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## **Comparative Analysis of the Model of Resolution of the Tax Dispute in the System of the Ministry of Finance of Georgia**

*Significant issue of administrative law, such as administrative mechanism of consideration of tax dispute, is considered in the present article. The mentioned mechanism in Georgia includes consideration of dispute by LEPL Revenue Service and Dispute Resolution Board of the Ministry of Finance.*

*The essence of consideration of tax dispute in the system of the Ministry of Finance, the peculiarities of the relevant administrative proceedings and foreign practice of tax dispute resolution, on the examples of the United States of America and German Federation, are discussed in the article.*

*Finally, specific method of perfection of the procedure of administrative consideration of tax disputes and prevention of tax disputes is formulated.*

**Key words:** *tax dispute, tax law, administrative law, prevention of tax dispute.*

### **1. Introduction**

Resolution of tax disputes are characterized by many peculiarities, conditioned by the complexity of tax law. Tax law includes legal issues, as well as the issues of various branches of science. "In spite of special actuality, tax law is the phenomenon in the modern financial-legal science, which is studied at less extent".<sup>1</sup> Following the complexity and diversity of the mentioned sphere, resolution of tax disputes is also outstanding for significant specificity. The main subject of discussion of the present article is the problems of resolution of tax dispute.

The essence of non-judicial mechanism of resolution of tax dispute lies in the fact that the whole procedure of dispute resolution proceeds only in tax authorities. The subject of discussion of the mentioned article is the peculiarities of consideration of the tax dispute in the system of the Ministry of Finance. The issue is quite actual, as many tax disputes emerge every day; nevertheless, the mentioned issues are not properly studied.

The provisions of the Tax Code of Georgia (hereinafter – TCG) are reviewed in the article; foreign legislative acts and scientific papers are analysed. The method of comparative analysis are used in the paper.

The essence of the institution of resolution of tax dispute in the system of the Ministry of Finance, the peculiarities of the relevant administrative proceedings are analysed in the article; foreign practice on the example of the United States and Germany are reviewed. Hopefully, the

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<sup>1</sup> Rogava Z., Tax System and Tax Law, Tbilisi, 2002, 43 (in Georgian).

conclusions, made as a result of consideration of the above mentioned issues, will contribute to the resolution of problems of tax disputes.

## **2. General Review of the Essence of the Institution of Resolution of Tax Dispute in the System of the Ministry of Finance of Georgia**

Tax disputes are characterized by the peculiarities, conditioned by its inter-disciplinary nature and special sphere of regulation.<sup>2</sup>

Tax dispute differs from other types of disputes in several aspects. Common civil dispute proceeds on the basis of some illegal action of any of the parties, and the basis of tax dispute is often mistaken declaration.<sup>3</sup>

In Tax law we can point out non-judicial and judicial methods of protection of the tax payer's right.<sup>4</sup> Resolution of tax dispute in the system of the Ministry of Finance is regulated by TCG, Section XLI of which is oriented towards the regulation of tax dispute within the system of the Ministry of Finance.<sup>5</sup>

Resolution of tax disputes through administrative procedures is characterized by relatively simple procedures, allowing the plaintiff to protect the right independently, without qualified legal service.<sup>6</sup> Administrative appeal, even in the case of negative outcome for the person, enables him/her to better understand the views of the tax authority and better prepare for protection of his/her position for the court hearing.<sup>7</sup> Nevertheless, administrative mechanism of resolution of dispute is deemed in legal literature as not very effective. According to international experience, consideration of the claims of tax payers in higher tax authorities very seldom ends in favor of tax payer.<sup>8</sup> Such situation is explained by strengthening of the position of its lower hierarchic circle by higher administrative authority.<sup>9</sup>

Tax system of Georgia provides for several forms of tax dispute proceedings, but court is considered to be the most effective and efficient mechanism of resolution of dispute between the tax payer and the state.<sup>10</sup>

According to the TCG, "the authorities, resolving tax dispute in the system of the Ministry of Finance of Georgia, are the Revenue Service and the Board for Resolution of Disputes under the Ministry of Finance of Georgia, and the Dispute Resolution Board is the authority under the Minis-

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<sup>2</sup> *Tsiklauri I.*, The Peculiarities of Georgian Model of Resolution of Tax Disputes and the Need of its Reformation, Magazine *Sarchevi*, №1-2 (3-4), 2012, 77 (in Georgian).

