

УДК 336.227.2.025
JEL Classification E62, H25, H26, O23
DOI 10.33111/sedu.2024.54.031.040

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MONITORING OF THE BEPS ACTIONS PLAN IMPLEMENTATION IN THE CONTEXT OF FISCAL REGULATION: SCIENTIFIC SUBSTANTIATION OF THE METHODOLOGY

Abstract. Since January 2017, Ukraine has joined the OECD's Inclusive Framework and committed itself to implementing the BEPS Minimum Standard. The national tax system is similar in structure to the tax systems of developed countries. At the same time, the country's recognition of generally accepted standards for combating aggressive tax planning requires significant adaptation of the legal framework.

Monitoring of the legislative process of implementing the BEPS Action Plan is an important area of further development of state regulation in the tax area and an effective means of achieving the proper quality of tax legislation and creating a modern and efficient tax system. The regulatory assessment of the state of national legislation will facilitate a detailed understanding and analysis of possible positive effects, achievement of results in the fight against tax evasion and base erosion, and avoidance of legal conflicts and contradictions. Monitoring the legislative process of implementing the BEPS Action Plan measures allows us to identify the necessary areas for improving the national legislative system and track the positive and negative effects of the application of legislative norms. Monitoring of regulatory legal acts is a tool for the development of future-oriented legislation, as it involves the study of legislation to obtain information necessary for assessing, forecasting, controlling and formulating recommendations for improving the regulatory framework and ensuring its optimal condition.

As a member of the OECD Inclusive Framework, Ukraine has implemented the BEPS Action Plan Minimum Standard through significant adaptation of the national tax legislation and its approximation to the provisions of international tax instruments. Monitoring of the legislative process of implementing the BEPS Action Plan is an important area of development of state regulation in the tax area and an effective means of achieving the proper quality of national tax legislation and further development of an effective tax system.

Keywords: international taxation, OECD, BEPS Action Plan, multinational enterprises, corporate income tax, avoidance of double taxation, transfer pricing, fiscal regulation.

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Introduction. The current international tax agenda, as well as the current international tax regulations, provide approaches and tools aimed at combating international tax evasion.

In 2013, the G20 leaders approved the BEPS Action Plan, which includes measures aimed at improving international tax policy and tax administration in 15 areas to combat tax evasion, including the use of offshore schemes. In autumn 2015, the final reports of the BEPS Plan were published [9].

In January 2017, Ukraine joined the OECD's Inclusive Framework and committed to implementing the BEPS Minimum Standard.

The national tax system is similar in structure to the tax systems of developed countries. At the same time, the country's implementation of generally accepted standards for combating aggressive tax planning requires significant adaptation of the legal framework.

Such adaptation includes, first and foremost, the approximation of national legislation to the provisions of international tax instruments to create the appropriate conditions for their implementation.

The national legislation has introduced provisions implementing the BEPS Action Plan and developed the relevant regulatory framework. Therefore, it is currently relevant and important to conduct a comprehensive systematic collection and analysis of information on the implementation of the BEPS Action Plan in Ukraine.

Thus, there is a need to assess the current state of Ukraine's implementation of the BEPS Action Plan measures by studying international experience in this area, monitoring and comparative analysis of national regulations and OECD recommendations to develop proposals for improving tax legislation, as well as to determine the effectiveness of the BEPS Action Plan measures already implemented in the context of preventing tax base erosion and increasing tax revenues to make decisions on its further implementation.

The above has led to the relevance of the presented study.

Tasks, methods and materials. The researcher Blanco A. [10] critically analyses the issues of effectiveness of the BEPS Action Plan implementation. A group of researchers Kumalasari K. P., Egalita F. F., Mumtadz A. Q., Azhari F. K. investigated the theoretical basis for the formation of the BEPS Action Plan concept and the challenges that this initiative is aimed at addressing [12]. Kumar A. studies the impact of BEPS on the development and further improvement of international fiscal standards in the context of sustainable development [13]. Many works of foreign authors, in particular Popescu C. R. [15], Preetika J. [16], are devoted to certain objects of taxation, in particular transactions with intangible assets.

