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Article

The benchmark for VAT and VAT expenditures in Ukraine : methodological and pragmatic aspects

Economy and forecasting

Provided in Cooperation with:

ZBW OAS

Reference: Sokolovska, Alla (2022). The benchmark for VAT and VAT expenditures in Ukraine : methodological and pragmatic aspects. In: Economy and forecasting (1), S. 55 - 83.
http://econ-forecast.org.ua/?page_id=189&lang=uk&year=2022&issueno=1&begin_page=55&mode=get_art&flang=en.
doi:10.15407/econforecast2022.01.055.

This Version is available at:

<http://hdl.handle.net/11159/12826>

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Alla Sokolovska¹

THE BENCHMARK FOR VAT AND VAT EXPENDITURES IN UKRAINE: METHODOLOGICAL AND PRAGMATIC ASPECTS

Despite the preparation by the State Tax Service of Ukraine of Reports on tax reliefs that are a loss of budget revenues, which indicate certain steps towards the introduction of the concept of tax expenditures in the budget process, the question of their quality remains open due to the uncertainty of the principles of distribution of tax reliefs into those that are losses of budget revenues and other tax reliefs, and due to the algorithm for calculating budget losses from the provision of tax reliefs. In view of the above, the purpose of the article is to determine methodological approaches to the formation of Directories and, accordingly, Reports of the State Tax Service of Ukraine on tax reliefs (on the example of VAT reliefs), that are losses of budget revenues, and on other tax reliefs and justification of the guidelines for improving the quality of such reports.

Based on the analysis of concepts of benchmark tax system (tax) and tax expenditure and approaches to determining their main elements, the author formulates requirements for the structure of Directories of tax reliefs and Reports on tax reliefs, in particular, it is established that if the Directory of tax reliefs, which are losses of budget revenues should include only tax expenditures, then in the structure of the Directory of other tax incentives two components can be distinguished – "structural incentives", which are elements of the benchmark tax system, and special incentives that do not lead to the loss of budgetary revenues. In order to facilitate the identification and analysis, the main components of "structural VAT reliefs" in Ukraine, as well as types (groups) of reliefs that do not cause budget losses are identified, cases of unjustified classification of tax reliefs in the State Tax Service Directories are

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considered and proposals to change their classification are substantiated. Based on the calculations, it was identified which groups of reliefs predominate in the system of other reliefs, as well as in the reliefs that are losses of budget revenues.

According to the results of the study, it was concluded that the amount of "structural reliefs" of VAT in Ukraine is 4.5 times higher than the amount of tax expenditures, which, if necessary, can be considered as a reserve for increasing tax revenues to the state budget of Ukraine. The shortcomings of the systematic accounting of VAT reliefs in the Directories of tax reliefs have been identified and proposals aimed at improving the correctness and completeness of their accounting have been developed.

Keywords: benchmark tax system; tax expenditures, "structural reliefs", VAT reliefs, tax reliefs accounting, Directories of tax reliefs

The term "tax expenditures" is used to denote policy instruments, which are alternative to budget expenditures, but similar to them in terms of economic and budgetary consequences, and used to achieve the same goals of public policy namely, supporting certain economic activities and groups. In other words, the term "tax expenditures" describes the use of tax instruments, such as tax exemptions, credits, reduced rates, etc. - to attain policy objectives that deviate from the main (fiscal) function of the tax system, at the expense of lower tax revenues [1].

Since its emergence in the 60s of the twentieth century. and to this day the concept of tax expenditures, having gained many supporters and critics in financial science, is nevertheless introduced into the budgetary practice of many countries. Its implementation results in the preparation and publication of tax expenditure reports and even the creation of a corresponding Global Database². According to the latter, out of 46 G20 and OECD countries, only two countries (China and Saudi Arabia) do not publish any official information on tax expenditures, and among EU member states, three countries (Croatia, Cyprus and Malta) do not report their tax expenditures [2]. And despite much criticism about the quality, completeness, regularity and representativeness of individual

² The Global Tax Expenditures Database (GTED) is a joint initiative led by the Council on Economic Policies (CEP) and the German Development Institute (DIE). It provides the collection of official and publicly available data on tax expenditures around the world in an online database for the purpose of improving reporting, strengthening control and, ultimately, promoting the development of efficient and fair tax expenditure systems.

reports, [3] their preparation and publication are considered "international best practice" [1] in terms of fiscal transparency and soundness of government fiscal policy decisions.

Reports on tax expenditures - tax benefits that are losses of budget revenues - are prepared on a regular basis by the State Tax Service of Ukraine too. They are compiled in terms of both particular taxes and economic activities, as well as regions of Ukraine. The data of reports as to particular taxes are reflected in the Global Database of Tax Expenditures. In addition to the report on tax reliefs that are losses of budget revenues, the State Tax Service of Ukraine also prepares a report on other tax reliefs. Both reports are formed based on the list of tax reliefs, systematized in the relevant directories, namely, the Directory of tax reliefs that are losses of budget revenues, and the Directory of other tax reliefs.

Despite these important steps towards the introduction of the concept of tax expenditures in Ukraine's budget process, the question of quality of the reports on tax reliefs remains open, as it remains unknown on what methodological basis they are formed, how the reliefs are distributed between two directories, and based on which algorithm the budget's losses from the provision of tax reliefs are calculated. There are no publicly available normative legal documents that would regulate the methodological aspects of accounting for tax reliefs that are losses of budget revenues and calculating the amounts of such losses.

In December 2010, the Decree of the Cabinet of Ministers of Ukraine №1233 approved the Procedure for accounting for amounts of taxes and fees unpaid by the business entity to the budget in connection with the receipt of tax reliefs [4], which, as amended in 2018 and 2021, is still valid. However, the Decree gives no answer to any of the questions.

The above mentioned problems, as testified by the analysis of literature on tax expenditures, are a manifestation of an underlying systemic problem, that is, a violation of the order (sequence) of tax reporting, which should include the following stages: (1) determining the benchmark tax system (structure); (2) identifying tax expenditures by comparing the current system with a baseline (benchmark system) and preparing on this basis a list of tax reliefs that may qualify as tax expenditures; (3) creating and using a set of data, methods and models to assess the value of tax expenditures; and (4) generating a public report on tax expenditures to inform the stakeholders [5].