<sup>3</sup> *Smith W.K., Stalans J.L.*, Negotiating Strategies for Tax Disputes: Preferences of Taxpayers and Auditors, *Law & Social Inquiry*, Vol. 19, №2, 1994, 343.

<sup>4</sup> *Rogava Z.*, Taxes, Tax System and Tax Law, Tbilisi, 2002, 67 (in Georgian).

<sup>5</sup> *Tsiklauri I.*, The Peculiarities of Georgian Model of Resolution of Tax Disputes and the Need of its Reformation, magazine "Sarchevi", №1-2 (3-4), 2012, 78 (in Georgian).

<sup>6</sup> *Nadaraia L., Rogava Z., Bolkvadze B.*, Comments to the Tax Code of Georgia, Vol. 2, Tbilisi, 2012, 668 (in Georgian).

<sup>7</sup> *Ibid*, 669.

<sup>8</sup> See *Rogava Z.*, Taxes, Tax System and Tax Law, Tbilisi, 2002, 269 (in Georgian).

<sup>9</sup> *Ibid*, 270.

<sup>10</sup> *Gabisonia I.*, The Mechanisms of Protection of the Tax Payer's Rights, Tbilisi, 2013, 109 (in Georgian).

try of Finance, resolving tax disputes<sup>11</sup>. According to TCG, tax dispute resolution in the system of the Ministry of Finance is a two-stage process and begins with the submission of claim in the Revenue Service.<sup>12</sup> Thus, appealing of the acts of the lowest bodies of the tax authorities – regional centers (tax inspection) and other bodies is first performed in the Revenue service, and then – in the Dispute Resolution Board under the Ministry of Finance or in the court, together with the decision of the mentioned body.

### **3. Administrative Proceedings, Related to the Resolution of Tax Dispute in the System of the Ministry of Finance of Georgia**

#### **3.1. Initiation of Tax Dispute**

By the moment of commencement of tax dispute the situation of the parties to the dispute is very special. The tax payer and the tax authority are in unequal situation from the very beginning. Regardless of who refuses to fulfill the requirement, it is the tax payers who have to initiate the dispute. Consequently, the payer will always have to pay the fee when lodging the suit with the court.<sup>13</sup>

Initiation of tax dispute doesn't mean the action, directed towards protection of person's right using judicial or non-judicial mechanisms. General rulings are established by the TCG, which are related to the appealing of the decision of the tax authority. The Tax Code establishes, that the decision, made by the tax authority in regard to a person on the basis of this Code, may be appealed in dispute resolution body.<sup>14</sup>

TCG lists the type of decisions, eligible for appealing.<sup>15</sup> 30-day timeline from the date of handing in the decisions is established to appeal such decisions.<sup>16</sup> The 30-day period is relatively new provision and it was specified in this form following the modification, introduced in TCG On December 20, 2011. According to earlier situation, TCG provided for 20-day period to appeal such decisions.

It seems as if the specified dispute subjects of tax dispute are not really comprehensive and do not completely reflect all bases of tax dispute. Nothing is said in the given article about illicit actions of tax authority and appealing the damage, caused by them.

In regard to initiation of tax dispute, more or less loyal position of legislator shall be mentioned which allows the person, in exceptional cases, to protect the right after expiration of the established period. The law rules that initiation of dispute after expiration of the 30-day period is admissible on the basis of newly discovered or newly revealed circumstances or evidences.<sup>17</sup>

More or less, it is innovation that according to the existing legislation, the claim is submitted to the resolution authority electronically. The information, submitted by the plaintiff to the resolution

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<sup>11</sup> Articles 54, 297 ( I) and 297 (II), Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>12</sup> Ibid, Article 297 (III).

<sup>13</sup> *Khmaladze V., Shavishvili I., Khatiashvili D., Migriauli D.*, Comments to the Tax Code of Georgia, Tbilisi, 2006, 220 (in Georgian).

<sup>14</sup> Articles 54 and 299 (I) of the TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>15</sup> Ibid, Article 299.

<sup>16</sup> Ibid, Article 299 (IV).

<sup>17</sup> Articles 54 and 299 VI of the TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

body has the same power, as that submitted in written form.<sup>18</sup> Such procedure will speed up and simplify the use of claim, as the method of protection of right.

