The system of appeals and remedies against tax acts: German experience and lessons for Ukraine

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Structure

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1. Introduction / basic principles

- Mandatory out of court review of tax acts;
- Aimed at discharge of work at the courts;
- Comprehensive review of any tax act;
- Specialized courts for tax matters;
- Special court procedure for tax disputes.

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2. Objection against tax acts

- Out of court objection in principle: always
- **Exceptions:**
  - decision on objection and
  - acts of highest tax authorities of the State and the Federal Lands;
- **Precondition:** asserting that the act leads to a certain disadvantage (“Beschwer”) to the individual / company;
- **Form:** in writing or for record to the authority which issued the tax act;
- **Time:**
  - Generally within 1 month after the tax act was disclosed to the addressee;
  - Exception: 1 year, if the tax act was disclosed without proper instruction on remedies.

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2. Objection against tax acts (cont.)

- **Content:**
  - Determination of the tax act,
  - Extent to which the tax act shall be challenged,
  - Facts and circumstances, if necessary;
- **Note:** it is sufficient if it becomes clear what the matter is about – no strict or formal barriers;
- Objection does not preclude the execution of the tax act, but stay of execution can be applied for.

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2. Objection against tax acts (cont.)

- The tax authority may immediately follow the objection and issue a new tax act;
- Tax authority may leave the tax act unchanged or change only partially;
- **Note:** *reformatio in peius* (“Verböserung”) is possible, but only after the tax authority gave respective information to the objector. In this case the objector may withdraw the objection and avoid the *reformatio in peius*.

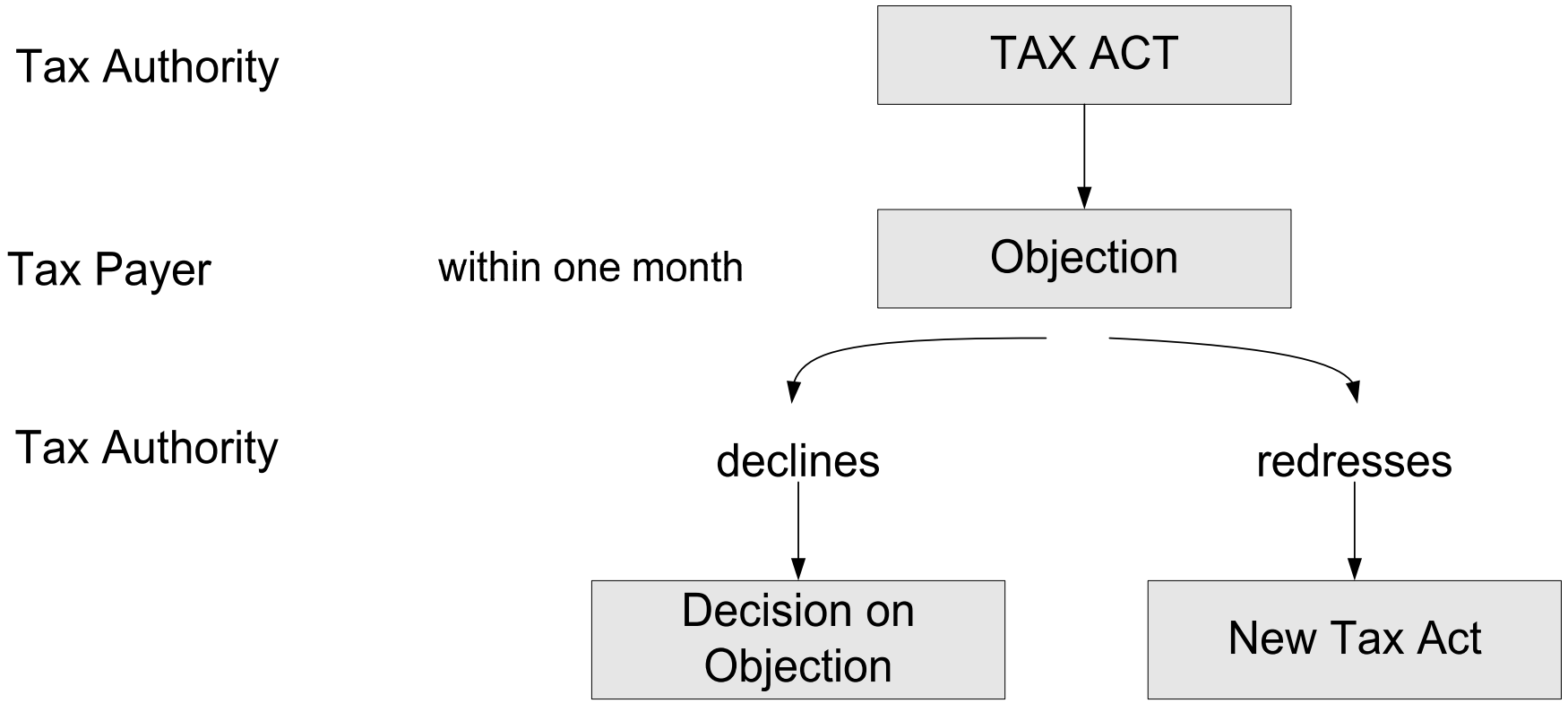
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3. Court action against tax acts

