

## THE IMPACT OF THE LAND MARKET LAW ON LAND AUDIT

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### Mysiuk V. O., Tatenko M. Yu., Tatenko N. Yu. The Impact of the Land Market Law on Land Audit

The article researches the peculiarities of soil audit on the territory of Ukraine. The main problematic issues of practical nature arising in the process of purchase, sale, lease and other operations with a land plot are substantiated. The main stages of soil audit are reflected and disclosed. In particular, peculiarities of the online service Feodal.online, which substantially simplifies this type of verification, and the main advantages of this service are covered. The association «Zelena Spilka Ukrainy» («Green Union of Ukraine»), which is the leader among soil audits, is briefly characterized. The main provisions of the Law «On amendments to certain legislative acts of Ukraine concerning the conditions of circulation of agricultural lands» No. 552-IX, which was adopted by the Verkhovna Rada on March 31, 2020, are analyzed. The opinion of numerous scholars, practitioners and politicians about the advantages and disadvantages of this regulatory act is disclosed. Historical facts concerning the moratorium on land sales are briefly explained. The list of countries that do not have land markets is presented. The peculiarities of land taxation, dependence of the amount of tax on the amount of regulatory and monetary valuation are considered, it is indicated what articles of the Tax Code of Ukraine should be changed and supplemented. The conformity of the draft laws of Ukraine «On the State inventory (audit) of lands» No. 2405 of 08.11.2019 and «On amendments to certain legislative acts of Ukraine regarding the conditions of circulation of agricultural lands» No. 552-IX of 31.03.2020 are analyzed. The main advantages (according to the authors) of the land law are disclosed, a number of inaccuracies and contradictions arising from the adoption of the law on the land market are considered. As a result, the main effective ways of improving the legislation in this sphere are proposed, taking into account features of the Ukrainian market economy.

**Keywords:** audit, land plots, legislation, online service, land market, main provisions.

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### Мисюк В. О., Татенко М. Ю., Татенко Н. Ю. Вплив закону про ринок землі на аудит земельних ділянок

У статті досліджено особливості проведення аудиту земельних ділянок на території України. Обґрунтовано основні проблемні питання практичного характеру, що виникають в процесі купівлі, продажу, оренди та інших операцій із земельною ділянкою. Відображені та розкриті основні етапи аудиту земель. Зокрема, розкрито особливості онлайн-сервісу Feodal.online, який значно спрощує такий вид перевірки, та основні переваги даного сервісу. Коротко охарактеризовано асоціацію «Зелена спілка України», яка є лідером серед аудиторських перевірок земельних ділянок. Проаналізовано основні положення закону «Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення» № 552-IX, який було ухвалено Верховною Радою 31 березня 2020 р. Розкрито думку різних науковців, практиків і політиків про переваги та недоліки даного нормативно-правового акта. Коротко розкриті історичні факти про мораторій на продаж землі. Наведено перелік країн, які до сьогодні не мають земельного ринку. Враховано та розкрито особливості оподаткування землі, залежність суми податку від розміру нормативно-грошової оцінки та вказано, які саме статті Податкового кодексу України необхідно змінити та доповнити. Проаналізовано відповідність проекту законів України «Про державну інвентаризацію (аудит) земель» № 2405 від 08.11.2019 р. і «Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення» № 552-IX від 31.03.2020 р. Розкрито основні переваги (на думку авторів) земельного закону, розглянуто ряд неточностей і суперечностей, що виникли внаслідок прийняття закону про ринок землі. Як наслідок, запропоновано основні ефективні шляхи вдосконалення законодавства в даній сфері, враховуючи особливості української ринкової економіки.

**Ключові слова:** аудит, земельні ділянки, законодавство, онлайн-сервіс, ринок землі, основні положення.

**Рис.:** 1. **Табл.:** 3. **Бібл.:** 15.

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Under modern conditions, audit is an important procedure in a market economy. This type of activity penetrates into all spheres of life, from the traditional audit of financial statements to IT audit. And land audit is one of the most important procedures for the functioning of land market relations. In real practice this type of audit is carried out rarely or not at all. The reason is ignorance and unawareness of the importance of the process for the economy. This issue is becoming especially important in the near future in connection with the opening up of the land market in Ukraine. And in this area, both in the scientific and practical context, there are a lot of inaccuracies and contradictions that need clarifying to be later enshrined in law. That is why this topic is of relevance today.

