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BEPS PLAN AS A KEY MECHANISM OF INTERGOVERNMENTAL TAX COOPERATION – INTERNATIONAL PROGRESS AND IMPLEMENTATION STATUS IN UKRAINE

Problem statement. Taxes constitute a complex legal and social institution. They directly reflect the level of cultural, economic, and political development within a society. Furthermore, taxes wield significant reciprocal influence over a state's political and economic stability and power. The efficacy of tax payment procedures profoundly impacts various aspects of a country's well-being.

Throughout history, taxpayers have sought to evade tax obligations, notably through aggressive tax planning, leading to substantial losses for states. According to analysts and the OECD, annually, the European Union loses approximately 60 billion euros in corporate income tax revenue due to capital flight to offshore jurisdictions. The United States loses roughly $135 billion annually. From Ukraine alone, an estimated $150 billion has been diverted since 1991 [1]. Utilization of offshore entities results in an annual loss of 200–300 billion hryvnias for Ukraine, roughly a third of its budget. These factual observations underpin the crux of this study.

Unwilling to accept such substantial losses, developed nations have opted to actively combat aggressive tax planning through intergovernmental cooperation – a primary avenue for addressing the issue, which forms the focus of this article. The practical significance of this research lies in its exploration of revolutionary changes in tax cooperation, notably the BEPS Plan, which remain largely unexplored in scientific literature due to their novelty and current implementation phase.

Sources and review of scientific literature, research topic relevance, and novelty. The BEPS Plan remains largely unexplored in scientific literature, as the reforms are currently being formulated and implemented. Existing scholarly works tend to focus on specific aspects of the topic. Notably, the book by Yo Ota and Tsuyoshi Ito, "BEPS and Global Business Activities," stands out as a foundational work [2]. Published in November 2017, it is the fourth book on tax law from the Institute of Progressive Legal Studies at the Graduate School of Law and Politics, Tokyo University. This work comprehensively analyzes themes from the OECD/G20 BEPS Project Final Report.

Also deserving attention is the book by Richard Collier and Joseph Andrus, "Transfer Pricing and the Arm's Length Principle Post-BEPS" [3]. This is the first book to provide a comprehensive analysis and critique of transfer pricing rules based on the arm's length principle post-BEPS Project.

The primary sources for this study were OECD publications, as the organization is a driving force behind the advancement of current tax cooperation. In light of the above, it can be argued that the topic of this study is underexplored in its entirety and warrants further investigation and the development of scholarly thought to facilitate its proper implementation, particularly concerning Ukraine's commitments to undertake tax reforms.

Exposition of the main material. Against the backdrop of economic globalization, national tax legislation does not always evolve adequately to address emerging challenges resulting from the complexities of transnational corporation activities, capital flows, and the active development of the digital economy. These factors create conditions for tax avoidance, primarily by large international companies, undermining the universality and fairness of existing tax systems. One of the main instruments used by multinational corporations to avoid taxation without formally violating current legislation is the so-called Base Erosion and Profit Shifting (BEPS) – a set of tax planning strategies that allow companies to declare their profits for taxation in jurisdictions where no economic activity contributing to profit generation takes place, and where tax rates are relatively low (or zero). The urgency of the BEPS problem is confirmed by a number of studies. According to OECD data, the minimum losses from base erosion and profit shifting range from 4 to 10% of global corporate income tax revenues, equivalent to $100 to $240 billion annually [4].

In these circumstances, for the first time in the history of international tax cooperation, efforts of two institutions – the OECD and the "Group of Twenty" – were combined to address the problem of base erosion and profit shifting. This allowed for the involvement of all countries, both developed and developing, which are members of these institutions, as well as a significant number of non-member partner countries. As a result, more than a hundred countries became participants in the BEPS Project or Plan. It aims to provide countries worldwide with an effective tool for taxing profits generated from economic activities conducted within their jurisdictions, while enhancing predictability, transparency, and universality of the international tax environment for businesses.

The BEPS Project was developed within the OECD with active support from the G20 countries. It focuses on situations of so-called "double non-taxation" and schemes for artificial shifting of taxable profits from jurisdictions where such income is actually generated to other jurisdictions, again, leading to zero or low taxation [5].

Such situations arise either due to gaps revealed in the interaction of national tax systems or as a result of the application of certain provisions of bilateral tax treaties. The essence of the project lies in international cooperation to combat cross-border tax planning schemes and in the development of a set of recommendations for national authorities and their further implementation into the legislation of countries. The main idea of the project is to close the avenues for profit shifting, preventing companies with production, resources, and labor force located in one country from paying minimal taxes there and shifting profits to countries where tax rates are either minimal or zero.