In view of the above, the purpose of this article is to determine the methodological approaches to the creation of directories and, accordingly, reports of the State Tax Service of Ukraine on tax reliefs (for example VAT benefits), which are losses of budget revenues, and on other tax reliefs and on this basis - approaches to the distribution of reliefs from this tax between the two directories.

Many publications of Western scholars have been devoted to the study of the benchmark of tax (tax system) and tax expenditures. Nevertheless, both components of the concept of tax expenditures remain the subject of scientific debate. The concept is criticized both for the difficulty of accurately defining the elements of the tax benchmark and for the separation of the latter from the normative base, and for the difficulty of distinguishing between structural elements of the tax and tax expenditures. The reasons for the emergence of the concept of tax expenditures, discussions of that time and the following decades, whose main object was the problem of choosing a standard for identifying tax expenditures between normative and benchmark tax structure, are presented in the works of L. Sugin [6], J. Fleming and R. Peroni [7], P. Palisi [8].

The substantiation of approaches to determining the elements of the tax benchmark and tax expenditures, as well as the criteria for classification of controversial provisions of tax legislation is addressed in the publications by R. Altshuler and R.D. Dietz [9], L. Burman and M. Phaup, [10], J. Craig and W. Allan [11], D.J. Kraan [12], B. Laport et al. [13], N. Hashimzade, C. Heady et. al. [14], L. Villela et. al. [15]. The list of the main tax expenditures in the context of separate taxes is presented in the works [1, 5], and the issues of their management, including the methods of measuring their value are reflected in the publications of M. Burton and M. Stewart [16], L. Kassim and M. Mansour [17]; OECD [18], L. Villela et al. [15].

In Ukraine, the first attempts to define tax reliefs as deviations from normative tax requirements, and the distinction between regulations and tax reliefs in Ukrainian tax law were made in 2005-2006 [19] and were further developed in a joint monograph by Ukrainian and Russian scholars on tax reliefs [20], as well as in a number of articles [21–23].

Defining the tax benchmark and tax expenditures

There is a consensus among scholars that the starting point for the analysis of tax expenditures is to define the standard (benchmark tax system or benchmark tax) against which they can be identified. However, views differed



on what could be considered as such a standard – the normative or benchmark tax system (structure). While the founder of the concept of tax expenditures S. Surrey developed a list of tax reliefs that could be classified as tax expenditures, considering them as a deviation from the "normal tax structure", i.e. based on the "modified version of the economic ideal", Reagan's Treasury abandoned the normative framework, recognizing as the standard the benchmark tax structure, which resembled the existing law [6].

In order to understand the advisability or inexpediency of such a refusal, one must first understand the definitions. Under the normative tax structure, scientists usually understand the optimal (ideal) tax structure given the goals of the government and constraints under which the government operates [14]. In fact, the elements of the normative tax structure are determined by the concept of a tax and by the fundamental principles of taxation. For example, such an element of the normative structure of PIT, as its normative framework, is determined by the most common concept of income – the Haig-Simons comprehensive income from all sources. It is this income that, with certain adjustments due to the need to solve problems in the process of tax administration (complexity of accounting and reliable estimation of certain income types, as well as high risks of their concealment from taxation), S. Surrey identified as a normal (normative) structure of income tax, and deviations from such a structure intended to favor a particular industry, activity or class of persons - as special preferences, often called tax benefits or tax subsidies which, regardless of their form, essentially represent government spending on priority activities or groups via the tax system, rather than via direct grants, loans or other forms of state aid [24].

As to the benchmark tax structure, it is characterized as one that, on the one hand, does not purport to be optimal [14], and on the other hand, is "a set of structural elements (norms) that provide such a tax structure that does not create any benefits for certain activities or groups of taxpayers" [21]. Close to this is the definition given by C. Heady and M. Mansour, according to which the benchmark tax system should be chosen so as to exclude tax provisions that provide support for certain groups of people or business types [5].

While the first characteristic indicates the key difference between the benchmark structure and the normative one, that is, its remoteness from the theoretical ideal, the second one emphasizes that this is a structure without special tax reliefs. However, the negative definition with an emphasis on what

should not be in the benchmark, cannot be sufficient. Therefore, more important for practical application are the positive definitions of the tax benchmark, which enumerates its main elements. For example, the OECD report (1998) establishes that the benchmark tax includes: the rate structure, accounting rules, deduction of compulsory payments, provisions to facilitate administration, and provisions on international fiscal obligations [25]. Other sources also mention such elements of the benchmark tax as the subjects of taxation [24], the benchmark unit and the period of taxation [1].

However, in our opinion, the most important elements for the identification of tax expenditures are such elements of the benchmark tax structure as the deduction of mandatory payments, administrative assistance provisions ("technical exceptions"), and provisions on international fiscal obligations. They are sometimes referred to as a general term such as "structural reliefs"³, which means that on the one hand, they may take the same form as special reliefs⁴, but on the other they are elements of the benchmark tax structure and, unlike special reliefs, they are not related to implementation of the government's economic, social or environmental policy. Instead, they can be aimed at ensuring the solvency of taxpayers, facilitating tax administration, avoiding double taxation, and so on. For example, exemption from VAT for the supply of goods and services granted to diplomatic missions are part of the benchmark structure, while reliefs of the educational services are a special benefit provided in the public interest. Zero taxation of export transactions is an element of the VAT benchmark, and its application to the taxation of domestic transactions belongs to special reliefs (tax expenditures).

The need to use as a standard not a normative but a benchmark tax system (structure) is explained by the scholars with differences in the views on the regulatory framework of taxation not only between different countries but also between analysts within one country, which results in inevitable differences in approaches to identifying tax expenditures [12]. However, there are no lesser differences in the views on the benchmark tax system (structure) [18], especially on the definition of those exemptions or deductions that are its

³ In particular, "structural reliefs" and tax reliefs that are tax expenditures are distinguished in the United Kingdom. [16].

⁴ We use the term "special reliefs" in the case of those tax reliefs that ensure the realization of taxes regulatory function and, in addition to tax expenditure, also include reliefs that do not lead to budget losses.



structural elements. In addition, the use as a reference of an alternative instead of the normative benchmark tax system, which is close to the legally established one, may result in the inclusion of some tax reliefs (such as reduced VAT rates or incentives for business) not in the budget of tax expenditures, but in the benchmark of the tax [5, 6].