In general, the research of European scholars is devoted to the study of the consequences of the introduction of modernised international taxation rules, in particular the BEPS Action Plan, into the regulatory framework of the EU Member States. For example, researchers Fortea C., Antohi V. M., Zlati M. L., Lăzărescu I. published a paper that highlights the results of an empirical study of the economic effects of the implementation of the BEPS Action Plan in Romania through the analysis of the dynamics of economic and financial indicators of Romanian companies [11].

The problem of combating tax evasion is also widely covered in the works of Ukrainian scholars. In particular, the study of Fedorchenko O. [8] reveals the essence and significance of the BEPS Action Plan for the development of international taxation.

At the same time, the vast majority of studies are devoted to the state and problems of implementation of the BEPS Action Plan in Ukraine (namely, Action 13 “Transfer pricing documentation and country-by-country reporting”). The study of Kryshchyna I. [1] devoted to issues of confidentiality of country-by-country reporting prepared by MNEs. Oliinyk Y., Chyzhykova O. highlighted the peculiarities of Action 13 implementation considering the institutional aspect and automatic exchange of information for tax purposes [4, 5].

Solving the problems of implementation of the BEPS Action Plan in Ukraine is also addressed in the works of Lovinska L. G., Kucheriava M. V. and Oliinyk Y. V. [3], who published a study on the implementation of international recommendations on the introduction of a three-tier model of transfer pricing documentation in Ukraine. Also, Kucheriava M. V. developed directions for improving the process of submitting transfer pricing documentation in Ukraine [2].

However, given the significant contribution of these researchers and the value of their results, the strengthening of European integration processes in Ukraine necessitates an analysis of the experience of EU member states in implementing the provisions of the BEPS Action Plan to incorporate it into domestic practice. This will allow to harmonise the domestic legislation with European legislation.

The objective of the article is to provide a scientific substantiation of the methodological aspects of monitoring the legislative process of the BEPS Action Plan implementation.

Research methods: institutional, systemic, empirical, structural and functional, comparative, retrospective, logical, analytical and other methods.

Results. The BEPS Action Plan is recognised as one of the most important initiatives in the history of global economic regulation. The launch of the initiative and its first successes allowed the OECD officers to declare the beginning of an era of unprecedented international cooperation on tax issues. The implementation of the BEPS Action Plan has strengthened the determination of many governments to effectively exchange tax information with other jurisdictions and helped to increase the effectiveness of the fight against tax evasion or the use of aggressive tax schemes by other countries. It is worth noting that the BEPS Action Plan is not a legally binding document and is advisory in nature. The international legal personality of the OECD and the “soft” nature of its regulatory framework do not allow for the imposition of sanctions. However, the importance of this document should not be underestimated. The BEPS Action Plan is being implemented in each OECD and G20 member country by amending legislation accordingly.

As a member of the OECD’s Inclusive Framework, Ukraine is also forced to integrate into this global regulatory mechanism. To date, the national legislation has incorporated the rules that implement the BEPS Action Plan. At the same time, Ukraine, as a candidate country for EU membership, faces the issue of continuing to adapt its tax legislation in the context of European directives.

The challenges of implementing the BEPS Action Plan in Ukraine include maintaining financial stability in the context of the transition to free movement of capital, improving the efficiency of tax regulation and introducing uniform requirements for business transparency in line with international standards.

In 2018, as part of its efforts to implement the BEPS Action Plan, Ukraine acceded to the Multilateral Instrument (MLI) to Implement Tax Treaty Related Measures. The goal was to counteract base erosion and profit shifting. The MLI allows Ukraine to simultaneously amend all or some of the existing double taxation conventions, which significantly reduces lengthy bilateral negotiations with each particular state.

The concept of the MLI Multilateral Convention is to simplify the procedure for amending tax treaties. A country that has signed and ratified the convention can simultaneously amend all international tax treaties to which it is a party. When signing the MLI Convention, each state independently determines the tax treaties to which it will amend and submits a corresponding application to the depositary (OECD). Amendments to a particular bilateral treaty are possible only if both countries — parties to the treaty — agree to it.

On 28.02.2019, the Verkhovna Rada of Ukraine approved the Law of Ukraine No. 2692-VIII “On Ratification of the Multilateral Instrument for the Implementation of Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting”, developed by the Ministry of Finance of Ukraine, entered into force on 02 April 2019 [7]. For Ukraine, the MLI entered into force on 01 December 2019 [14]. By acceding to the MLI (Action 15 of the BEPS Action Plan), after signing and ratifying it, Ukraine simultaneously implements Action 6 and Action 14, which are the minimum standards of the BEPS Action Plan and are mandatory for the country.