### **3.2. Subject for Tax Dispute Resolution**

#### **3.2.1. Resolution of Tax Dispute by the Revenue Service**

It is established by the legislation, that the bodies for resolution of tax disputes in the system of the Ministry of Finance of Georgia are the Revenue Service and the Dispute Resolution Board under the Ministry of Finance (hereinafter – bodies for dispute resolution).<sup>19</sup>

According to TCG, tax payer can protect his/her rights, primarily, in the Revenue Service.<sup>20</sup> Section XIV of TCG establishes the procedure of resolution of tax dispute in the system of the Ministry of Finance.<sup>21</sup>

The TCG rules, that the plaintiff, at any stage of tax dispute in the system of the Ministry of Finance of Georgia, has the right to apply to the court.<sup>22</sup> The procedure of court proceedings related to the tax dispute is determined by administrative procedural legislation of Georgia.<sup>23</sup> Consequently, TCG admits the possibility for a person to protect his/her rights without using non-judicial mechanism as well. Nevertheless, according to Administrative Procedural Code of Georgia (hereinafter – APCG), it is ruled that the court, with the exception of the case, specified by the law, will not accept a suit against administrative body, if the plaintiff hasn't used the opportunity of single-time submission of administrative claim in accordance with the procedure established by General Administrative Code of Georgia (hereinafter – GACG) rule.<sup>24</sup> Following the above mentioned, the suit of the tax payer will be admissible in the court only if he/she has used the opportunity of single-time submission of the claim. For the person to be able to protect his/her right in the court, it is necessary, to use the opportunity of submission of the claim minimum to the Revenue Service.

According to TCG, the bodies for dispute resolution have regulations, approved by the Government of Georgia which established the procedure of claim consideration and relations with plaintiffs.<sup>25</sup>

The procedure of claim consideration and relations with plaintiffs by the bodies for dispute resolution is determined by the Regulations, approved by the Decree # 473 dated December 14, 2011 of the Government of Georgia. The Regulation of the bodies for dispute resolution is the guiding document of the bodies for tax dispute resolution in the system of the Ministry of Finance of Georgia, which specifies the procedure of claim consideration and relations with plaintiffs, as well as legal bases, functions and operational procedures of the bodies for dispute resolution.<sup>26</sup>

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<sup>18</sup> Ibid, Article, 299 ( IX).

<sup>19</sup> Ibid, Article, 297 ( I).

<sup>20</sup> Ibid, Article, 297 ( III).

<sup>21</sup> Ibid, Article, 296 (II).

<sup>22</sup> Article, 296 (III) of the TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>23</sup> Article 296- IV of the TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>24</sup> Article 2 ( V), of the TCG, Georgian Legislative Herald, 06. 08. 1999, 39 (46) (in Georgian).

<sup>25</sup> Articles, 54 and 297 ( V) of the TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>26</sup> *Nadaraia Z., Rukhadze K., Bolkvadze B.*, Comments to the Tax Code of Georgia, Vol. 2, Tbilisi, 2012, 670-671 (in Georgian).

The Revenue Service, as the body for dispute resolution, consists of its managers, deliberative body and office; the composition of the deliberative body shall be determined by the Head of the Revenue Service.<sup>27</sup>

Procedural and technical issued for dispute resolution are mostly regulated by the Regulations, approved by the Decree № 473 dated December 14, 2011 of the Government of Georgia. The same Regulations define the tax claim form.<sup>28</sup>

### **3.2.2. Resolution of tax Dispute by the Dispute Resolution Board under the Ministry of Finance of Georgia**

The second stage of tax dispute resolution is consideration of the disputed in the Dispute Resolution Board under the Ministry of Finance. The composition of the Dispute Resolution Board is defined by the Government of Georgia<sup>29</sup>

The Dispute Resolution Board is the body for dispute resolution under the Ministry of Finance of Georgia.<sup>30</sup> It consists of 13 members. Public servant, as well as private individual can be assigned as the member of the Board. Appointment of public servant as the member of the Dispute Resolution Board is possible on the basis of nomination by the director of the relevant authority. A person, who is not a public servant, will be appointed as the member of the Board on the basis of personal application and decision of the Government of Georgia. The Dispute Resolution Board is managed by the Chairman. A member of the Dispute Resolution Board has the right to perform other paid activity, if it doesn't contradict Georgian legislation.<sup>31</sup>

The Dispute Resolution Board has the office, which ensures preparation of the claims, submitted to the Board, for consideration, provision of information on proceedings to the plaintiffs and formalization of decisions, made by the Board.<sup>32</sup>

Aggravation of the plaintiff's tax liabilities as a result of tax dispute in the system of the Ministry of Finance of Georgia is inadmissible, with the exception of the case of examination, conducted within this dispute with the payer's consent.<sup>33</sup>

Dispute Resolution Service is specially created in the system of the Ministry of Finance, one of the main tasks and functions of which is consideration claims and all materials, submitted in relation to these claims by the tax payer/ tax agent, preparation of the relevant information for submission to the Dispute Resolution Board under the Ministry of Finance of Georgia.<sup>34</sup>

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<sup>27</sup> Ibid, 671.