In contrast to scholars who oppose the benchmark tax system to the normative one, B. Laporte et al. consider the normative approach as one of two approaches that can be used to define the benchmark tax system. According to this approach, the baseline is an ideal tax system based on the key principles of tax policy, that is neutrality, efficiency and fairness. However, in the absence of generally accepted standards for prioritizing the application of the above principles and ways of their implementation, the benchmark tax system is often defined using a positive approach based on current tax legislation [13].

The subject of the analysis by J. Craig and W. Allan is also the benchmark tax system. However, they distinguish three approaches to its definition: 1) conceptual approach, which tries to connect the benchmark tax to the "normative tax structure"; 2) reference law approach, which is based on the country's current tax legislation to define both the standard and deviations from it; 3) the approach that considers tax expenditures as an analogue (equivalent) of budget subsidies (analogous subsidy approach), i.e. recognizes tax expenditures only those provisions of tax law that are similar to direct subsidies [11].

In our opinion, the most productive approach is the one according to which the standard for defining tax expenditures should be the benchmark tax system, which is governed by the combination of conceptual (normative) and legal (positive) principles. In particular, knowledge of conceptual principles, including fundamental principles of withholding a certain tax, allows identifying the main elements of "structural reliefs", while the influence of the legal approach is manifested in different classifications of the same elements of benchmark or tax expenditures in different countries due to differences in tax policy. For example, the right that gives each company in the value chain the opportunity to deduct VAT incurred in the course of intermediate consumption is an element of benchmark that ensures VAT neutrality. Zero-rate taxation of export transactions of goods and services is the result of defining VAT as a tax on domestic consumption, whose collection, in accordance with the principles of international trade, requires avoiding double taxation of value added – both in the country where the latter is created and in the country where it is

consumed. At the same time, the reimbursement of input VAT to exporters is a condition for taxation not of all turnover, but of the actual value added, i.e. it follows from the tax's essence. On the other hand, VAT exemptions for certain activities in the public interest that do not belong to the benchmark tax requirements are classified in many countries as tax expenditures, while in EU member states they are classified as elements of the benchmark tax, because according to the Council Directive 2006/112/EC, they are considered compulsory exemptions in the harmonized VAT system.

Having clarified the main approaches to defining the benchmark tax system (tax), we will briefly describe the provisions (characteristics) that are most important for the identification of tax expenditures⁵. First of all, it should be noted that they can be analyzed in two aspects: in relation to tax reliefs and in relation to the tax's benchmark.

Regarding the first aspect, tax expenditures, according to K. McKenzie, are a subset of tax reliefs [26], in particular, they represent that their part, whose result is the loss of budget revenues. The other part of special tax reliefs are reliefs that do not cause such losses. Important features of tax expenditures as a subsystem of tax reliefs also include: 1) providing reliefs to certain taxpayers or their groups; 2) achieving certain goals of public policies - economic, social or environmental ones, which distinguishes them from "structural reliefs", whose purpose does not go beyond ensuring "own operational efficiency" of the tax system (implementation of basic tax principles, improving tax administration, etc.), and 3) their existence in such principal forms as exemptions, deductions, allowances, credits, preferential rates, deferral of tax liability, etc.

Analysis of tax expenditures in relation to the tax benchmark allows focusing on their definitions as deviations from such a structure, as alternatives to direct budget expenditures etc. All or some of these characteristics (features) of tax expenditures are reflected in their definitions, proposed by both scientists (Table) and international organizations or individual countries. At the same time, unlike the definitions used in the budgetary practice of individual countries, which reflect the specifics of their particular tax policies, the definitions proposed by scholars are comprehensive and trying to reflect all the main features of tax expenditures and therefore represent special interest.

⁵ For a more detailed analysis of tax expenditures see article [22].

Table

Definitions of tax expenditures by individual scientists

Surrey, S., McDaniel, P.R. [24]	<p>These special preferences, often called tax incentives or tax subsidies, are departures from the normal tax structure, designed to favor a particular industry, activity, or class of persons. Tax subsidies partake of many forms, such as permanent exclusions from income, deductions, deferrals of tax liabilities, credits against tax, or special rates.</p> <p>Whatever their form, these departures from the "normative" tax structure essentially represent government spending for the favored activities or groups through the tax system rather than through direct grants, loans, or other forms of government assistance.</p>
Burton, M., Stewart, M. [16]	<p>A tax expenditure is usually defined as the estimated revenue loss to a government that results from a tax concession or tax preference allowed to a particular class of taxpayer or activity.</p>
Caiumi, A. [27]	<p>Tax expenditures are defined as revenue decreases due to preferential tax provisions for example special exemptions, exclusions, allowances, deductions, credits, deferrals, reduced tax rates or other forms of tax offsets that shield certain taxpayers from exposure to prevailing tax rules. Such provisions are policy tools analogous to government outlays, hence the term "tax expenditures" (henceforth TE). TE are a common channel for financing public policies that may parallel direct expenditures in the support of a broad range of activities, from social welfare to environmental and industrial policy objectives.</p>
Hashimzade, N., Heady, C. et al. [14]	<p>A tax expenditure is a provision in the tax law, motivated by a social or economic policy, that reduces or defers tax liability of a taxable entity in order to help a particular group or to encourage a particular activity and can be replaced by a direct expenditure for this purpose. A tax expenditure is not an integral part of the tax structure but presents an exception or deviation from the structure, and is introduced to pursue a specified policy objective possibly for a limited period of time. A tax expenditure arises when the entitlement to the reduction in tax liability is conditional on the taxable entity possessing specified characteristics or choosing to undertake or forgo a specified action.</p>

Table (continued)

Kassim, L., Mansour, M. [17]	The amount of tax revenue foregone through the application of special tax provisions or regimes, relative to a benchmark tax system
Kraan, D.-J. [12]	Tax expenditure can be defined as a transfer of public resources that is achieved by reducing tax obligations with respect to a benchmark tax, rather than by a direct expenditure.
Villela, L. [15]	Governments frequently use tax systems to pursue certain political economic objectives, such as encouraging savings, stimulating employment, and protecting national industry. In such circumstances, the tax system fulfills a similar role to that of public expenditures, yet the state foregoes all or part of the amount that otherwise would be collected from certain taxpayers or activities. This renunciation is what is known as a tax expenditure. From a public policy point of view, tax expenditures are an alternative tool of state intervention, which pursue similar results to those that could be obtained via direct public spending.
Ivanov, Y., Mayburov, I., Nazarenko, A. [23]	In the most general sense, tax expenditures are lost revenues of the budget system due to the application of various deviations from the normative structure of taxes, which provide any benefits to certain activities or groups of taxpayers.
Sokolovska, A.M., Petrakov, Y.V. [22]	Tax expenditures are tax revenues lost by the budget as a result of deviations from the benchmark (normative) tax structure in order to achieve a certain goal of the government's socio-economic policy, which is an alternative to direct budget expenditures.

