

# COSTS, THAT ARE NOT TAKEN INTO ACCOUNT IN DETERMINING TAXABLE INCOME AND EXPENDITURE OF DUAL-USE



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- ▣ The article deals with the recognition of expenses under the Tax Code. The features of dual costs and expenses which are not relevant to the subject of taxation are determined.
- ▣ Expenses, income tax, Tax Code of Ukraine, the recognition of expenses.

## ВИТРАТИ, ЩО НЕ ВРАХОВУЮТЬСЯ ПРИ ВИЗНАЧЕННІ ОПОДАТКОВУВАНОВОГО ПРИБУТКУ, І ВИТРАТИ ПОДВІЙНОГО ПРИЗНАЧЕННЯ

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- ▣ У статті розглянуто визнання витрат згідно з нормами Податкового кодексу. Визначено особливості витрат подвійного призначення та витрат, що не враховуються при визначенні об'єкта оподаткування.
- ▣ Витрати, податок на прибуток, Податковий кодекс України, визнання витрат.

## РАСХОДЫ, КОТОРЫЕ НЕ УЧИТЫВАЮТСЯ ПРИ ОПРЕДЕЛЕНИИ НАЛОГООБЛАГАЕМОЙ ПРИБЫЛИ, И РАСХОДЫ ДВОЙНОГО НАЗНАЧЕНИЯ

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- ▣ В статье рассмотрено признание расходов согласно нормам Налогового кодекса. Определены особенности расходов двойного назначения и расходов, которые не учитываются при определении объекта налогообложения.
- ▣ Расходы, налог на прибыль, Налоговый кодекс Украины, признание расходов.

### Statement of the problem

With the enactment of Chapter III of the Tax Code much attention is paid on determining the object of taxation for income tax in terms of inclusion in the latter expenditures entity.

Provisions of the Tax Code, in most cases, agree on accounting and tax calculations, but several issues remain unresolved.

### Analysis of recent research and publications

A lot of native and foreign authors: PY Nechay, O. Oleinik, Y. Sokolov, and others paid attention to the issue of cost accounting in their publications. However, a number of issues in this area are still not open and needs further fundamental research. Today

is a controversial issue related to recognition and an expense for tax expense for the tax code.

The **aim** is to study and analyze the main changes in the recognition and formation of expenses with the enactment of the Tax Code of Ukraine.

### The main material of the study

Article 139 defines CLE expenses not included in the expense in determining taxable profit (Fig. 1) [3]. Let us consider each element indicated in Fig. 1 costs.

Expenses, not related to business activity. These restrictions do not apply to taxpayers whose main activity is:

- Organization of receptions, presentations and celebrations upon request and at the expense of others;
- Purchase of lottery tickets and other documents confirming the right to participate in the lottery;
- Finance of physical individuals personal needs with the exception of payments under Articles 142 and 143 of the Code, and in other cases provided for by this section.

As mentioned, accounting costs are included in costs of an administrative nature or other expenses. Displays the debit expense accounts (administrative – MF. 92, other costs – MF. 84).

Instance. Company “A” held negotiations. In respect of which such expenses were incurred: accommodation of delegates – 500 UAH; transport service delegation – 150 UAH. Interpreter fees are included in the negotiations – 200 UAH. Costs for coffee break – 200 UAH. Theatre – 250 UAH. To cover up the example, assume that the company is not a VAT payer.

So the costs of accounting will include the amount of 1200 UAH. But this amount will not be reflected as an expense in the tax calculations when determining the object of taxation.

Indicated in paragraphs 139.1.2. payments – are the payments that go through the expense of businesses transit received from debtors and listed principal, subcontractors and others. These payments do not include neither income nor expenditure. The same provision is defined in accounting in the Regulations (Standard) 15 “Revenue”, approved by the Ministry of Finance on 29.11.99, the number 290 on non-inclusion of such payments of income [4]. In accounting such payments reflect like other deductions. The amount of revenue that belongs to the principal display carrying AT 704 – Rm 685.