It was published on July 18, 2013, under the title "Action Plan on Base Erosion and Profit Shifting" (BEPS Plan) [6]. The finance ministers of the "Group of Twenty" characterized it as highly ambitious and comprehensive. Accordingly, the communique issued following the ministerial meeting on July 20, 2013, included commitments to adopt necessary measures for the implementation of the Plan at both national and international levels, and invited all interested countries to participate in the joint OECD and G20 project on BEPS [7].

The BEPS Plan consists of 15 action points. Each point describes a separate tax issue and proposed solutions that should be implemented into the domestic legislation of countries and international agreements between them. In October 2015, the OECD completed the final development of all the Plan's points and provided a final report, which was endorsed at the G20 summit in Turkey in November 2015.

It should be noted that, at the initiative of the OECD, any country can join the BEPS Plan (not only OECD and G20 members). These countries were invited to join the so-called "Inclusive Framework on BEPS Implementation." The fifteen actions of the BEPS Plan involve the implementation of a range of tools that allow participating countries to combat profit shifting. These include:

1. Addressing tax challenges and the peculiarities of taxation in the era of the "digital economy".

2. Neutralizing so-called "hybrid schemes".

3. Enhancing the effectiveness of Controlled Foreign Company (CFC) rules.

4. Combating base erosion through interest and other financial payments;

Counteracting "harmful tax practices," taking into account issues of transparency and the real economic substance of companies.

5. Preventing abuse of double tax treaties.

6. Preventing the application of artificial arrangements to avoid permanent establishment status.

7. Developing transfer pricing rules for intangible assets.

8. Developing transfer pricing rules for risks and capital.

9. Developing transfer pricing rules for other high-risk transactions.

10. Developing methods for collecting and analyzing information on base erosion and profit shifting.

11. Implementing rules requiring disclosure of "aggressive tax planning schemes".

12. Streamlining requirements for transfer pricing documentation and "country-by-country reporting".

13. Developing and enhancing the effectiveness of mechanisms for resolving tax disputes between countries.

14. Developing a comprehensive multilateral convention on international taxation to modify existing tax treaties between countries.

Furthermore, these actions differ in the level of agreement on specific actions within them among countries. For instance, Actions 5, 6, 13, and 14 involve the development of certain "minimum requirements" or a "minimum standard" to be implemented at the national level through changes to the relevant legislation. Within Actions 2 and 4, the development of guidelines is envisaged, which implies less mandatory and more flexible implementation of actions at the national level. Actions 3, 6, 7–10, and 12 involve identifying "best practices" in various areas. However, in some countries participating in the BEPS Project, the implementation of actions according to established best practices will not be mandatory.

Particularly noteworthy are Actions 3 and 15. Action 3 focuses on the development of effective rules for taxing Controlled Foreign Companies (CFCs). CFC tax rules already exist in several developed countries. Their essence lies in including the undistributed income of a foreign company, owned directly or indirectly by a taxpayer of a particular country, in the tax base of such a taxpayer in their country, i.e., equating it with their income. However, according to the OECD, the CFC rules of some countries do not fully address base erosion and profit shifting and thus require improvement. The relevance of this action is underscored by the widespread practice in many countries of redirecting the profits of resident companies to subsidiaries registered in low-tax jurisdictions. The BEPS Plan notes that in addition to promoting taxation of profits in the resident country, Action 3 may also have a positive ancillary effect by limiting the shifting of profits to low-tax jurisdictions of third countries.

Action 15 involves signing the Multilateral Instrument (MLI), which allows for the simultaneous updating of existing double tax treaties. The MLI introduces a series of amendments/corrections to the standard provisions of tax treaties, excluding the application of such provisions in inappropriate circumstances (e.g., for improper purposes). In particular, the preamble contains a provision stating that treaty parties intend to eliminate double taxation "without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through the use of treaty shopping arrangements aimed at obtaining benefits provided by such agreement)." In other words, benefits provided in the agreement are not granted if, considering all relevant facts and circumstances, there are sufficient grounds to believe that obtaining such benefits was one of the main purposes of the agreement. Additionally, the Convention covers several other actions of the BEPS Plan, including improving the procedure for mutual agreement and the process of arbitration for resolving disputes between its participants. On July 23, 2018, Ukraine signed the MLI.