Source: compiled by author.

All this allows the following intermediate conclusions that can become a methodological basis for analyzing the structure of reports of the State Tax Service of Ukraine on tax reliefs:

- tax expenditures are a subsystem of special tax reliefs;
- in addition to tax expenditures special reliefs also include reliefs that do not lead to loss of budget revenues;
- tax expenditures are a deviation from the benchmark tax structure, one of whose components are the so-called "structural reliefs" - elements built into the benchmark tax structure that provide easing (reduction of tax in one form or another or exemption from its payment), available to all taxpayers or their individual groups, and not related to the implementation of certain state policies;



– as part of "structural reliefs" three types (groups) can be distinguished: 1) elements, whose inclusion in the benchmark tax structure is due to the concept of tax and the object of taxation and the fundamental principles of taxation; 2) the need to implement regional and international agreements; and 3) the needs of effective tax administration ("technical exceptions"⁶).

Accounting for tax expenditures and other tax reliefs on VAT in Ukraine

Based on these conclusions, one can establish the structure of Directories of tax reliefs and relevant reports of the State Tax Service of Ukraine. Thus, the Directory of tax reliefs that are losses of budget revenues and the relevant report should reflect tax expenditures, while the Directory the report on other tax reliefs – "structural reliefs" (elements of the benchmark tax structure), as well as part of special reliefs, which do not lead to loss of budget revenues.

The most important report in the context of budget analysis and improvement of the budget management system is the report on tax expenditures. However, in order to find ways to optimize the government support for certain economic activities and population groups, knowledge is needed about the total amount of ₴ reliefs provided to them, regardless of whether they lead to budget losses or not. The source of such information is the Report on other tax reliefs, which determines its place in the budget management system.

Two types of reports are prepared not only in Ukraine, but also, for example, in the United Kingdom. The latter's national budget reports an estimated loss of revenue from tax reliefs, which are tax expenditures and "structural reliefs", but information on each type of reliefs is separated so that the reader can understand that each type of tax relief is treated individually by the government.

Analysis of both reports shows that in Ukraine in recent years the amount of the other reliefs has been 7-9 times greater than that of reliefs leading to the loss of budget revenues. However, to understand what these figures mean, one should analyze the structure of these reports. We will analyze them in two aspects: in terms of which groups of benefits predominate in the system of other reliefs and in the reliefs that are losses of budget revenues, and how reasonable is, in our opinion, their classification.

⁶ Technical exceptions include transactions that should in principle be taxed, but for pragmatic reasons caused by the complexity of administering their taxation, are exempt from tax.

Let us consider in more detail the composition of other VAT reliefs⁷. According to our calculations, the bulk them (89.48%) are "structural reliefs". Of these, 89.08% are elements whose inclusion in the benchmark structure of the tax is due to the concept of value added tax as a consumption tax and the fundamental principles of taxation. The most important among them are the elements related to the zero-rate taxation of the following operations: export of goods outside the customs territory of Ukraine (in the customs regimes of export, re-export, duty-free trade, and customs-free zone); supply of goods by duty-free shops, supply of services for international transport, and supply of goods related to international transport - for refueling and provision of fuel of aircraft and ships, spacecraft, land military transport or other special contingent of the Armed Forces of Ukraine participating in peacekeeping operations abroad; provision of services for the maintenance of aircraft performing international flights, etc.

Another component of this group of "structural reliefs" is the conditional full exemption from taxation of transactions for the export of goods under the customs regime of temporary export; export to a customs warehouse; and export in the customs regime of processing. Export of goods using these regimes means that they are exported not for consumption outside Ukraine's customs territory, but for a) re-import until the end of an established period without any changes, except for standard wear and tear as a result of their use (customs regime of temporary export); b) storage under customs control (customs warehouse regime); and c) processing outside Ukraine's customs territory provided that these goods and products of their processing are returned to the customs territory under the customs regime of import (customs regime of processing). Exemption from taxation of goods during such export is not a special relief, but a normative requirement to collect VAT as a consumption tax (goods and services must be taxed at the place of consumption), i.e. can be qualified as a "structural relief".

Export of goods under the customs regime of re-export means that goods that were previously imported into Ukraine's customs territory with VAT, were not consumed in Ukraine, but were a) under customs control and not assigned to a customs regime; b) assigned to the customs regime of temporary importation and exported outside Ukraine's customs territory in the same condition in which they were imported, except for natural changes in their qualitative and/or quantitative characteristics under normal

⁷ The source of analysis is the Report of the State Tax Service of Ukraine on other tax reliefs for 2018.



conditions of transportation and storage; c) were assigned to the customs regime of processing in Ukraine's customs territory and exported outside it in the same condition in which they were imported, except for natural changes in their qualitative and/or quantitative characteristics under normal conditions of transportation and storage, or in the form of products of their processing; d) were assigned to the customs regime of customs warehouses and exported outside Ukraine's customs territory in the same condition in which they were imported into it, except for natural changes in their qualitative and/or quantitative characteristics under normal conditions of transportation and storage. Therefore, the VAT exemption for their re-export prevents double taxation and can be qualified as a "structural relief".

Another - a small - part of "structural reliefs", which only constitutes 0.4% of the total amount of other reliefs, is the exemption from taxation provided by international agreements. Yet another component of "structural reliefs", as already mentioned, should be considered "technical exceptions", in particular, exemptions from taxation of financial and insurance services, but they were not reflected in the reports of the State Tax Service. There are two reasons for this: firstly, their identification as not subject to VAT⁸, and secondly, the technical difficulty of defining the amount of reliefs for financial transactions⁹. In addition to the VAT exemption for financial and insurance services, R. de la Feria and R. Krever also include in "technical

⁸ According to the Procedure for accounting for the amount of taxes and fees not paid by an business entity to the budget in relation to receiving tax privileges approved in 2010, tax reliefs are determined by transactions for the supply of goods and/or services that are subject to taxation of value added tax and in accordance with the Tax Code of Ukraine and international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, exempt from taxation or taxed at a zero rate, as well as those to which special tax regimes in agriculture are applied (paragraph 8). It follows that the calculation of amounts of value added tax not entered into the state budget for transactions for the supply of goods and services that are not subject to VAT is not performed. And although paragraph 8 was excluded from the Procedure by the Resolution of the Cabinet of Ministers of Ukraine of 31.10.2018, No 891 the rule that follows from it continues to apply - for transactions for the supply of goods and services that are not the object of taxation, calculation of VAT amounts not paid into the state budget is not performed.