Repayment of the principal amount of loans does not apply to the costs as these loans are not related to the income at the time of receipt. The exception is the amount repayable financial assistance, which were previously included in income under § 135.5.5

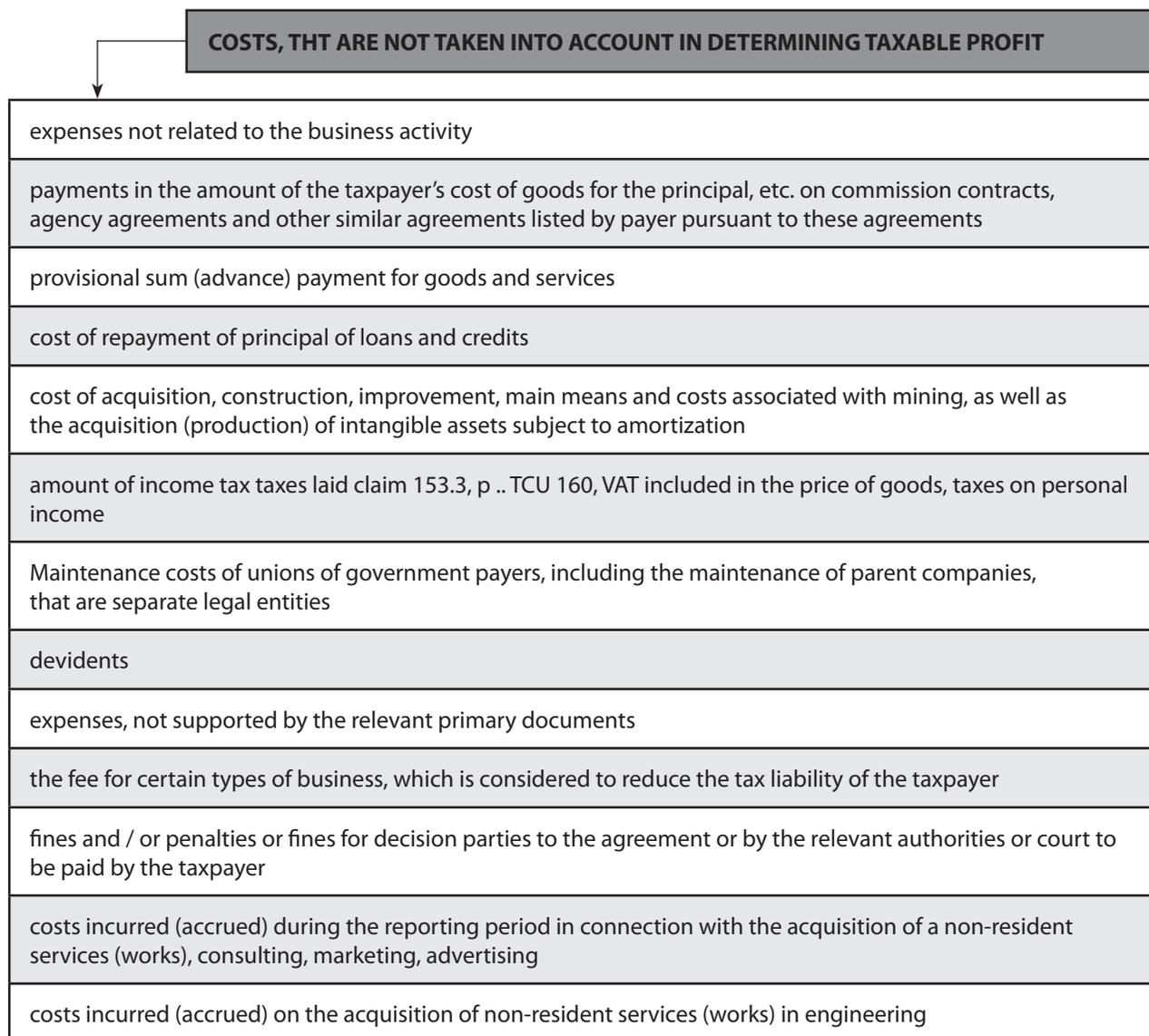


Figure 1. Structure costs are not included in determining taxable income under paragraph 139.1 CLE

Section 135.5 of Article 135 of the Tax Code for the reason that such financial assistance was received from persons who do not pay income tax, and the remaining defaults at the end of the reporting period.