<sup>28</sup> See The Regulations of the Bodies for Dispute Resolution Approved by the Decree № 473 dated December 14, 2011 of the Government of Georgia, 16.12.2011 (in Georgian).

<sup>29</sup> Articles 54 and 297 (IV) of TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>30</sup> Ibid, Article 297 (II).

<sup>31</sup> Nadaraia L., Rogava Z., Rukhadze K., Bolkvadze B., Comments to the Tax Code of Georgia, Vol. 2, Tbilisi, 2012, 670-671 (in Georgian).

<sup>32</sup> Articles 54 and 297 (VI) of TCG, Georgian Legislative Herald, 12.10.2010 (in Georgian).

<sup>33</sup> Ibid, Article 298 (II).

<sup>34</sup> Decree № 341 dated December 17, 2013 of the Government of Georgia On Approval of the Regulations of the Ministry of Finance of Georgia, 19,12,2013, Article 20 (a) (in Georgian).

Many controversial opinions exist in regard to the second stage of administrative mechanism of tax dispute resolution, i.e. consideration of disputes in the Dispute Board of the Ministry of Finance of Georgia.

Statistical data in consideration of tax disputes were requested from the Ministry of Finance of Georgia on the basis of application. In response to the mentioned application, it was explained by the letter №21-03/36342 dated May 28, 2014 of the Legal Entity of Public Law (hereinafter – LEPL) – Revenue Service, that 9837 claims were submitted to the Dispute Division of the LEPL Revenue Service in 2013, out of them, 3072 were partially satisfied and 85 were completely satisfied. Consequently, the share of claims, partially satisfied by the Revenue Service makes 31.2%, and completely satisfied claims – 8.7%.

Besides, during 2013, 1875 applications were registered in Dispute Resolution Board. Out of these, the Board completed proceedings in regard to 877 claims. Out of these claims, 450 claims were either completely or partially satisfied.<sup>35</sup> I.e. the share of claims, satisfied by the Dispute Board makes 51.3% in 2013.

During 2014, 1940 claims were registered in the Dispute Resolution Board. The Board heard 3027 claims in 2014 (including the disputes, submitted in previous years). In 2014, the Dispute Resolution Board made decision on 2550 cases. By the decisions, the plaintiffs' requests were either completely or partially satisfied in 1062, 1052 were refused and in 436 cases the claim was left without consideration; i.e. the share of claims, satisfied by the Dispute Board in 2014 makes 42%.<sup>36</sup>

It becomes clear from the same letter #21-03/36342 dated May 28, 2014 of the LEPL Revenue Service, that 324 decisions of the Revenue Service and Ministry of Finance was appealed in 2013; out of those, 90 cases were completed in favor of the tax payer. Consequently, the court has resolved 27.2% of the processed disputes in favor of the tax payer.

Such statistics indicate to many circumstances. Primarily, it should be mentioned that the percentage share of the dispute satisfaction by the tax dispute resolution bodies is quite high. Such practice may show inefficient work of tax administration.

The two-stage procedure of consideration of tax dispute is unique and different from the procedures, established in Georgia and foreign countries for dispute resolution in other spheres. On the one hand, such method might be considered expedient, as it facilitates self-control of tax authority and relieves courts of loading. Such self-control is necessary today. Nevertheless, raising of efficiency of operation of the tax administration itself is appropriate, so that the decisions of tax authorities are not illegal in mass and the tax authority itself doesn't have to abolish them.

### **3.3. The Process of Claim Consideration by the Dispute Resolution Body**

#### **3.3.1. Terms of Consideration of Claim**

After the tax payer initiates dispute and the tax claim is received for processing, the authorized body directly considers it.