⁹ In the Rules of Accounting for Value Added Tax, approved in 2004, there was an attempt to determine the algorithm for calculating the amounts of VAT not paid into the state budget by banks and insurance companies. According to subparagraph 4.2.8 of the Rules, the calculation was to be made based on profits tax return for the relevant reporting tax period, as this category of taxpayers do not keep tax accounting for transactions for the sale of goods (works, services) excluded from the object of VAT [28]. Due to the conditional nature of such calculations, the proposed algorithm was removed from the Rules by changes made in accordance with the Order of the State Tax Administration of 01.12.2005, No 539/397 and in March 2011 the Rules of Value Added Tax became invalid due to the Order of the State Tax Service No 129/55.

exceptions" the exemption from taxation of certain real estate transactions (in particular, transactions for the supply of housing, except for their first supply) and gambling services [29]. In Ukraine, residential real estate reliefs are included in the Report on Tax reliefs, which are budget losses, i.e. are not considered a type of "structural reliefs", while gambling transactions are not subject to VAT and do not appear in any tax reliefs report.

Besides the "structural reliefs", other VAT reliefs also include reliefs that do not lead to a loss of budget revenues, amounting to 3.70% of total amount of other reliefs. Unlike structural VAT reliefs, whose composition is unlikely to give rise to any objections, the identification of reliefs that do not lead to a loss of budget revenue is more problematic and therefore requires a more detailed analysis. The latter can be done via dividing such operations into several groups.

The first group includes operations for the supply of goods and services, which are paid from the budget funds. Examples of such operations are the following:

- exemption from taxation of the supply of basic research services, R&D, if such services and/or works are performed by a person who directly receives payment for their value from the account of the body providing treasury services of budget funds (relief code 14060432);
- exemption from taxation of transactions for the supply of cars for the disabled to the authorized body of executive power with their payment from the central or local government budgets and funds of compulsory state insurance (relief code 14060407), etc.

Exemption from VAT of these transactions does not lead to loss of budget revenues, excluding for the counter-movement of budget funds (both from the budget to pay for goods and services, including VAT, and to the budget).

The second group includes supply operations performed by bodies, which are regulated by public law and which should not be considered taxable regarding activities or operations in which they participate as public authorities. An example of such transactions is the exemption from taxation of the supply of government's paid services to individuals or legal entities by executive authorities and local governments, as well as by individuals authorized by such bodies or legislation to provide these services, the compulsory character of whose receipt (provision) is established by law (relief code 14060427).



Despite the fact that in the TCU, unlike Council Directive 2006/112/EC, does not stipulate that bodies governed by public law should not be considered taxable regarding activities or operations in which they participate as public authorities, these transactions can essentially be classified as non-taxable supplies (transactions outside the scope of VAT). However, in order to qualify them, as well as to bring Chapter V of the Code closer to the requirements of Council Directive 2006/112/EC, it is necessary to introduce a relevant provision in the TCU, as we mentioned above [30, p. 284].

The third group could include reliefs from taxation of transactions for the free of charge supply of goods and services. Examples of such operations include operations with the following:

- free privatization of housing stock, including common areas in apartment buildings and adjacent territories, and private land plots, as well as the supply of services, whose receipt is established by law as a prerequisite for such privatization (relief code 14060421);
- gratuitous transfer to employees of state farms and of privatized agricultural enterprises and persons equated to them of shares of state property (stocks) (relief code 14060422), etc.

The reason for classifying the above transactions as those that do not lead to the loss of budget revenues, obviously, may be their gratuitous nature, although it would be more logical to classify gratuitous transactions as non-taxable (such that are not subject to taxation). This is how they are qualified in EU countries. However, the latter have legal grounds for this (definition of the object of VAT taxation in Council Directive 2006/112/EC as supply of goods and services for remuneration, which provides for the qualification of their free supply as non-taxable transactions; and when certain transactions for free transfer of goods and services are to be recognized as taxable (such recognition is important in the context of the counteraction of tax evasion) they are considered to be remunerative (see Articles 16, 18, 26 of the Directive), while in Ukraine they are not (due to the inclusion of free transfer transactions in the object of VAT taxation). In light of the above, the exemption of such transactions from VAT, in our opinion, should be interpreted as leading to budget losses (if the state considers the qualification of gratuitous transactions as an object of taxation as a norm, then their exemption should be considered as a loss) and therefore be included in the report on tax expenditures, and not in the report on other tax reliefs. Instead, we are witnessing a lack of logical

consistency in the qualification of similar reliefs in the Directories of tax reliefs and, accordingly, in the reports of the State Tax Service. If the exemptions, which we cite as examples of gratuitous transactions that do not lead to loss of budget revenues, are included in the Directory (and report) on other tax reliefs, then the exemption of transactions for free transfer of instruments, equipment, materials other than excisable, to research institutions and organizations and to higher educational institutions included in the State Register of Scientific Institutions Provided with State Support are part of the Directory and Report on tax reliefs, which are losses of budget revenues. The foregoing shows a lack of clear methodological approaches to the classification of tax reliefs and their distribution between directories.

And yet another example of gratuitous supply of goods and services whose exemption from taxation does not lead to loss of budget revenues are charitable assistance operations, in particular, free supply of goods/services to charitable organizations established and registered in accordance with the law (relief code 14060424).

As to the provision of such assistance by charitable organizations to recipients (entities) of charitable assistance, these transactions are not subject to VAT, because charitable organizations are not taxpayers. And not only in Ukraine. According to R. de la Feria and R. Krever, in traditional European VAT systems, charitable organizations are seen as out-of-tax suppliers who cannot register and claim input tax credits. However, this is not the case in all countries. "In some modern VAT jurisdictions, the activities of charities are viewed as economic activities in the broader sense, even if they are not for profit, and the bodies will be considered taxable persons, able to recover input tax on acquisitions and thus eliminate any embedded tax on their supplies of charitable goods or services. This is not the case in all modern VAT jurisdictions, however" [29].