As for Ukraine, back in 2017, the Ministry of Finance developed a roadmap for implementing the BEPS Plan, which was reviewed by experts and is actively being implemented today [8]. Since January 1, 2017, our country has also joined the Program of Enhanced Cooperation within the OECD and has undertaken to implement the aforementioned Minimum Standard of the BEPS Action Plan – the mandatory four out of the fifteen actions proposed by the Plan. Implementing the Minimum Standard is a mandatory requirement for all participating countries of the Enhanced Cooperation Program. Additionally, the Ministry of Finance supports the initiative regarding further implementation of all BEPS Action Plan measures in partnership with the OECD [9].

To implement the minimum standard, Ukraine adopted the Law of Ukraine "On Amending the Tax Code of Ukraine to Implement the Plan to Counter Base Erosion and Profit Shifting" [10]. This law was developed by a working group led by the Ministry of Finance with the participation of the National Bank, as well as with the involvement and support of international tax experts. It takes into account the work of the interdepartmental working group led by the Chair of the Committee of the Verkhovna Rada of Ukraine on Tax and Customs Policy, Nina Yuzhanina, who has been overseeing the development of the draft law since 2016, as well as the conclusions of the expertise conducted by OECD and World Bank specialists [11]. The Ukrainian law embodies eight crucial actions for the state:

– Action 3: disclosure by Ukrainian resident individuals of their participation in foreign companies they control (CFCs) and the taxation rules for such companies;

– Action 4: limitation of expenses on financial transactions with related parties;
– Action 6: prevention of abuse related to the application of double tax treaties;
– Action 7: prevention of artificial avoidance of permanent establishment status;
– Actions 8–10: improvement of transfer pricing control;
– Action 13: reporting rules by countries for international groups of companies.

The goal is to support Ukraine's financial stability in the context of transitioning to free capital movement, enhance the efficiency of tax regulation, and introduce unified transparency requirements for doing business in Ukraine according to international standards [12]. Additionally, as part of implementing the Plan, in February 2019, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" [13]. The main goal of this instrument is the possibility of automatically amending all double tax treaties specified by the contracting states in the notification to the depositary, which is the OECD. Thus, our country made changes to 76 bilateral treaties, including agreements with Cyprus and the United Kingdom, confirming Ukraine's positive movement towards tax reforms.

Furthermore, in 2023, Ukraine committed itself under a new Roadmap for implementing the BEPS Action Plan to strengthen efforts to align the tax system with international tax standards [14]. The Roadmap identifies priority measures for the period 2023-2025 and aims to assist Ukraine in addressing new and specific challenges arising from current circumstances caused by Russian aggression and ongoing war, as well as to intensify efforts to bring the tax system into line with international tax standards. This also holds strategic importance in anticipation of significant foreign direct investments associated with the recovery and reconstruction period.

The implementation of BEPS measures and associated capacity-building measures is also an important part of the Program for Ukraine, agreed upon by the OECD and the Government of Ukraine on June 7, 2023, supporting the agenda of reforms, recovery, and reconstruction in Ukraine and helping Ukraine strengthen its aspirations for accession to the OECD and the European Union [15]. The author emphasizes the critical importance of continuing to implement BEPS measures in light of Ukraine's Euro-Atlantic aspirations.

Conclusions. In conclusion, the main practical problem underlying the writing of this work was the issue of large sums of money being diverted from taxation by individuals, legal entities, and transnational corporations, as reported by the OECD. In this study, the author examined the tool for combating this phenomenon – intergovernmental cooperation within the framework of the BEPS Action Plan – a plan to counteract base erosion and profit shifting developed by the OECD at the request of the G20 countries.

The implementation of the BEPS Action Plan by Ukraine represents a significant step forward for our country in its efforts to align its tax system with international standards and combat base erosion and profit shifting. The proactive measures taken by the Ministry of Finance and other governmental bodies demonstrate Ukraine's commitment to fostering transparency, enhancing tax regulation, and attracting foreign investment.

The adoption of laws and ratification of international conventions, such as the Multilateral Convention to Implement Tax Treaty Related Measures, underscore Ukraine's willingness to cooperate with the international community in addressing tax avoidance and evasion. These legislative and policy changes not only contribute to Ukraine's financial stability but also position the country as a responsible member of the global tax community.

Furthermore, the ongoing efforts outlined in the new Roadmap for implementing the BEPS Action Plan indicate Ukraine's dedication to continuous improvement and adaptation to evolving international tax standards. By prioritizing key measures and actively engaging with international partners, Ukraine aims to overcome challenges posed by the current geopolitical context and facilitate its integration into the global economy.