Research in this area was carried by domestic scientists, namely: A. O. Kasych, O. O. Pidkuiko, A. V. Tereshchenko, V. O. Tymoshenko [10]. In particular, it is worth noting a significant contribution of modern practitioners and experts in this process. For example, Andriy Martin, Head of the Department of Land Use Design of the National University of Life and Environmental Sciences of Ukraine, detected the shortcomings in the State Geocadastr and why it should be reformed. Mykola Sol'skyi, one of the authors of the Law on the Land Market, revealed the peculiarities of land taxation and control over compliance with the tax law. The pros and cons of the Land Market Law were highlighted by Denis Nizalov, Doctor of Philosophy, Associate Professor at the Department of Economics of De Montfort University [8].

The founder of the online service Feodal.online Andriy Demyanovych proved the importance of land audit that are cultivated by business entities [5]. The People's Deputy of Ukraine Vadym Rabinovych proposed a draft of the Law on State Land Inventory (Audit) [2; 14].

Modern legislative changes are very important for conducting land audit, so it is necessary to describe the main features of this process. The Ukrainian market for audit services related to the land issues is insufficiently studied and has a number of inaccuracies and shortcomings. Such main pending issues are investigated in the article.

The aim of the study is to investigate the features of conducting land audit and the impact of the Land Market Law on the process of land audit. An equally important goal is determining the main points of the Land Market Law that will help simplify or complicate this procedure. As a result, the main objectives of this article are:

- 1) to investigate the features of land audit and describe the specifics of main online service Feodal.online, which really simplifies the title search process;
- 2) to disclose the procedure of land taxation and control over the administration of mandatory payment of this type of taxes, taking into the account the latest changes in legislation;

- 3) to analyze the advantages and disadvantages of the Land Market Law and the draft of the Law on State Land Inventory, to investigate their impact on further audit services;

The main research materials are the Land Market Law and the draft Law on State Land Inventory (Audit), data from legislative sites, current publications on this issue.

The main methods used in the research are general scientific techniques (analysis, comparison, deduction, induction and other methods), logical and graphical method, generalization and systematization.

Audit as part of economic space is one of the most important type of business activities. According to the Law of Ukraine "On Audit of Financial Statements and Auditing", audit is an independent professional activity of auditors and auditing entities, which are registered in the Register of auditors and auditing entities, on the provision of audit services [12].

Land audit is a unique and socially required activity. In the process of buying, selling, renting or other land transactions, you have to be sure that the land is legally protected and safe to use. Cases when it appears that the purchased land plot has several owners are very common. As a result, the entity is involved in a number of lawsuits that do not always result in favor of the real land owner. The main inconsistencies are shown in *Tbl. 1*.