In order to bring a legal basis for the adequate qualification of transactions of free supply of goods and services as non-subject to VAT, and at the same time a methodological basis for defining the latter (as transactions that are not subject to VAT - since their list, which is reflected in Article 196 of the TCU, largely lacks any logical explanation), it is necessary to define the object of VAT taxation in the TCU as defined in Council Directive 2006/112/EC, namely the supply of goods and services for remuneration.



The fourth group includes transactions that, instead of being taxed at a zero rate, are simply exempt from taxation. An example of such transactions is the temporary, until January 1, 2022, exemption from taxation of transactions for the exportation (under the customs regime of export) of waste and scrap of ferrous and nonferrous metals, as well as paper and cardboard for disposal (waste paper and wastes) of item 4707 according to UKT FEA; and the temporary, from September 1, 2018 to December 31, 2021, VAT exemption for operations on exportation of soybeans outside Ukraine's customs territory (under the customs regime of export) (trade item 1201 according to UKT FEA).

The fifth group includes exemption from taxation of transactions of supply (import) into Ukraine's customs territory of goods and services, which are used for the production of goods (services), whose sale is taxed at the standard rate. Such exemptions are provided by the Tax Code of Ukraine, but they are not reflected in the reports of the State Tax Service. In addition, this group includes the exemption of transactions for the supply in Ukraine's customs territory of goods and services, which are used for the production of goods (services), whose sale is taxed at the standard rate. These exemptions not only do not lead to a loss of budget revenues, but cause them to increase because producers who use tax-exempt means of production, lose the right to a tax credit. However, if goods imported into Ukraine's customs territory without payment of VAT for their use in certain types of production are not used for their intended purpose, their exemption from taxation is a definite loss of budget funds.

Analysis of the State Tax Service's report on other VAT reliefs shows that it also includes reliefs that, in our opinion, lead to a loss of budget revenues and should therefore be transferred to the report on tax expenditures. Their share in the total amount of other reliefs, by our calculations, is 6.83%. These are just some of the reliefs of this type.

1. The temporary, until January 1, 2023, exemption from value added tax of space entities covered by the Law of Ukraine "On Space Activities", for operations on supply into Ukraine's customs territory of R&D results carried out for needs of space activities (relief code 14060458).

This exemption can be identified as a special R&D-encouraging relief leading to a loss of budget revenues. Even if the results of tax-exempt R&D are directly used in space activities, depriving its agents of the right to tax credit and increasing payments to the budget, the growth of the latter, due to the long

production cycle in this industry, will occur in a few tax periods. Therefore, there will be budget losses until the end of manufacturing of the final product production.

It is characteristic that, while the relief for space entities is included in the report on other tax reliefs, a similar relief for the aircraft industry (relief code 14060530) is included in the report on tax reliefs that are budget losses, which indicates a lack of clear methodological approaches to the formulation of these concepts.

2. The temporary, until January 1, 2022, exemption from value added tax of transactions for the supply of waste and scrap of ferrous and nonferrous metals, as well as paper and cardboard for disposal (waste paper and wastes) of trade item 4707 according to UKT FEA (relief code 14060465).

If wastes and scrap of ferrous and non-ferrous metals, as well as paper and cardboard were intended for recycling, the exemption from taxation of their supply operations would not lead to a loss of budget revenues, depriving the recycling company of the right to tax credit. The same effect would occur if the supply of waste, scrap and paper were followed by their export. However, the exemption from taxation of their supply for recycling (which can be considered as final use) can be qualified as a special environmental relief, which leads to a loss of budget revenues.

3. Exemption from taxation of transactions on the supply of services for the lease (sublease) of land owned by the state or local community, if funds for such services are paid in full directly to the relevant accounts of the bodies that providing treasury services of budget funds (relief code 14060431).

Despite the fact that the qualification of this exemption as directly affecting budget revenues (by reducing the funds paid to the accounts of the bodies that provide treasury services of budget funds) is obvious, it is not included in the report on reliefs that are loss of income budget. This can be explained only by inertia, since this exemption in its previous version was included in the report on other tax reliefs. Its previous version was as follows: "Lease transactions for land plots owned by the state or local community are exempt from taxation, if the rent for such lease is fully transferred to the relevant budgets."

We focus on that formulation for the following reasons. First, in our opinion, it was inappropriate, because the object of VAT taxation here is not the transaction of paying rent for land plots, but the transaction of renting them, as



stated in the new version of this relief. Secondly, the payment of rent should have been treated as not subject to VAT, instead of exempt from VAT, and hence should have been reflected in another article of the TCU (namely, in Art. 196). Thirdly, such a transaction, which concerns not the land, but the whole property complex, (as stated in subparagraph 196.1.15 of Art. 196 of the TCU) and is presently considered as not subject to VAT. This is a transaction of "payment of rent or concession payment under contracts of lease or concession of the entire property complex of a state or municipal enterprise (its structural unit), if the lessors or concessionaires under the contracts are public authorities or local governments, and the payments are transferred to the State Budget of Ukraine or a local budget".

In our opinion, this subparagraph should be reworded to read: "Operations on transfer of an integral property complex of a state-owned or municipal enterprise (its structural subdivision) to lease or concession are exempt from taxation if the lessors or concessionaires under the relevant agreements are public authorities or local governments and payments are transferred to the State Budget of Ukraine or to a local budget". This exemption should be transferred to Art. 197 of the TCU and be reflected in the Report on tax reliefs that lead to loss of budget revenues.

4. The temporary, until January 1, 2025, zero-rate taxation of transactions on the sale of products (services) created by aircraft industry enterprises that fall under Art. 2 of the Law of Ukraine "On Development of the Aircraft Industry", at the expense of the State Budget of Ukraine (relief code 14060531).

Zero-rate taxation of transactions on the supply of goods (services) in the domestic market, as already mentioned, is a special tax relief. At the same time, the production of such goods at the expense of budget funds does not affect the qualification of their sales operations as such that lead or do not lead to budget losses. If the customer of the aircraft industry is the state, the budget losses from its taxation at zero rate will be equal to the amount of the input VAT. If the product is purchased by a private consumer, the budget losses will include both the amount of conditionally calculated tax on the sale of products and the amount of VAT to be reimbursed from the budget.

5. Exemption from taxation of the provision of construction and installation works for the construction of affordable housing and housing built at public expense (relief code 14060448).