In light of these developments, the author highlights that it is imperative for Ukraine to sustain its momentum in implementing BEPS measures and advancing its tax reform agenda, in particular by implementing a 2023-2025 Roadmap for implementing the BEPS Action Plan. Continued collaboration with international organizations, adherence to best practices, and robust enforcement mechanisms will be essential for achieving the objectives outlined in the BEPS Action Plan and ensuring the long-term effectiveness of Ukraine's tax system. The successful implementation of BEPS measures will not only strengthen Ukraine's fiscal framework but also contribute to the country's overall economic development and competitiveness on the international stage.

The author considers the future prospects of researching the topic to be extremely broad, as international cooperation among states in the field of taxation is gaining momentum. In Ukraine, the studied reforms are in the process of implementation, hence there is a wide scope for further exploration of the topic in the future.

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Summary

***Krasovskyi V. I.* BEPS Plan as a key mechanism of intergovernmental tax cooperation – international progress and implementation status in Ukraine.** – Article.

This article examines intergovernmental cooperation within the framework of the BEPS Action Plan, developed by the Organisation for Economic Co-operation and Development (OECD) at the initiative of the G20 countries. The relevance of implementing and studying this mechanism is driven by the issues of tax base erosion and profit shifting, carried out by individuals, legal entities, and large multinational corporations, leading to significant annual tax revenue losses, according to the OECD data. The study explores tools to combat this phenomenon.

The analysis also focuses on Ukraine's steps in implementing reforms aimed at joining global efforts to combat tax evasion. The research highlights the challenges facing Ukraine in aligning its tax system with international standards and describes legislative measures taken to counter BEPS. Special attention is given to the adoption of the Multilateral Instrument (MLI) and amendments to Ukraine's Tax Legislation as key steps towards achieving tax transparency and preventing profit shifting.

Furthermore, the study underscores the importance of further research in this field, emphasizing the expansion of international cooperation on tax matters. In the context of Ukraine's implementation of tax reforms, there is a need for further scholarly exploration to assess policy effectiveness and develop future reforms.

The author emphasizes that comprehensive research on the BEPS phenomenon and the implementation of relevant measures are crucial for Ukraine's integration into the global tax administration system, which is also necessary in terms of Ukraine's aspirations to join the EU. The author calls for continuous scholarly work to support reforms, promote transparency, and prevent tax evasion both domestically and internationally.

Key words: combating tax base erosion, BEPS plan, OECD, controlled foreign companies, MLI.

Анотація

***Красовський В. І.* План BEPS як ключовий механізм міждержавного податкового співробітництва – міжнародний прогрес та стан впровадження в Україні.** – Стаття.

У даній статті вивчається міждержавне співробітництво в рамках Плану дій BEPS, розробленому Організацією економічного співробітництва та розвитку (ОЕСР) за ініціативою країн «Великої двадцятки». Актуальність впровадження та дослідження даного механізму продиктована проблемами розмивання податкової бази та зміщення прибутку, здійснювана як фізичними особами, юридичними особами, так і транснаціональними корпораціями, що, за даними ОЕСР, призводить до значних втрат податкових надходжень щорічно. У роботі вивчаються інструменти боротьби з цим явищем.

Аналіз також зосереджується на кроках України у впровадженні реформ, спрямованих на приєднання до глобальних зусиль у боротьбі з ухиленням від сплати податків. Дослідження висвітлює виклики, які стоять перед Україною у вирівнюванні своєї податкової системи з міжнародними стандартами, та описує прийняті законодавчі заходи для протидії BEPS. Особлива увага приділяється прийняттю Багатостороннього інструменту (MLI) та внесенню змін до Податкового законодавства України як ключовим крокам у досягненні податкової прозорості та запобіганні зміщенню прибутку.

Крім того, дослідження підкреслює значимість подальших досліджень у цій галузі, наголошуючи на розширенні обсягу міжнародного співробітництва у податкових питаннях. У контексті впровадження Україною реформ у галузі оподаткування виникає потреба у подальших наукових дослідженнях для оцінки ефективності політики та розробки майбутніх реформ.

Автор підкреслює, що всебічне дослідження явища BEPS та впровадження відповідних заходів є ключовими для інтеграції України в глобальну систему адміністрування податків, що є необхідним також з точки зору прагнення України до вступу в ЄС. Автор закликає до постійної наукової роботи з метою підтримки реформ, сприяння прозорості та запобігання ухиленню від сплати податків як на внутрішньому, так і на міжнародному рівнях.

Ключові слова: боротьба з розмиванням податкової бази, план BEPS, OECP, контрольовані іноземні компанії, MLI.