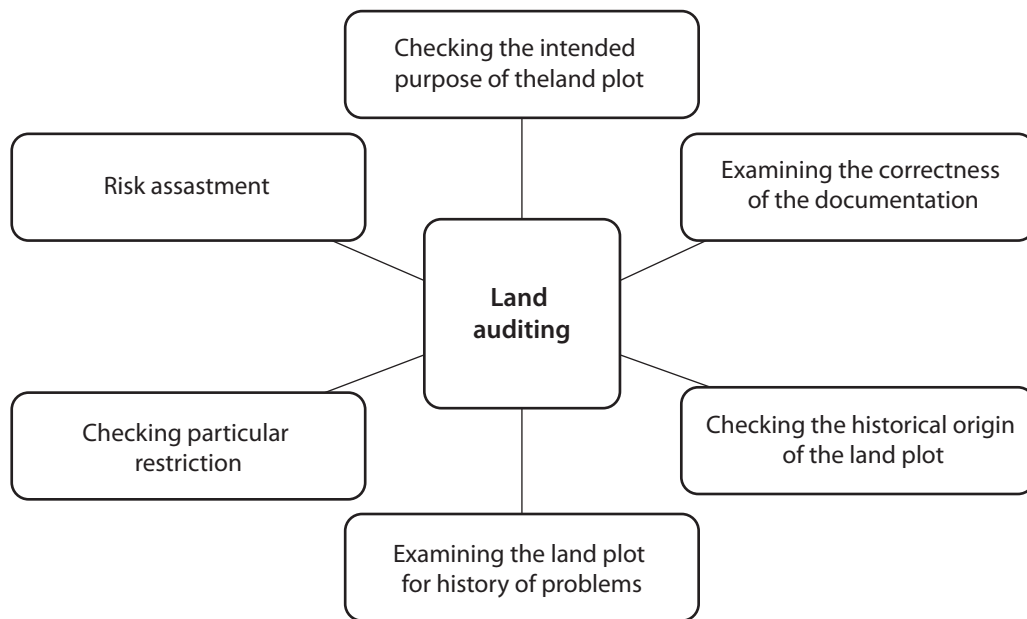
**Table 1**

**Problematic practical land issues**

Type of problem	Problem description
Documentary	1) Forgery of or incomplete data in the transfer certificate of land title
	2) Lack of accompanying documents to the transfer certificate of land title or lease agreement
Aim	3) The buyer's plans do not correspond to the purpose of the land plot
Law	4) The probability that the purchased land shall be withdrawn for public use, according to the construction plan
	5) Legal availability of land easement
Ecology	6) Lack of reliable data on the boundaries of the land plot
	7) The seller hid the information about the presence of utilities and hazardous harmful substances in the area

Source: compiled by [1].

This is no complete list of complications. There are a lot of "legal wars" for the land because this natural wealth is unique and priceless for people. That is why companies of various forms of ownership must inspect land plots. The main stages of verification are shown in *Fig. 1*.



**Fig. 1. The main stages of land auditing**

Source: compiled by [1].

Land audit requires high professional skills from auditors. In addition to professional knowledge, they must have deep knowledge of the basic aspects of land law, skillfully use reliable information, provide all the necessary conditions for the most accurate information space while reaching all user needs. However, regarding this issue, it is necessary to take into the account audit risk since in real practice the quality of services directly depends on the completeness and reliability of customer data.

But to be able to do this scope of work, an auditor should use modern digital capabilities. In August 2019, the online service Feodal.online was launched in Ukraine for all participants of the agricultural market, which provides information about land plots and their owners. This service allows making up to 5,000 requests per hour. At the moment, it is not free and you should pay 0.9 hryvnias per one request.

The main benefits of Feodal.online service:

- ✦ efficiency;
- ✦ client confidentiality (no need to involve specialists in various fields);
- ✦ filling and updating information automatically on modern accounting platforms (including 1C);
- ✦ automatic notification in case of re-registration of the land;
- ✦ prompt preparation of reliable information on the land plot for obtaining loans and other needs;
- ✦ audit of the landbank for the creditor [3; 4].

Usually land audit is conducted by the Land Union of Ukraine Association, which was founded in 2004. The services of this association are used by leading Ukrainian and foreign companies. This organization was established to address all problematic issues of land law: consulting

on disputes, land audit, features of the transfer of land ownership, important aspects of land lease, etc.

Modern audit firms can provide consulting and outsourcing services – keep accounts at other companies. Therefore, it is necessary to consider features of registration of land plots. It would seem that all the main features are revealed, and there should be no complications. But we cannot ignore significant changes in the legislation that concern all Ukrainian citizens.

On April 28, 2020, the President of Ukraine Volodymyr Zelensky signed the Law “On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land” No. 552-IX, which was adopted by the Verkhovna Rada on March 31, 2020. In particular, we try to briefly reflect the main provisions in *Tbl. 2*.

