-biznes-ombudsmena-stosovno-nevikonannya-sudovih-rishen-shchodo-reyestratsiyi-podatkovih-nakladnih/> (in Ukrainian).

Kodeks administratyvnoho sudochynstva Ukrainy: pryiniaty 6 lyp. 2005 roku № 2747-IV [Code of Administrative Legal Proceedings of Ukraine of July 06, 2005 No. 2747-IV]. (2005). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (in Ukrainian).

Konstytutsiia Ukrainy: pryiniata 28 cherv. 1996 roku [Constitution of Ukraine of June 28, 1996]. (1996). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (in Ukrainian).

Nakaz Ministerstva finansiv Ukrainy Pro zatverdzhennia Poriadku pryiniattia rishen pro reiestratsiiu/vidmovu v reiestratsii podatkovykh nakladnykh/ rozrakhunkiv koryhuvannia v Yedynomu reiestri podatkovykh nakladnykh: pryiniaty 12 hrud. 2019 roku № 520 [Order of the Ministry of Finances of Ukraine On Approval of the Decision Making Procedure on Registration / Refusal to Registration of Tax Invoices / Adjustment Calculations in the Single Register of Tax Invoices of December 12, 2019 No. 520]. (2019). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/z1245-19#Text> (in Ukrainian).

Podatkovyi kodeks Ukrainy: pryiniaty 2 hrud. 2010 roku № 2755-VI [The Tax Code of Ukraine of December 2, 2010 No. 2755-VI]. (2010). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2755-17#Text> (in Ukrainian).

Postanova Kabinetu ministriv Ukrainy Pro zatverdzhennia poriadku vedennia Yedynoho reiestru podatkovykh nakladnykh: pryiniata 29 hrud. 2010 roku № 1246 [Decree of the Cabinet of Ministers of Ukraine On Approval of the Procedure of Maintaining the Unified Register of Tax Invoices of December 29, 2010 No. 1246]. (2010). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1246-2010-%D0%BF#Text> (in Ukrainian).

Postanova Kabinetu ministriv Ukrainy Pro zatverdzhennia poriadkiv z pytan zupynennia reiestratsii podatkovoi nakladnoi/rozrakhunku koryhuvannia v Yedynomu reiestri podatkovykh nakladnykh: pryiniata 21 hrud. 2019 roku № 1165 [Decree of Cabinet of Ministers of Ukraine On Approval of Procedures for Suspension of Registration of Tax Invoice/Adjustment Calculation in the Single Register of Tax Invoices of December 11, 2019 No. 1165]. (2019). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1165-2019-%D0%BF#Text> (in Ukrainian).

Postanova Verkhovnoho Sudu Ukrainy: pryiniata 26 kvit. 2018 roku po spravi № 803/839/14 [Resolution of the Supreme Court of Ukraine of April 26, 2018 on case No. 803/839/14]. (2018). *court.gov.ua*. Retrieved from <https://reyestr.court.gov.ua/Review/73734532> (in Ukrainian).

Ukhvala Tretoho apeliatsiinoho administratyvnoho sudu: pryiniata 1 lyp. 2021 roku po spravi № 160/10398/20 [Resolution of the Third Appeal Administrative Court of July 2, 2021 on case No. 160/10398/20]. (2021). *court.gov.ua*. Retrieved from <https://reyestr.court.gov.ua/Review/98053258> (in Ukrainian).

Ukhvala Verkhovnoho Sudu Ukrainy: pryiniata 21 lyp. 2021 roku po spravi № 160/6665/20 [Resolution of the Supreme Court of Ukraine of July 21, 2021 on case No. 160/6665/20]. (2021). *court.gov.ua*. Retrieved from <https://reyestr.court.gov.ua/Review/98493459> (in Ukrainian).

Zakon Ukrainy Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta deiakykh zakonodavchykh aktiv Ukrainy shchodo podatkovoi reformy: pryiniaty 28 hrud. 2014 roku № 71-VIII [Law of Ukraine On Amendments to the Tax Code of Ukraine and Some Legislative Acts of Ukraine of the Tax Reform of December 28, 2014 No. 71-VIII]. (2014). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/71-19#Text> (in Ukrainian).