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<sup>35</sup> See Statistical Report of 2016 of the Dispute Resolution Board under the Ministry of Finance of Georgia, <<http://taxdisputes.gov.ge/images/file/2013%20Report.pdf>> (in Georgian).

<sup>36</sup> See Statistical Report of 2014 of the Dispute Resolution Board under the Ministry of Finance of Georgia, <[http://taxdisputes.gov.ge/images/file/statistika\\_2014.pdf](http://taxdisputes.gov.ge/images/file/statistika_2014.pdf)> (in Georgian).

The dispute resolution body considers the claim within 20 days.<sup>37</sup> It shall be mentioned, that the above term differs from that defined in GACG as well.

According to GACG, unless otherwise specified by the law or bylaw act, issues on its basis, the authorized body is obliged to consider administrative claim and make the relevant decision within one month.<sup>38</sup> It's strange that legislation establishes the 20-day period for such complex type of dispute; nevertheless, the burden of shortness of time represents load for the tax authority rather than for the tax payer, so for the purposes of proper administration of tax payment and claim consideration, it is not negative to consider the dispute within 20 days. It shall also be taken into account, that such burden shall not prevent objective consideration of dispute; besides, the dispute resolution body shall not be oriented only towards formal finalization of proceedings, but on the content of the case and its comprehensive examination.

### **3.3.2. The Scope of Consideration of Claim**

The dispute resolution body shall consider the claim within the scope of the plaintiff's request.<sup>39</sup>

TCG determines that the Dispute Resolution Board shall consider the claim the scope of the dispute, appealed in the Revenue Service.<sup>40</sup>

Similar ruling is envisaged by GACG, according to which, unless otherwise specified by the law or bylaw act, issues on its basis, the administrative body, considering administrative claim within the scope of the request, mentioned in it, and in the cases, provided by the law, may go beyond it.<sup>41</sup>

It is expedient, that tax authority is not limited by the requests, raised by the plaintiff and factual circumstance, but is oriented towards deep examination of the issue, the more so if it is obvious that the tax payer doesn't manage to effectively protect his/her right. In such case it is expedient for the administrative body to exceed the scope of request. Consequently, it is not expedient to increase the role of the administrative body only in exceptional cases towards comprehensive examination of the circumstances of the case.

### **3.4. The Decision of the Tax Dispute Resolution Body**

The Dispute Resolution body makes decision in regard to the tax payer's claim and by this decision, the dispute resolution body is authorized to: a) satisfy the claim; b) partially satisfy the claim; c) not satisfy the claim; d) leave the claim without consideration; e) make interim decision and suspend consideration of the claim; f) make decision by unifying the content, specified in subparagraphs "a" – "d" of this paragraph.<sup>42</sup>

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<sup>37</sup> Ibid, Article 302 (I).

<sup>38</sup> Article 183 (I) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

<sup>39</sup> Articles 54 and 302 (II) of the GACG, Georgian Legislative Herald, 12.10. 2010 (in Georgian).

<sup>40</sup> Article 302 ( III) of the GACG, Georgian Legislative Herald, 12.10. 2010 (in Georgian).

<sup>41</sup> Article 193 (I) of the GACG, Georgian Legislative Herald, 15. 07. 1999 (in Georgian).

<sup>42</sup> Article 304 (I) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

According to the tax legislation, in proportion to the nullified part of the decision of tax authorities, the acts, which served as the basis for the disputed decision, issued by the same authority, are nullified.<sup>43</sup> It shall be mentioned, that often the acts, which served as the basis for the decision of tax authority, don't regulate relations themselves, but such recording can be considered logical.

As resolution of tax dispute is performed in two stages, the decisions of each dispute resolution body have specific terms of coming into force and appealation. The decision of the dispute resolution body shall come into force on the 21<sup>st</sup> day of handing in, in the case if it is not appealed.<sup>44</sup>

The decision of dispute resolution body is also subject to appealation. The TCG specifies, that if the decision, made by the revenue service, is not favorable for the plaintiff, the plaintiff shall have the right to appeal it in the Dispute Resolution Board or court within 20 days from its handing in.<sup>45</sup> The same 20-day term is established for appealation of the decision of the Dispute Resolution Board in the court.<sup>46</sup> Besides, discontinuation of the tax dispute by the plaintiff during the specified period shall be regarded as recognition of the disputed tax indebtedness.<sup>47</sup> It is important to mention, that following from particular complexity and specificity of tax disputes, the 20-day period of appealation might not prove to be sufficient for the tax payer. As it is known to us, in general, one month period is established for appealation of the decision of administrative body in the court.<sup>48</sup>