This exemption does not lead to a loss of budget revenues insofar as construction and installation works are provided for the construction of housing at public expense, and leads to such losses insofar as construction and installation works are provided for the construction of affordable housing. The latter is due to the fact that affordable housing is built at the expense of private investors (hence in the case of its exemption the counter-movement of budget funds is not eliminated) and because the supply of affordable housing is also exempt from VAT. Such a double tax exemption reduces investor costs but raises the government's losses.

After analyzing the structure of the Report on other tax reliefs, let us consider the Report on VAT reliefs that lead to loss of budget revenues. Its analysis allows us to distinguish between reliefs that cause loss of budget revenues, and those not leading to such losses. Examples of these reliefs are as follows.

1. The temporary, until January 1, 2019, exemption from value added tax of transactions for the supply of machinery, equipment, facilities specified in Art. 7 of the Law of Ukraine "On Alternative Fuels", on the territory of Ukraine (relief code 14010457).

Exemption from taxation of capital goods used in the production of alternative fuels does not lead to a loss of budget revenues. Although this relief is no longer valid, it still appears in the reports of the State Tax Service until 2019 and for this reason requires an explanation of its impact on budget revenues.

2. The temporary, for the period of anti-terrorist operation and/or imposition of martial law in accordance with the law, exemption from value added tax of transactions for the supply of defense products in Ukraine's customs territory determined as such in accordance with paragraph 9 of Art. 1 of the Law of Ukraine "On State Defense Order "(relief code 14010514).

If defense products are supplied within a government defense order and are therefore paid for from the budget, its exemption from taxation does not lead to a loss of budget revenues.

3. Exemption from taxation of transactions on the first supply of goods specified in part eight of Art. 287 of the Customs Code of Ukraine in Ukraine's customs territory for use in the production of defense products defined by law, and if the customer is a state customer assigned by the Cabinet of Ministers of Ukraine (relief code 14010517).



Exemption from taxation of transactions on the first supply of goods (materials, components, units, equipment and components) used in the production of defense products does not lead to loss of budget revenues, because the manufacturer, buying such products without VAT, loses the right to tax credit.

4. The temporary, until January 1, 2022, exemption from value added tax of transactions on the supply of coal and/or products of its enrichment in Ukraine's customs territory (trade items 2701, 2702, 2703 00 00 00, 2704 00 according to UKT FEA) (relief code 14010521).

Insofar as coal is used in the production of other goods, such as electricity or heat, the exemption of its supply from VAT does not lead to a loss of budget revenues.

The share of transactions that are included in the Report on tax reliefs that are losses of budget revenues, but, in our opinion, do not lead to such losses, in 2018 amounted to 15.90% (UAH 3907.5 million) in the amount of reliefs that are losses of budget revenues, and in 2019 - 12.32% (UAH 3809.5 million). The lion's share of these amounts was the VAT exemption for the supply of coal and/or enrichment products (77.84 and 73.71%, respectively).

In general, the greatest losses from reliefs in 2019 were caused by:

- taxation at a reduced rate of transactions on the supply of medicines and medical devices - 26.06% of total loss;
- exemption from taxation of transactions on the provision of health services - 15.32%;
- exemption from taxation of transactions on the provision of educational services - 13.88%;
- exemption from taxation of operations on the supply of housing, except for their first supply - 9.26%;
- exemption from taxation of transactions on the supply of coal and/or enrichment products - 9.08%;
- exemption from taxation of transactions on the supply of periodicals of printed media and books, student notebooks, textbooks and manuals - 7.97%;
- exemption from taxation of transactions on the supply of services for the carriage of passengers by urban passenger transport, whose tariffs are regulated in the manner prescribed by law - 4.63%.

Another point to note is that a few reliefs that cause loss of budget revenues are not included in the Directory of tax reliefs that are losses of budget revenues for 2021, although they are reflected in the relevant reports of the State Tax Service, in particular for 2019. Among them are:

- taxation of value added tax at a zero rate for the period up to January 1, 2025 of the supply of goods (except excisable goods) and services directly manufactured by companies and organizations operated by public associations of persons with disabilities (relief code 14010462);
- taxation at the rate of 7% of operations on supply in Ukraine's customs territory of medicines authorized for production and use in Ukraine and entered in the State Register of Medicinal Products (relief code 14010508);
- taxation at the rate of 7% of transactions for the supply of medical devices in Ukraine's customs territory according to the list approved by the Cabinet of Ministers of Ukraine (relief code 14010509);
- taxation at the rate of 7% of transactions on the supply in Ukraine's customs territory of medicines, medical devices and/or medical equipment approved for the use in clinical trials, authorized by the central executive body, which determined the state policy in health care (relief code 14010510).

In the 2021 Directory of tax reliefs, which are losses of budget revenues, also did not reflect the reliefs related to taxation at a reduced rate (7%) of the following transactions:

- provision of services for showing (conducting) theatrical, opera, ballet, music, concert, choreographic, puppet, circus, sound, light and other performances, performances of professional art groups, artistic groups, actors and performers, movie premiers, and cultural and artistic events;
- provision of services for the display of original musical works, demonstration of exhibition projects, conducting excursions for groups and individual visitors to museums, zoos and nature reserves, and for visiting their territories and facilities by visitors;
- provision of services for the distribution, demonstration, public announcement and public showing of films adapted in accordance with the law in Ukrainian-language versions for the visually impaired and the hearing impaired;
- provision of temporary accommodation via hotels and similar facilities.

All these reliefs are introduced by Law No 962-IX of 04.11.2020 and are losses of budget revenues.



As for another relief - taxation at a reduced rate of 14% of transactions on supply in Ukraine's customs territory and import into Ukraine's customs territory of agricultural products classified under codes 1001, 1003, 1005, 1201, 1205, 120600 according to UKT FEA, their taxation for the reduced rate does not lead to a loss of budget revenues, because such products are used either in agricultural production or in the processing industry, reducing the amount of tax credit and increasing payments to the budget for entities that use them as raw materials. Therefore, the relevant relief should be included in the Directory of other tax reliefs.

Conclusions

I. In the context of the methodology for distribution of tax reliefs into those that are losses of budget revenues and other tax reliefs, and the classification of the latter.

While the Directory of tax reliefs, which are losses of budget revenues, should include only tax expenditures, which is the basis for changing its name to the Directory of tax expenditures (in order to introduce common terminology), then in the structure of the Directory (and STS report) of other tax reliefs are two components – "structural reliefs" and special reliefs that do not lead to loss of budget revenues.