The adoption of this law has raised a number of controversial issues. Some support the lifting of the moratorium, others consider it a violation of the Constitution. It is the Constitution that defines land as the main national wealth, and the law actually contradicts some of its articles.

Oleksandr Kovaliv, Doctor of Economics, researcher at the Institute of Agroecology and Nature Management of NAAS, believes that the regulatory changes do not disclose the current provisions of Articles 13, 14 and 41 of the Constitution of Ukraine. Tymofiy Milovanov, the former Minister of Economic Development and Trade, pointed to the limited land market. According to him, the modern economy is based on enterprises, so it is worth allowing legal entities to buy land from the very launching of the Law. Denis Bashlyk, Head of the State Geocadastre of Ukraine, emphasized that this was a historic decision as before that the land market was shady [6].

**Table 2**

**The main provisions of the Law № 552-IX**

Subject	Description
Terms of enactment	The land market is planned to be introduced in July 2021
Form of payment	Payments for land plots are made in on a non-cash basis
Ownership	The right to purchase land immediately after the opening of the market is granted to individuals, and from 2024 the permit can be received by legal entities
	Communal and state lands are not subject to sale
	Banks acquire a title of ownership to the land by enforcement of collateral
	Legal entities, the founders or final beneficiaries of which are persons who are not citizens of Ukraine, may acquire a title of ownership to the agricultural land from the date of and subject to approval of this by referendum
	Prohibition on sale to certain individuals and legal entities
	When alienating a land plot, the acquirers of a title of ownership must comply with the requirements for the acquirer using the State Register of Real Rights to Immovable Property, the State Land Cadastre, the Unified State Register of Legal Entities and Individuals
Restrictions on land ownership	The maximum size of land owned is for individuals is up to 100 hectares, for legal entities – 10 thousand hectares. It should be borne in mind that the total area of agricultural land owned by a citizen may not exceed 10 thousand hectares
Price restrictions	Until January 1, 2030, the sale price for agricultural land plots cannot be less than the standard monetary value

Source: compiled by [7; 13].

Let’s briefly discuss the facts about the moratorium on land sales. The land reform lasts for 28 years already, and it is a world record. Until recently, a similar situation was observed in Mexico.

The ban on sale of agricultural land was in force for 18 years. The government extended the moratorium 10 times. However, Venezuela, Cuba, North Korea, Tajikistan, Congo, Belarus still do not have a land market [9].

Let us consider the features of taxation proposed by one of the authors –Mykola Solsky. On the agropolit.com

website, he commented, “The project envisages 5% of the normative monetary valuation. With an average normative monetary value of UAH 28,000 per 1 ha, this is UAH 1,400 per year. This means that the owner or tenant of 1 hectare (depending on the chosen taxation system) must pay a total of UAH 1,400 per year of personal income tax, unified social contribution, military duty, land tax, tax for taxpayers included in Group 4. If the land owner or user has not paid taxes, he must pay extra to the amount of the tax liability” [8].

First of all, it is necessary to amend Articles 269–289 of the Tax Code of Ukraine (TCU) and define control measures to provide timely receipt of these tax payments, which will ease the procedure for verifying the correctness of the calculation and land tax payment for control bodies and auditors. It is worth to take into the account certain benefits that are not envisaged in the new Land Market Law yet. For example, the tax consequences prescribed in Article 277 of the TCU (concerning the land plots for which the regulatory and monetary assessment has not been carried out) are not taken into the account. Thus, the TCU defines objects, subjects, tax base, tax period, land tax rates. But these data need to be reviewed because the opening of the land market characterizes land as a commodity. These and other changes must be clearly spelled out since, in fact, in the process of checking the tax sphere, auditors have nothing to be guided by except for the TCU and Land Market Law [11].

Now let us consider advantages and disadvantages of the Law on the Land Market (*Tbl. 3*). We believe that its shortcomings need to be addressed in the first place since this will simplify land audit and accounting.