Zakon Ukrainy Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo pokrashchennia investytsiinoho klimatu v Ukraini: pryiniaty 21 hrud. 2016 roku № 1797-VIII [Law of Ukraine On Amendments to the Tax Code of Ukraine Concerning the Improvement of the Investment Climate in Ukraine of December 21, 2016 No. 1797-VIII]. (2016). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1797-19#Text> (in Ukrainian).

Zakon Ukrainy Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy shchodo zabezpechennia zbalansovanosti biudzhetykh nadkhodzen: pryiniaty 30 lystop. 2021 roku № 1914-IX [Law of Ukraine On Amendments to the Tax Code of Ukraine and certain Legislative Acts of Ukraine Concerning Ensuring Balance of Budget Revenues of November 30, 2021 No. 1914-IX]. (2021). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1914-20#Text> (in Ukrainian).

Zakon Ukrainy Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo udoskonalennia administruvannia podatku na dodanu vartist: pryiniaty 16 lyp. 2015 roku № 643-VIII [Law of Ukraine On Amendments to the Tax Code of Ukraine Concerning Improvement of Administration of Value Added Tax of July 16, 2015 No. 643-VIII]. (2015). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/643-19#Text> (in Ukrainian).

Zakon Ukrainy Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo stabilizatsii rozrakhunkiv na Optovomu rynku elektrychnoi enerhii Ukrainy: pryiniaty 9 lystop. 2017 roku № 2198-VIII [Law of Ukraine On Amendments to the Tax Code of Ukraine Concerning Stabilisation of Settlements on Wholesale Market of Electric Energy of Ukraine of 9 November, 2017 No. 2198-VIII]. (2017). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2198-19#Text> (in Ukrainian).

Андрій Логвин,
доктор філософії з права, logvin.andrey80@gmail.com
ORCID: orcid.org/0000-0003-4373-375X

СТРОКИ ФОРМУВАННЯ ПОДАТКОВОГО КРЕДИТУ: ГЕНЕЗИС ТА ПРОБЛЕМИ СЬОГОДЕННЯ

Анотація. *Метою статті* є необхідність дослідження проблемних питань нормативно-правового характеру, пов'язаних із формуванням податкового кредиту з податку на додану вартість, зокрема, становлення строків для віднесення відповідних сум податку до його складу, їх урегульованість та відповідність з правової точки зору реаліям сьогодення. **Методи дослідження.** Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання. **Результати.** Можливість віднесення відповідних сум податку на додану вартість до складу податкового кредиту, як в поточному, так і наступних податкових періодах, впливає як на зменшення податкових зобов'язань до сплати, так і на можливість отримання бюджетного відшкодування. Таким чином, майнова вигода від отримання права на податковий кредит (тим більше за реально сплаченим податком на додану вартість у ціні товару/послуги) очевидна. При цьому запровадження з 01.01.2022 р. зменшення строків (до 365 днів), протягом яких платник податку має право на віднесення сум податку на додану вартість до складу податкового кредиту, призводить до порушення збалансованості взаємовідносин між суб'єктами податкових правовідносин. **Висновки.** Проведений аналіз положень нормативно-правових актів, якими регламентовано порядок формування податкового кредиту з податку на додану вартість, в тому числі визначено строки для віднесення відповідних сум податку до його складу, дозволив виявити нагальні проблемні питання правового характеру. Вказані питання пов'язані зі скороченням з початку 2022 року строків для формування податкового кредиту, які певним чином впливають на можливість віднесення до його складу відповідних сум податку на підставі зареєстрованих податкових накладних, зокрема, реєстрація яких фактично відбувається на підставі набрання законної сили судовим рішенням. Крім того, у статті зроблено науково обґрунтовані висновки з окресленої проблематики та визначено можливі шляхи вирішення.

Ключові слова: податок на додану вартість, система електронного адміністрування ПДВ, система автоматичного моніторингу критеріїв оцінки ступеня ризиків, податковий кредит, податкова накладна, Єдиний реєстр податкових накладних.

The article was submitted 14.02.2022

The article was revised 09.03.2022

The article was accepted 29.03.2022