Also, on the way to implementing the BEPS Action Plan, after the ratification of the MLI Convention, Ukraine adopted the Law of Ukraine “On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Eliminating Technical and Logical Inconsistencies in Tax Legislation” dated 16.01.2020 No. 466-IX (hereinafter — Law No. 466) [6].

It should be noted that the package of the national BEPS Action Plan is more than the minimum. This package includes: Action 3 — introduction of CFC rules (disclosure by residents of Ukraine of their participation in Controlled Foreign Companies (CFCs) and taxation rules for such companies); Action 4 — improvement of the limitation interest deductions; Action 6 — prevention of tax treaty abuse; Action 7 — improvement of taxation rules for permanent establishments; Actions 8-10 — improving control over transfer pricing; Action 13 — introducing Country-by-Country Reporting for international groups of companies; Action 14 — improving the effectiveness of dispute resolution mechanisms.

The implementation of these Actions allows Ukraine to declare that the country recognises and adheres to generally accepted standards for combating against aggressive tax planning.

Therefore, in the current conditions of Ukraine’s development, improving the effectiveness of legislation is of critical importance. This necessitates a comprehensive

systematic analysis of the implementation of the BEPS Action Plan in Ukraine. A crucial stage of such analysis is monitoring the current state of implementation of the BEPS Action Plan by Ukraine. The results of such analysis will allow to identify areas for further improvement of tax legislation in the context of preventing the erosion of the tax base and increasing tax revenues.

Monitoring the legislative process of implementing the BEPS Action Plan is an important area of further development of state regulation in the tax area and an effective means of achieving proper quality of tax legislation and creating a modern and efficient tax system.

The regulatory assessment of the state of national legislation will facilitate a detailed understanding and analysis of possible positive effects, achievement of results in the fight against tax evasion and tax base erosion, and avoidance of legal conflicts and contradictions. Monitoring the legislative process of implementing the BEPS Action Plan measures allows us to identify the necessary areas for improving the national legislative system and track the positive and negative effects of the application of legislative norms.

For a more detailed substantiation of the proposals, it is advisable to pay attention to the theoretical and legal foundations of the monitoring characteristics. Based on the analysis of foreign and national approaches, legislative monitoring is considered to be as:

- an element of the process of law development, which originates from the stage of the idea of legal regulation of social relations to the adoption and implementation of a legal act;

- systematic comprehensive activities of public authorities, scientific institutions, and civil society institutions to evaluate, analyse and summarise the effect of legal norms and forecast the development of legislation. Its main purpose as an objective phenomenon is to observe the system of legislation and identify gaps, contradictions, corruption potential of legal acts, defects, duplication and other characteristics of the regulatory framework.

Thus, the monitoring of regulations is a tool for the formation of future legislation, as it involves the study of legislation to obtain information necessary for assessing, forecasting, controlling and formulating recommendations for improving the regulatory framework and ensuring its optimal condition.

A special place in the area of monitoring of regulatory acts and their further improvement belongs to expert assessments, which are used in solving current problems by analysing the effectiveness of specific legislative provisions. Such assessment is based on the professional, scientific and practical experience of experts and is subjective and directly depends on their competence. Expert monitoring can be conducted individually or collectively with the formation of an analytical assessment of legislation.

In the context of the study's focus on the scientific substantiation of further improvement of tax legislation in the context of the implementation of measures envisaged by the BEPS Action Plan, the purpose of monitoring is to improve the

efficiency of tax legislation in the context of the implementation of the BEPS Action Plan.

Monitoring is a systematic observation of the BEPS Action Plan implementation process by assessing its status and developing evidence-based recommendations for improvement in the context of EU legislation.

The object of monitoring is the process of implementing the BEPS Action Plan.

The monitoring and evaluation of the effectiveness of the BEPS Action Plan are aimed at observing the process of its implementation, identifying problems and determining areas for improving national tax legislation.

The monitoring is carried out by determining the list of assessment areas, tracking their implementation, and preparing the results of such monitoring, which includes the identification of areas for improving tax legislation. The monitoring is carried out by the BEPS Action Plan Actions.