These are not all the nuances around the land issue. Let us focus on the fact that the Law on the Land Market does not cover the land audit procedure. However, the Government has paid attention to some features of this activity. Deputy of the Verkhovna Rada of Ukraine Vadym Rabinovych proposed the draft Law of Ukraine on State Land Inventory (Audit) No. 2405 dated November 8, 2019. This draft law proposes to define the concepts, tasks, objects, subjects of the state land inventory (audit) and bodies that will regulate activities in the field of land audit [14].

This law has a huge value for land audit. This is a kind of analogue of the Law “On Audit of Financial Statements and Auditing” in the field of land relations. At the same time, taking the state land inventory will increase Ukraine’s budget expenditures and reduce its revenues. And to determine the impact of the law on budget indicators in terms of value is impossible [2; 14].

At this research stage, it is important to find out how this law will affect audit. Firstly, the range of audit services will increase significantly. The regulatory and legal framework that emerged in agriculture has a number of inconsistencies and is difficult to interpret. However, it is this framework that will help solving accounting, tax and other legal issues. Secondly, this legislative act facilitates

## Advantages and disadvantages of the land market

Advantages	Disadvantages
1) Restrictions on land ownership, which will help reduce the monopolization of land by oligarchs and businessmen	1) Lack of clear provisions in land registrations and contradictions between the provisions of various regulations. Certain changes have been made to the Land Code, but there are some inconsistencies with the Tax Code and the Constitution. The lack of clear legislation in this area
2) State and communal lands are not subject to sale. In fact, most experts see this as an advantage	2) The right to purchase land is first obtained by individuals and then by legal entities. However, we completely agree with the opinion of Tymofiy Milovanov that economic strength is based on legal entities [6]
3) Price restrictions, which ensure the prevention of monopolization and unfair competition	3) The signing and promulgation of the law during the coronavirus pandemic. At the moment, the land market does not take into the account the peculiarities of the modern pandemic
4) Prohibition on sale of plots to non-residents. Although the KPMG law firm adviser Vasyl Kiyko argues that the more restrictions are imposed, the lower the value of the land is [15]	4) The law does not provide funding for the purchase of land
5) The land market is planned to be introduced from July 2021, which is a correct decision since by that time the Verkhovna Rada will adopt a number of amendments to the Land, Tax, Civil Codes and other legislative acts	5) A significant percentage of protests by farmers and farms

the work of audit entities, which, using certain provisions on land issues, can provide audit much faster and more efficiently. And although the implementation of the Law on the Land Market has just been started, we should keep in mind that the audit procedure is no less important.

### CONCLUSIONS

Thus, land audit is one of the necessary components that should be in land acquisition. Analyzing the practical aspects, it is safe to say that this type of audit helps to avoid and prevent a lot of future risks. Land audit can be carried out with the help of the Feodal.online service, which minimizes risks for both, auditors and farmers. But the most pressing issue arose after the adoption of the law "On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land" No. 552-IX. This legislative act covers the main aspects related to acquisition of land by individuals and legal entities. This law does not meet all the needs of society. In general, the authors support the land market as it will increase the level of the economy in the country. This European practice brings together the interests of Ukraine and the European Union.

Land audit procedures are not clearly defined. Moreover, the Law on the Land Market doesn't cover the peculiarities of audit in this area. As a result, the following solutions have been proposed:

- 1) to enact the draft Law of Ukraine on State Land Inventory (Audit) No. 2405 dated November 8, 2019 starting from 2021 as its entry into force in 2020 to some extent does not comply with the

Budget Code of Ukraine. Or another option – to make some amendments to the current law of Ukraine "On Audit of Financial Statements and Auditing", considering the specifics of land audit, or to create a separate legislative act that will regulate audit services in this area without violating the Land Market Law;

- 2) to create special entities or separate state institutions that will specialize in consulting, accounting, auditing and taxing transactions related to sale and purchase of land. This will greatly simplify the prevention of violations of the new law and tax legislation;
- 3) to improve the online service Feodal.online, which will cover all the requirements of the market law.

In this article, the features of land audit were investigated, taking into the account modern digital opportunities and legislative changes that could serve as a solution of current land audit problems. ■

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