The main components of "structural VAT reliefs" in Ukraine, reflected in the Directory (and report) of other tax reliefs, are: zero-rate taxation of transactions on the supply of goods and services outside Ukraine's customs territory and exemptions from taxation under Ukraine's international agreements with governments of other countries or international organizations. The third group of "structural reliefs", which includes to "technical" exception, the most significant of which are exemptions from VAT of financial and insurance transactions, is not included in the Report on other tax reliefs (which indicates the amounts of budget losses) because their consequences for the budget at this stage cannot be accurately measured. However, this group should be included in the Directory of other tax reliefs, which lists them.

In order to facilitate the identification of tax reliefs that do not lead to loss of budget revenues, they are divided into the following groups of reliefs, which are provided in the form of VAT exemption of specific transactions: 1) supply of goods and services paid for from the budget; 2) supplies made by bodies, which are governed by public law and which should not be considered taxable persons within the activities or operations in which they participate as public

authorities; 3) supply of goods and services free of charge; 4) supply (import) of goods and services into Ukraine's customs territory to be used in the generation of goods (services), whose sales are taxed at the standard rate, as well as transactions on the supply of goods and services in Ukraine's customs territory to be used for the production of goods and services), whose sales are taxed at the standard rate; and 5) a specific group for Ukraine - transactions that should have been taxed at a zero rate, but are exempt from taxation.

II. In the context of the prospects for reviewing VAT reliefs.

In Ukraine, among the VAT reliefs presented in the directories of tax reliefs, as well as in the relevant reports of the State Tax Service, the largest is the amount of "structural reliefs", which are elements of the benchmark tax structure and are not subject to revision. In 2018, their amount was UAH 109,910.98 million and was 4.48 times higher than the amount of tax expenditures (UAH 24,567.70 million). The latter can become a reserve for increasing tax revenues to Ukraine's state budget. And it is among them that we should look for exemptions, which could be refused either because of their low effectiveness and efficiency, or because of non-compliance with the requirements of Council Directive 2006/112/EC.

III. In the context of correctness and completeness of systematic accounting of VAT reliefs.

1. Despite the lack of normative documents that would define methodological approaches to the distribution of tax reliefs into those that are loss of budget revenues and other tax reliefs, in general, their actual distribution is rather correct, although not without some shortcomings. Among them are the following:

- inclusion in the list of tax expenditures of reliefs that do not lead to loss of budget revenues (in 2018 - 15.90% of total tax expenditures), and in the list of other tax reliefs - benefits that cause budget losses (6.83% in total amount of other reliefs));
- inconsistency in the qualification of similar (of same type) tax reliefs - their inclusion in different reports;
- incomplete reports on tax reliefs: lack of information on PIT and VAT reliefs on goods imported into Ukraine's customs territory;
- incomplete system of accounting for tax reliefs in directories. In particular, they do not reflect a number of tax reliefs associated with the application of a reduced VAT rate.



2. In order to improve the accounting for tax reliefs and reports of the State Tax Service on tax reliefs that are losses of budget revenues, and those of other tax reliefs it is necessary:

- make changes to the current directories of tax reliefs, ensuring complete accounting of tax reliefs as introduced by the Tax Code of Ukraine;
- establish an Instruction on the distribution of tax reliefs between the Directory of tax reliefs that are losses of budget revenues, and the Directory of other tax reliefs;
- develop a Methodology for calculating the loss of revenues of the State Budget of Ukraine and local budgets from tax reliefs;
- define the elements of the benchmark and tax expenditures of personal income tax, and include reliefs from this tax in the directories of tax reliefs;
- to ensure systematic accounting of VAT reliefs for goods imported into customs territory, and their reflection in the directories of tax reliefs.

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Received 14.12.21

Reviewed 27.01.22.

Signed for print 03.08.22.

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БАЗОВА СТРУКТУРА І ПОДАТКОВІ ВИТРАТИ З ПДВ В УКРАЇНІ: МЕТОДОЛОГІЧНИЙ І ПРАГМАТИЧНИЙ АСПЕКТИ

Попри те, що Державна податкова служба (ДПС) України готує звіти про податкові витрати – податкові пільги, що є втратою доходів бюджету, і це свідчить про певні кроки на шляху впровадження концепції податкових витрат у бюджетний процес, питання щодо якості цих звітів залишається відкритим – через невизначеність принципів розподілу податкових пільг на такі, що є втратами доходів бюджету, та інші податкові пільги, а також алгоритму розрахунку витрат бюджету від надання податкових пільг. Тому метою статті є визначення методологічних підходів до формування довідників і, відповідно, звітів ДПС України про податкові пільги (на прикладі пільг з ПДВ), що є втратами доходів бюджету, і про інші податкові пільги та обґрунтування напрямів підвищення якості таких звітів.

На основі аналізу концепції базової податкової системи (податку) і податкових витрат та підходів до визначення їх основних елементів у статті сформульовано вимоги до структури довідників податкових пільг та звітів про податкові пільги,

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зокрема, встановлено, що якщо Довідник податкових пільг, які є витратами доходів бюджету, має включати лише податкові витрати, то у структурі Довідника інших податкових пільг можна виокремити дві складові – "структурні пільги", які є елементами базової структури податкової системи, і спеціальні пільги, які не призводять до витрат бюджетних надходжень. З метою полегшення ідентифікації та аналізу визначено основні складові структурних пільг з ПДВ в Україні, а також види (групи) пільг, які не призводять до бюджетних витрат, розглянуто випадки необґрунтованої класифікації податкових пільг у довідниках ДПС та обґрунтовано пропозиції до зміни їх класифікації. На основі проведених розрахунків виявлено, які групи пільг переважають у системі інших пільг, а також пільг, які є витратами доходів бюджету.

За наслідками дослідження зроблено висновок, що сума структурних пільг з ПДВ в Україні у 4,5 раза перевищує суму податкових витрат, які, за потреби, можуть розглядатись як резерв збільшення надходжень податку до державного бюджету України. Визначено недоліки системного обліку пільг з ПДВ у довідниках податкових пільг та розроблено пропозиції, спрямовані на підвищення коректності та повноти їх обліку.

Ключові слова: базова структура податкової системи; податкові витрати, структурні пільги, пільги з ПДВ, облік податкових пільг, довідники податкових пільг