All costs associated with the acquisition (manufacturing, construction) of fixed assets and their subsequent improvements (reconstruction, modernization), the acquisition of intangible assets and mining are not included in the cost at the time of implementation, and are included in the future in the amount of accrued depreciation, amortization procedure disclosed in the art. TCU 144–148. In order to determine the object of taxation shall be included in the cost accounting period in which such improvements have been made only as the sum of costs associated with the improvement and repair of fixed assets, including leased in an amount not to exceed 10 percent of the aggregate book value of all groups of assets at the beginning of the year.

In accounting, the following amounts are to increase the original value of fixed assets in the following depreciation costs. They are displayed on debit accounts fixed assets.

Expenditures for maintenance companies of parent companies and other authorities, who are legal entities not included in the cost paid by the income that is available to businesses. In determining the object of taxation is not recorded in the accounting are included in the costs of an administrative nature. The debit account 92 “Administrative expenses” is displayed. Dividends paid by net income, an accounting of the costs are not included in their calculation reflects a debit subaccount 443 “Profit used in the reporting period”.

Item 139.1.9. TCU states include the inability to costs of those expenses that are not documented, and reveals the notification the tax authority that there is no document.

Cost of sales of patents does not include the costs, at the time of purchase accounting in it belongs to prepaid expenses and reimbursement of patent trading is carried out in subsequent reporting periods due to accrued income tax.

If the enterprise carries on both activities, subject to and not subject to patenting, income from these activities is determined separately and recovery of commercial patents are only due to the income tax on those activities that are subject to patenting.

How does the cost of trade patent affects the amount of income tax we will show in the example:

ACCOUNTING Revenues 7000 UAH  
Expenses 5000 UAH  
The cost of patent 300 UAH  
Taxable income 1700 UAH (7000 – 5000 – 300)  
Income tax 357 UAH (1700 × 21%)

INCOME TAX CALCULATIONS Revenues 7000 UAH  
Expenses 5000 UAH  
The cost of patent 300 UAH  
Taxable income 2000 UAH (7000 – 5000)  
Income tax 120 UAH (2000 × 21% – 300)

The amounts of fines and penalties do not apply to expenses as those resulting from deficiencies in economic activity, and their amount is not reduced accordingly taxable income. In determining the object of taxation are not included.

Consulting, marketing, advertising, purchased in non-residents are included in the cost of which exceeds 4% of the income of the previous year (excluding VAT and excise duties), and if these services are purchased by a permanent establishment of non-residents, their value is the costs in full.

In Section 160.8 TCU stating that the representation of non taxed income as independent from those of non-residents.

If you can not separately identify income such taxable income is determined by the state tax service as the difference between income and expenses determined by applying to the amount of the revenue factor 0.7.

If these services, consulting, marketing, advertising purchased by non-resident, having offshore status, their cost is not included in the costs in full. Section 161.3 states that offshore status are non-residents located in offshore zones, except those whose status is not offshore must be supported by the appropriate documents.

In accounting they are included to the cost of administrative and/or marketing nature. The debit account 92 “Administrative expenses”, 93 “Cost of sales”.

Instance is displayed. The company orders advertising both in domestic provider of services and non-resident. The cost of these services is 1000 UAH in Ukraine and \$300. U.S. dollars in non-resident. Conventionally taxable income for the previous year is 8000 UAH.

In accounting, these costs will be reflected  
Dt93 – Kt 631 UAH 1000.  
Dt93 – Kt 632 3200 UAH.  
(300 \* 8, calculated according to the NBU rate)

In the accounting, to the expenses 4,200 UAH included

(1000 + 3200)

In assessments of the costs 1320 UAH  
(1000 + 320 (8000 \* 0.04))

Describing the cost of domestic enterprises we should pay attention to the costs of dual purpose as they are linked to the taxation of business profits. Until recently, they regulated the Law of Ukraine “On Enterprise Profit Tax” [1], and now – the Tax Code of Ukraine.

Analyzing changes in national legislation that took place in this context to note that the list of dual-use costs, according to TCU, now no charges have been recognized as such by the Law number 334 (Fig. 2).

Under the standards of the costs TCU dual purpose includes:

- the cost of the taxpayer to provide employees with special clothing, footwear
- expenses (other than those subject to depreciation) related to scientific and technical support economic activity
- the taxpayer’s expenses for training, retraining and qualification
- any warranty costs (maintenance) or warranty replacement products
- the cost to the taxpayer of advertising
- any costs of insurance
- travel expenses of individuals who are employed with the taxpayer or members of the governing bodies of the taxpayer
- the cost of the taxpayer (other than capital subject to amortization) for the maintenance and operation of such facilities that were on the books and held by the taxpayer as of July 1, 1997, but not used for profit.