It shall also be mentioned, that even the existing situation is better for the tax payer, as the possibility of appealation of the decision of the dispute resolution body within 20 days was established only by the Law of Georgia "On Introduction of Modifications in the Tax Code of Georgia", which was adopted on December 20, 2011. According to the Article 305 of the edition of the TCG, valid till that date, only 10-day period was determined for appealation of the decision of the Revenue Service in the court or in the Ministry of Finance of Georgia. The mentioned period was extended. Nevertheless, it is expedient to give the tax payer longer period for appealation of the decision of the dispute resolution body even in the court.

## **4. Foreign Practice of Tax Dispute Resolution**

### **4.1. German Model of Tax Dispute Resolution**

Georgian legislation, as well as the legislation of foreign countries envisages judicial, as well as non-judicial methods of resolution of tax disputes. In the practice of foreign countries the procedure of resolution of tax dispute in special court is considered the most reliable.

As it was already mentioned, the peculiarities of resolution of tax dispute are significantly related to the system of tax authorities of a specific country.

In Germany, the system of tax authorities is defined by the "Fiscal Code of Germany". According to the mentioned act, tax authorities imply Federal Administrative Tax Authorities and tax bod-

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<sup>43</sup> Article 304 (III) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

<sup>44</sup> Article 306 (I) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

<sup>45</sup> Article 305 (I) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

<sup>46</sup> Article 305 ( II) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

<sup>47</sup> Article 305 (V) of the GACG, Georgian Legislative Herald, 15.07.1999 (in Georgian).

<sup>48</sup> Article 22 of the GACG, Georgian Legislative Herald, 06.08.1999 39 (46) (in Georgian).



ies of lands.<sup>49</sup> Local tax bodies also operate in Germany.<sup>50</sup> In regard to the measures, implemented by these very bodies, the tax payer's relevant interest of protection of rights may arise.

German tax system is self-administrative. With exception of indirect taxes, most of taxes are administrable through special written "notification of assessment", which shall be submitted to the tax payer by the tax body.

After receipt of this document, the tax payer can draw up an administrative claim. The payer, primarily, protects his/her right based on administrative procedures and if the tax authority doesn't satisfy the claim, the tax payer will have to protect the right through the court. Administrative claim allows the tax authority to revise its own decision in factual and legal aspect.

Tax payer, usually, has a one-month period for drawing up administrative claim on the basis of the measure of the tax authority. Such claim is free of charge.

The process of consideration of tax dispute is quite long and may last several months, taking into account the factual and legal content.

Only appealing the act doesn't mean, that the appealed act is suspended; for this purpose the tax payer shall apply to the tax authority specially. If the authority doesn't satisfy this request, the tax payer has the possibility to appeal such rejection in the court as well.

In the case of expiration of the period of appeal of tax measures for reasonable excuse its restoration is admissible, if the author of appeal justifies it; e.g. in the case is he/she has some reasonable impediment.<sup>51</sup>

Tax dispute prevention measures are quite encouraged in Germany. The profession of tax consultant has long tradition in Germany. Tax consulting is regulated by the Law "On Tax Consulting". By the end of 2007 over 73000 natural persons and 7500 legal entities were accredited as tax consultants in Germany. They are distinguished for their professionalism, obeying stringent ethical principles and rules in the course of implementation of their activities. The tax consultant offers to tax payer the service on the basis of contract and helps him/her.<sup>52</sup>

According to German tax system, alternative methods, like factual agreement, are encouraged. Discussion of this issue became particularly active since 1984 and German Court explained, that it would be expedient to give obligatory nature to such agreement; even conclude between the tax auditor and tax payer. For this very reason the method of meetings and negotiations between the parties is encouraged to increase the frequency of achieving factual agreements.<sup>53</sup> The existence of such arrangement shall be assessed positively, nevertheless, its transfer in the form of exact template and

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<sup>49</sup> Fiscal Code of Germany, promulgated on 1 October 2002, Section 6, (2)

<sup>50</sup> Ibid, Section 6, 5.

<sup>51</sup> See KPMG Deutsche Treuhand-Gesellschaft AG., Tax Procedure: Tax Litigation and Dispute Resolution in Germany, <<http://www.mondaq.com/x/7706/Arbitration+Dispute+Resolution/174+Tax+Procedure+Tax+Litigation+and+Dispute+Resolution+in+Germany>>, [29.07.1999].