- In general: Possible only after objection;
- Only in so far as the objection was not successful;
- Time: within 1 month after disclosure of the decision of the tax authority regarding the objection;
- Filing either with the court or with the issuing tax authority;
- Mandatory content: claimant, defendant (issuing tax authority), claim, tax act and decision on objection.

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3. Court action against tax acts (cont.)



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3. Court action against tax acts (cont.)

- Again: Objection does not preclude the execution of the tax act, but stay of execution can be applied for;
- The court is obliged to inquire the whole matter itself;
- Claimant and plaintiff have to cooperate and help;
- Usually there will be a court hearing, but in simple matters or upon consent of the parties the court can decide without hearing;
- Hearing by video conference is possible.

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3. Court action against tax acts (cont.)

- If the tax act was unlawful and if the tax act was detrimental to the rights and interests of the claimant the court will abolish the tax act;
- If the tax act determined a certain amount of money the court can determine the amount instead of the authority. If further clarification is necessary the court will oblige the authority to issue a new tax act taking into account the court's ruling.

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3. Court action against tax acts (cont.)

Tax Authority		Dicision on Objection
Tax Payer	within one month	Court action
The court		Court decision
The parties	within one month	Appeal
The Appeal Court		Appeal Court Decision

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4. Appeal against court decisions

- Both parties are entitled to appeal the court's decision – in case the court or the appeal court allowed the appeal;
- **The appeal shall be allowed if:**
  - The matter is of general importance (subject to the appeal court's judgment);
  - The matter has never been subject to an appeal court's decision;
  - For the sake of unification of jurisprudence;
  - The decision might be influenced by a procedural mistake.
- **Time:**
  - Notice on appeal within 1 Month after the disclosure of the lower court's decision;
  - Reasoning within 2 Months after the disclosure of the lower court's decision.

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5. Special case: Action for a declaratory judgment (Feststellungsklage)

- Usually subject to tax disputes are tax acts imposing certain payments upon the tax payer;
- In certain cases there is no obligation to pay but the tax act determines certain parameters, criteria, allowing for example the (later) measurements of certain taxes;
- In these cases it would not be expedient to wait for the final tax act or to wait until the determination becomes relevant;
- In these cases the taxpayer may apply for a declaratory judgment.

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6. Recommendations for Ukraine

- Broaden the scope of possible objections and court challenges, in order to allow legal remedies against all state tax authorities' decisions detrimental to the tax payer (in particular challenge of „akty", not only "rishenya");
- Stream line the out of court and court challenges:
  - First review by the tax authority, possibly with review by superior authority in cases where the tax authority want to upheld its decision,
  - only subsequently review by a court;
- Grant reasonable time to decide whether to challenge a decision or not – 10 days is not enough.

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6. Recommendations for Ukraine (cont.)

- Have specialized courts / judges for tax matters;
- From a practical standpoint, disregarding any German experience:
  - tax authorities and courts basic principle shall be legality and not maximizing of state revenues;
  - tax provisions shall be consistent and non-contradicting;
- Limitation of recurrent hearings at the first instance (no ping pong);
- Per our data:
  - App. 83% cases of out of the court objections in Ukraine were not in favor to the taxpayer (2011);
  - App. 55-70% of out of the court objections in Germany were no in favor to the taxpayer (2010).

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