In the letter, the State Tax Administration of 29.07.2011 №13818/6/15-1415 reports to take into account when determining the tax object cost of purchasing clothing and footwear taxable person can, unless these things are included in the List number 994 or industry norms [6]. Independently doesn’t have right to develop standards for a company to use these things in accordance with applicable law [2]. So, in terms of STA, such things may be granted only by their own profits.

In determining the taxable income of the expenses, expenses (other than those subject to depreciation) incurred by the taxpayer for the maintenance and operation points of free medical care and prevention workers including providing medicines, medical equipment, inventory, and wages costs for wages of employees of these institutions (paragraph §140.1 of Art. 140 of the Tax Code).

In addition, an expense included costs of compulsory previous periodic and unscheduled medical examination of workers engaged in heavy work, work with dangerous or hazardous conditions or those where there is a need for professional selection (Section 7 of the List number 994).

However, there are cases when the company held both mandatory and voluntary examinations. For example, transportation enterprises should carry out medical examinations of drivers before their workday. For this reason the company should have nurses (one or more). But sometimes employers can run medical examination on their own, for what the head will pay an additional fee. In this case, you should keep separate payroll of assessed for both type of medical

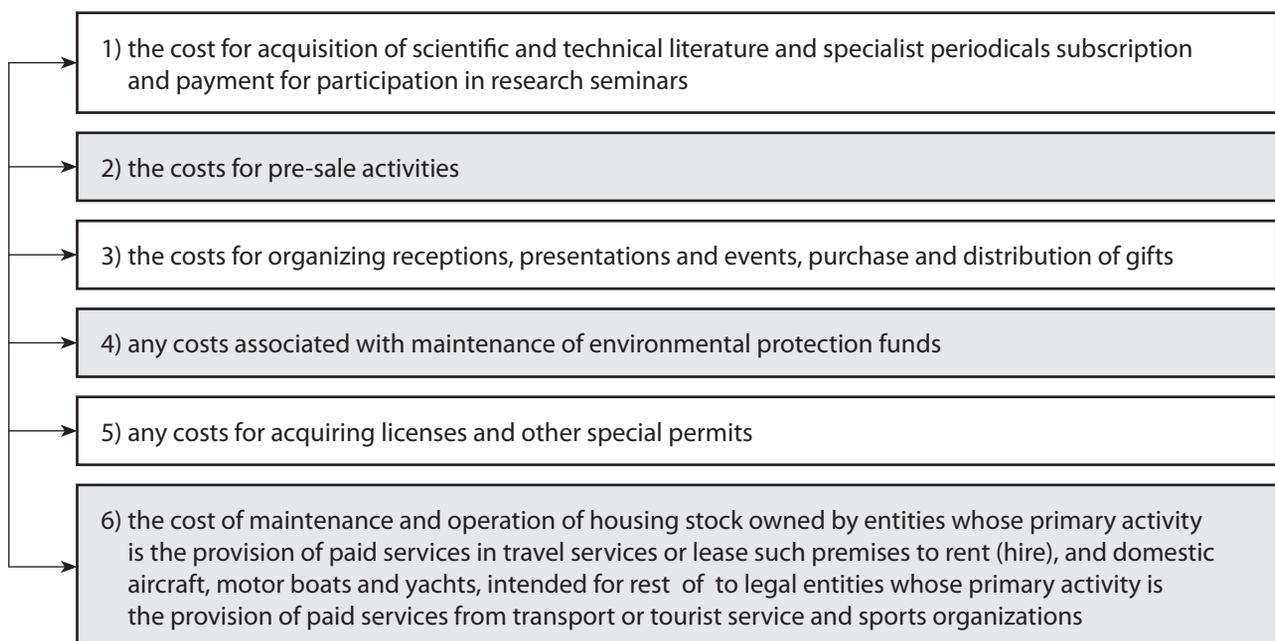


Figure 2. Expenses not included in the list of dual-use costs by TCU

examinations, and accordingly display them in tax accounting. Wages for conducting company examinations can be included in the cost of tax accounting, and for carrying out voluntary examinations – not.