<sup>52</sup> *Gabisonia I.*, Tax Code, The Mechanisms of Protection of the Tax Payer's Rights, Tbilisi, 2013, 112 (in Georgian).

<sup>53</sup> See KPMG Deutsche Treuhand-Gesellschaft AG., Tax Procedure: Tax Litigation and Dispute Resolution in Germany, <<http://www.mondaq.com/x/7706/Arbitration+Dispute+Resolution/174+Tax+Procedure+Tax+Litigation+and+Dispute+Resolution+in+Germany>>, [29.07.1999].

granting of similar power to tax auditors may not be expedient for Georgian reality in order to avoid formation of biased practice in the form of illegal arrangement between a tax payer and tax auditor.

According to German model, the institution of preliminary decision is also offered, which is implemented directly upon completion of tax audit. Federal Tax Court ruled that such decision may be present, when fixing of specific events is required, which occurred for expression of discretion, granted to the authority, or a tax payer has the interest to obtain preliminary decision.<sup>54</sup>

#### **4.2. The US Model of Tax Dispute Resolution**

In the issue of resolution of tax disputes, American scientists give priority to pre-trial mechanisms and it is considered, that the initial phase play decisive role in proper management of tax dispute. Tax payer can select some body, through which is will obtain the relevant legal decision; nevertheless, the US legislation creates certain preliminary stages and in some cases these administrative measures are obligatory.<sup>55</sup> Besides, the trend of resolution of dispute not through court proceedings, but in the system of tax system itself is more frequently noted. Tax services openly encourage mediation and voluntary liaison arbiter and alternative ways of dispute resolution. Tax court rules also encourage alternative methods of consideration of tax dispute.<sup>56</sup> As for alternative methods of dispute resolution, presently the mechanism of tax arbitration is actively used in the United States. American scientists particularly support the encouragement of existence of tax arbitration for various states.<sup>57</sup>

In the US, tax authorities issue formal basis for appellation – “tax request”, which is subject to appellation during 90 days from its handing in.<sup>58</sup>

In the US judges restrain from making decision before the tax payer uses all administrative methods of protection in his/her disposal. As a result of the above mentioned method, when considering the tax dispute, the parties often arrive to agreement before starting the hearing. Due to such policy, the judge of the US Tax Court considers 10% of suits. As for the persons, who submit claim to the Tax Court without sufficient justification and intentionally procrastinate the process, may be subject to imposition of penalty.<sup>59</sup>

More and more priority is given in the US to the alternative methods of dispute resolution and its elimination in the very first stage. In tax science, great audit importance is given to audit in prevention of tax dispute and achieving consensus in regard to it. It is quite actual measure, the more so that 45% of the interviewed tax payers in the US specified, that they have undergone audit.<sup>60</sup>

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<sup>54</sup> See KPMG Deutsche Treuhand-Gesellschaft AG., Tax Procedure: Tax Litigation and Dispute Resolution in Germany, <<http://www.mondaq.com/x/7706/Arbitration+Dispute+Resolution/174+Tax+Procedure+Tax+Litigation+and+Dispute+Resolution+in+Germany>>, [29.07.1999].

<sup>55</sup> *Treusch E.P.*, What to Consider in Choosing a Forum to Resolve an Ordinary Tax Dispute, *Journal Tax Lawyer*, Vol. 55, №1, 2001-2002, 83.

<sup>56</sup> *Ibid*, 84.

<sup>57</sup> *Ibid*, 6.

<sup>58</sup> *Ibid*, 86.

<sup>59</sup> *Gabisonia I.*, Tax Code, The Mechanisms of Protection of the Tax Payer's Rights, Tbilisi, 2013, 114 (in Georgian).

<sup>60</sup> *Smith W.K., Stalans J.L.*, Negotiating Strategies for Tax Disputes: Preferences of Taxpayers and Auditors, *Law & Social Inquiry Journal*, Vol. 19, №2, Spring, 1994, 355.

In the scientists' opinion, disputes between public authorities and citizens on tax issues differ in several aspects. Dispute arises, when the relevant official considers, that the citizen didn't obey the law. Besides, the relevant official has formal power to complete dispute within the scope, where enforcement of the decision is possible.<sup>61</sup> Several stages of development of tax dispute are distinguished in modern tax science.