Regulatory monitoring and assessment of the implementation of the BEPS Action Plan will help to understand and analyse the possible positive effects of achieving the results of combating tax evasion and base erosion; avoid legal conflicts and contradictions; obtain information necessary for assessing, forecasting, monitoring and formulating recommendations for improving the taxation regulatory framework and ensuring its optimal condition.

The methodology for monitoring the implementation of the BEPS Action Plan includes the study and analysis of regulations without the use of specific numerical or quantitative indicators. This methodology allows for a deeper understanding of the nature and possible consequences of changes in tax legislation.

The main purpose of monitoring and assessing the implementation of the BEPS Action Plan is to obtain a thorough understanding of the changes in legislation, analyse the impact of legislative innovations and determine the level of their compliance with the main objectives of the BEPS Action Plan.

Monitoring is a systematic observation of the implementation of the BEPS Action Plan by assessing its status and developing evidence-based recommendations for improvement in the context of OECD recommendations and EU legislation.

The object of monitoring and assessment is the process of implementation of the BEPS Action Plan. The monitoring and assessment of the BEPS Action Plan implementation efficiency is aimed at observing the process of its implementation, identifying problems and determining the directions for improving the national tax legislation.

Monitoring includes the following stages (carried out in accordance with the BEPS Action Plan):

1. Analysis of the text of the legal act:

Structural analysis: consideration of the structure of a legal act, identification of its components and logical connections.

Linguistic analysis: identification of semantic aspects, interpretation of terms and terminology.

2. Identifying core amendments:

Identification of amendments: identification of provisions that have been introduced into tax legislation for the first time.

Analysis of amendments: examination / estimation of amendments made to existing provisions of the tax legislation.

3. Compliance assessment with the objectives of the BEPS Action Plan:

Identification of targets for the BEPS Action Plan Actions: analysis of the objectives addressed by the tax legislation.

4. Formulation of the recommendations:

Development of recommendations: providing suggestions on areas of improvement of national tax legislation within the implementation of the BEPS Action Plan in Ukraine.

Interaction with policy-makers: conduct a dialogue with representatives of the Ministry of Finance of Ukraine to discuss and consider the recommendations on areas of further development of the national tax legislation in the context of the implementation of the BEPS Action Plan in Ukraine.

Conclusions. Ukraine, as a member of the OECD Inclusive Framework, has implemented the BEPS Minimum Standards through significant adaptation of its national tax legislation and its approximation to the provisions of international tax instruments.

Monitoring of the legislative process of implementing the BEPS Action Plan is an important area of development of state regulation in the tax area and an effective measure of achieving the proper quality of national tax legislation and further development of an effective tax system.

At the same time, it should be noted that given Ukraine's course towards EU membership, an important aspect of implementing the provisions of the BEPS Action Plan is to consider the experience of EU member states in implementing the recommendations of studies international initiative. Therefore, a comparative analysis of the content of the BEPS Actions is relevant to compare approaches to their implementation in the EU and Ukraine.

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МОНІТОРИНГ ІМПЛЕМЕНТАЦІЇ ЗАХОДІВ ПЛАНУ ДІЙ BEPS У КОНТЕКСТІ ФІСКАЛЬНОГО РЕГУЛЮВАННЯ: НАУКОВЕ ОБҐРУНТУВАННЯ МЕТОДИКИ

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Анотація. У статті науково обґрунтовано теоретико-методологічні засади та методичні підходи до реалізації моніторингу законодавчого процесу імплементації заходів плану дій BEPS. Авторами доведено, що здійснення регуляторного оцінювання стану національного законодавства сприятиме детальному осмисленню та аналізу можливих позитивних наслідків, досягнення результатів боротьби із ухиленням від оподаткування та розмиванням бази оподаткування, уникненню правових колізій та суперечностей. Обґрунтовано, що моніторинг нормативно-правових актів є інструментом формування перспективного законодавства, оскільки передбачає дослідження законодавства з метою отримання інформації, необхідної для оцінювання, прогнозування, контролю та формування рекомендацій з удосконалення нормативної бази та забезпечення її оптимального стану.

Ключові слова: міжнародне оподаткування, ОЕСР, План дій BEPS, міжнародна група компаній, податок на прибуток підприємств, уникнення подвійного оподаткування, трансфертне ціноутворення, фіскальне регулювання.

Стаття надійшла до редакції 21.02.2024