*Examples.* The company held required and voluntary examinations. Wages of nurses working at the plant – 2000 UAH. for conducting voluntary medical examinations she is additionally paid 1000 UAH.

Wages for required medical examinations Dt 92 kt 661 2000 UAH

Wages for voluntary examinations Dt 92 Kt 661 1000 UAH  
Expenses in accounting 3000 UAH.

Costs of assessments 2000 UAH.

Displays the calculating payroll is the same.

For categories of costs specified and paragraphs 140.1.2. any interest restrictions are not set. However, those restrictions on an expense taking into account exists in the payment of royalties.

In particular, the costs in an amount in excess of 4% of income (revenue) from sales of products, goods and services (net of VAT and excise tax) for the year preceding the reporting and for banks – in an amount that exceeds 4% of income from operations (excluding VAT) for the year preceding the reporting is not included in the calculation of royalty reporting period for non-residents. This clause does not apply to charges undertaken by entities in the field of television and radio, and charges for the right to use copyright, related rights in a cinematographic foreign films, music and literature.

In the cost amount of the royalties is not included, when accrued in favor of the non-resident, having offshore.

- In accordance with paragraphs. 140.1.3 Section 140.1 of Art. 140 of the Tax Code in determining the taxable object as an expense of the taxpayer takes into account the costs associated with training employees:
- on the job training, retraining and advanced training of trades, and if legislation provides mandatory periodic refresher or advanced training;
- to study or vocational training, retraining and advanced training in national and foreign institutions, if a certificate of education in such institutions is mandatory for certain conditions of doing business, including, but not exclusively, in higher and vocational technical education of individuals (regardless of whether such persons are employed by the taxpayer), which concluded with him a written agreement (contract) to work out the obligations assumed by them in the taxpayer after graduation for at least three years;

- the organization of teaching and practical training on the type of core business of the taxpayer.

In accordance with paragraph 4 paragraphs. 140.1.3 TCU in the event of termination of the contract under which the person undertook to work out at least 3 years, the taxable income increases in the amount of income actually performed by him costs of education and/or training that were included in its costs. Meanwhile charged additional tax liability for income tax and penalties in the amount of 120% of the NBU discount rate ruling on the day of tax liability tax that would pay the taxpayer within the prescribed period, if he had not enjoyed tax exemption established by this point, calculated to the amount of the tax liability and estimated underpayments for each day, ending the day increasing income. However, in TCU is installed an exception under which the amount of reimbursed taxable loss for such an agreement is not included in income and is not subject to taxation (§140.1.3 Section 140.1 of Art. 140 of the Tax Code).

The cost of warranty repairs and replacement of goods provided by paragraphs. 140.1.4 Section 140.1 of Art. 140 of the Tax Code. Provides guidelines established that in determining the object of taxation into account any costs for warranty repair or replacement warranty products sold by the taxpayer, the value of which is not compensated by the buyer in an amount that corresponds to warranty replacement published by the payer.

For this category of expenditures in the Tax Code provides the following limitations:

- when making warranty replacement of goods taxpayer must keep records of customers who receive a replacement or repair, the procedure established by Tax Service of Ukraine;
- replacement of the goods without getting back defective goods or lack of record keeping does not entitle the increased costs the seller;
- procedure for warranty repairs (maintenance) or replacement warranty as well as a list of products for which warranty service is established, shall be determined by the Cabinet of Ministers of Ukraine on the basis of the legislation on consumer protection.

Expenditure on advertising and market research (marketing) on presale goods within cost of sales, including costs associated with the sale of goods, works and services included in the calculation of the tax object as other costs (paragraph “g” §138.10.3 §138.10 c. 138 and paragraphs. 140.1.5 Section 140.1 of Art. 140 of the Tax Code).

It should be taken into account that, in accordance with paragraph 7. 8 of the advertising placement information about the manufacturer of the goods and/or goods in locations where the goods sold or provided to the consumer, including elements of the equipment and/or clearance outlet, or directly to the product itself and/or its packaging is not considered to be advertising.

However, the Tax Code provides some restrictions on the costs associated with the purchase of advertising services from non-residents. This is referred to our §.139.1.13.