The first stage of potential tax dispute is identification of mistake or incorrect declaration by auditor. If auditor discovers similar issue, he/she must decide whether he/she begins it with the tax payer.

After expression of his/her own position by the auditor through claim/ suit and formulation of specific way of problem resolution, the citizen can agree to this position or follow the way, offered by the auditor, till resolution of the issue, so that the case doesn't grow into tax dispute.

If the tax payer doesn't agree to the auditor's position, partially or completely, the case will transform into dispute, which, in its turn, include negotiations and counter-claim from tax payer.<sup>62</sup>

So, on the stage before initiation of dispute, special importance is given to the negotiation of the auditor and the tax payer. From auditor's side, main accent is made on the consensus, conforming to the law. They will not like compromise and capitulation methods, unlike tax payers. Difference of formal power can be seen in the issues of giving the priority to negotiations. Auditors, more often, have rigid positions, whereas tax payers are more willing to cooperate, especially those who are oriented towards saving time.<sup>63</sup> Consequently, such method of avoiding tax dispute, when auditors are equipped with certain powers, is important and interesting; nevertheless, it is important to analyze the risks, which follow from granting these powers.

In the US, tax payers were interviewed on how much they could influence auditor's decision, from 1 to 5 scores, where 1 score meant complete impossibility of making influence. 11% responded that they didn't know the answer, and those who knew, specified mainly 3.0.<sup>64</sup> Consequently, it is important that the auditor's and the tax payer's consensus doesn't obtain negative form and doesn't transform into biased practice.

## 5. Conclusion

It shall be concluded that consideration of tax disputes is characterized by specificity and complexity. The above stated is proven by the analysis of legislative norms and the relevant literature. For this very reason, legislation envisages complex – two-stage system of non-judiciary mechanism of tax dispute resolution.

The two-stage tax system, and, moreover, the two-stage mechanism of dispute resolution in the system of the Ministry of Finance is not very efficient presently. Against this background court represent more efficient way of protection of right. More attention shall be paid to the raising of effi-

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<sup>61</sup> *Smith W.K., Stalans J.L.*, Negotiating Strategies for Tax Disputes: Preferences of Taxpayers and Auditors, *Law & Social Inquiry Journal*, Vol. 19, №2, Spring, 1994, 337.

<sup>62</sup> *Ibid*, 342.

<sup>63</sup> *Ibid*, 365.

<sup>64</sup> *Ibid*, 355.

ciency of activities of tax authorities and increasing of the number of lawful decisions, made by them; and the existence of the complex, two-stage system of tax dispute resolution is not an efficient method for achieving this goal.

The 20-day period, established for appellations of the measures of tax authorities by administrative procedure can be deemed quite short, as this time might not be sufficient for the addressee of these measures to prepare perfectly for commencement of dispute. Against this background, the fact that much longer, 30-day period was given to the tax payer to appeal against specific measures of tax authority, shall be assessed as positively.

Besides, the legislation establishes 20-day period for resolution of such complex dispute by the tax authority; nevertheless, the shortness of the period burdens the tax authority and not the tax payer and although it is short as compares with the period, established by the legislation of other countries, it doesn't limit the tax payer to comprehensively protect his/her right. Nevertheless, it is important that the main principle is not just prompt resolution but complete and objective consideration, making fair and lawful decision. With consideration of this provision, it would be proper to revise the period of dispute resolution.

The period of appealing against the decision of the tax authority, resolving the dispute, was increased from ten to twenty days. Regardless the already existing change, it is expedient to give the tax payer even longer period for appealing the decision of the tax authority, resolving the dispute, in the court.

It is expedient that the tax authority is not limited by the demands, raised by the tax payer and factual circumstances, but is oriented towards in-depth study of the issue. Besides, the tax authority, resolving the dispute, shall be oriented towards maximum involvement of the interested party on the process of dispute resolution.

It is also important to consider foreign practice of tax dispute resolution and extend the periods, established for appealing against the measures of the tax authorities for protection of his/her rights. Besides, it is necessary to strengthen the role of various institutions and measures like tax consultant, tax auditor, factual agreement, preliminary decision and tax arbitrages. Various special procedures of tax dispute resolution, existing in foreign countries represent quite efficient and reasonable mechanism.

It is expedient to strengthen the role of non-judiciary mechanism of tax dispute resolution and to refine the procedure, which would lead to faster and more efficient restoration of the violated right.