Property insurance is regulated by the Law of Ukraine "On Insurance". Its Article 7 contains a list of types of compulsory insurance and all types of voluntary insurance set out in Article 6. So is required and voluntary insurance, and therefore the cost of these species should be accounted for differently.

In the calculations the tax payer of income tax expenses may be attributed to the cost without limitation all costs of insurance specified in paragraphs 140.1.6., Namely:

- risks of loss of harvest;
- transportation of goods of taxpayer;
- liability related to exploitation of vehicles that are part of the fixed assets of the taxpayer;
- risks associated with the production of national films (of no more than 10% of their production);
- environmental and nuclear damage;
- property of the taxpayer;
- financial leasing object;
- financial, credit and other risks of payer.

The Tax Code provides some restrictions on the cost of insurance for transactions with voluntary insurance does not always associated with the business operations of the company-employer. TCU prohibits included in the cost:

- 1) the cost of voluntary life insurance, health and other risks associated with the activities of individuals who are employed by a taxable income;
- 2) the cost of any third-party insurance individuals or entities.

According to Art. 140 TCU travel expenses are expenses of dual nature, so costs that are taken into account for the calculation of taxable income just in some parts. This documentary taxpayer must prove, first, membership of such costs in their own business, and secondly, their compliance with the norms of the article.

In accordance with paragraphs. 140.1.7 of the Tax Code of the taxpayer costs associated with the assignment of individuals who are employed by such taxpayer or members of the governing bodies of the taxpayer are included in the cost.

These costs include the costs of:

- transportation, including baggage allowance, booking transport tickets as a place of business and back, and the place of assignment (including leased vehicles);
- payment of hotel accommodation (motels) and included in the accounts of expenditure on food or personal services (laundry, cleaning, repair and ironing clothes, shoes or clothes) to hire other premises;
- payment of telephone conversations;
- registration of passports, entry permits (visas), compulsory insurance.

In addition, the costs include other documented expenses related to travel, including any charges and taxes payable in connection with such expenses.

The documents confirming the amount of such expenses include: travel tickets or travel accounts (Baggage Claim), including e-tickets if boarding pass, and of the payment of all transport modes, including charter flights, invoices received from hotel (motels), or other persons providing services on placement and residence of the individual, including reservation of seats in places of residence, insurance policies, etc.

However, the provisions of the Tax Code permitted to include costs for travel expenses, which do not require documentation. These costs include spending on food and other financing their own individual needs, daily expenses.

TCU clears that the daily pay per calendar day. For example, if the employee left at 22. 40 minutes. April 2 and came back in 00 hours. 30 minutes. April 4, per diem are paid for three days. TCU provides that the amount of travel expenses within Ukraine is not more than 0.2 percent of minimum wages in effect for the working people as of January 1 of the tax year (per day for 2012, this amount is 214.60 UAH ( $1073 \times 0.2$ )), and not more than 0.75 percent of minimum wages for trips abroad, ie 804.75 UAH ( $1073 \text{ UAH} \times 0.75$ ).

For comparison, we do the calculation of maximum daily amount for 2013 in the draft Law on the State Budget with 1.01 minimum wage in 2013 will be 1176 UAH.

In accounting expense allowance for travel expenses of the reporting period are recognized and reflected in the accounts of expenses, depending on

the purpose of travel. When choosing items, be guided by P (S) 16 [4]. For example, travel expenses section chief – overhead costs (Section 15.1 P (S) BU 16) that appear on the account 91, the cost of travel director – administrative (Section 18 P (S) BU 16) and reflected in the account 92 and travel expenses manager of sales – cost of sales (Item 19 P (S) BU 16) are displayed, respectively, on account of 93.

## Conclusions

Thus, the directions of further research and discussion is to identify disagreements that may arise in the practical management of financial, taxation and find compromise solutions to solve them and improve the structure of financial and tax reporting costs taking into account the representation of domestic and foreign experience.

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2. *The Law of Ukraine "On Labour Protection" dated 14.10.1992 №2694-XII [electronic resource]. – Mode of access: <http://zakon1.rada.gov.ua/laws/> [in Ukrainian]*
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  6. *Постанова Кабінету міністрів України «Про затвердження переліку заходів та засобів з охорони праці, витрати на здійснення та придбання яких включаються до витрат» №994 від 27.06.2003 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/994-2003-%D0%BF>*

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