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EU trends of digital services taxation: controversial regional context for Ukrainian legislation modernisation

VOLODYMYR I. KOROL[1*], OLEG V. ZAICHUK1[1,2], OKSANA V. NEBYLTSOVA[3], BOGDAN V. DEREVYANKO[1,4] and KOSTIANTYN M. PILKOV[1,5]

The extrapolation of global and regional trends in the field of cross-border provision of digital services allows forecasting the further loss of effectiveness of existing international treaty and legislative instruments to ensure a fair allocation of taxing rights between states and the balance of private interests of economic entities and public interests of states in international taxation. The applying of factor analysis revealing cause-effect relationships identified the process-trigger, a set of major factors for the European Union - both domestic institutional and legal and external (in particular, the global interests of multinational companies of China and the US), which determined and, to a large extent, will determine the content and dynamics of processes within EU in the future. The application of a set of modeling and forecasting methods has enabled to create the structured cognitive model and the integrated forecast of the EU legal area formation in the field of taxation of cross-border digital services. The implementation of relations legal regulation fragmentation a pessimistic scenario in the EU as a consequence of uncoordinated unilateral actions by almost half of a number of EU member states upon developing draft laws and adopting tax legislation outside the harmonization process within the framework of the EU acquis does not create a favorable regional context for determining priority directions for improving the tax legislation of Ukraine.

Keywords: corporate income tax, new nexus, value creation, VAT

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[1]Department of International Private and Comparative Law, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, 01042, 23-a, Rayevsky Str., Kyiv, Ukraine

[2]Department of Civil Law, Vasyl Stefanyk Precarpathian National University, 76018, 57 Shevchenko Str., Ivano-Frankivsk, Ukraine

[3]Department of International Accounting and Audit, Kyiv National Economic University named after Vadym Hetman, 03057, 54/1 Peremogy Ave., Kyiv, Ukraine

[4]Department of Economic Law, Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine, 50065, 21 Stephan Tilha Str., Kryvyi Rih, Ukraine

[5]Commercial Cassation Court, Supreme Court, 01043, 8 Pylyp Orlyk Str., Kyiv, Ukraine

[*]Corresponding author

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INTRODUCTION

The modern paradigm of digital economy development and the key vectors of the of global and regional trends deployment in this area of public relations determine the necessity for modernisation of international treaty and legislative instruments. Implementation of the European Integration Strategy by Ukraine has led the Government's conceptual approaches to prioritising a number of directions, in particular, Interoperability, eServices, eID in the context of Digital Agenda for Europe and Digital Single Market (Order of the Cabinet… 2018).

The introduction of new business models in the field of digital economy and the significant digitalisation of the sectors of the economy of industrial society create new challenges with the aim of ensuring the balance of business entities' private interests of cross-border economic activity and public interests of states in the field of international taxation. Considering that Ukraine is a country with a multi-million users of digital services provided with the use of modern digital technologies by non-residents without physical presence in its territory, the issue of non-receipt of tax revenues to the state budget is of particular economic and social severity.

As pointed out by Managing Director of the International Monetary Fund C. Lagard, "The existing international corporate tax system is completely outdated". Considering Ukraine as a local manifestation of the general trend, the following affirmation can be recognized reasonable "the current state of affairs is having a particularly detrimental effect on low-income countries depriving them of the budget revenues they need so much to accelerate economic growth, reduce poverty and achieve the Sustainable Development Goals until 2030" (Lagard 2019).

The multicomponent nature of cross-border public relations and emerging critical issues in the digital economy as a whole, and the provision of digital services, in particular, raises question the existence of positive scenarios for the unilateral implementation of mechanisms of protecting and defending the economic interests of the Ukrainian state within national legislation. Such a prognostic vision raises questions of a systemic nature regarding the expediency of implementing the state tax policy of Ukraine in a broader context. It will be determined by the key vectors for improving international legal instruments at the global, regional (European) and bilateral levels.

Formulating an issue in such a hierarchically structured format determines the aim of this article, which is to offer a conceptual and legal approach relating to the main areas of modernisation of Ukrainian legislation in the field of (OECD/G20 2018) taxation of cross-border digital services by non-residents without permanent establishment in its territory. The relevant

context is determined by the implementation of the BEPS Project initiated by the OECD and G20 and the current trends of the improvement of the EU acquis acts, bilateral agreements (conventions) of Ukraine on the avoidance of double taxation with EU Member States and the legislation of EU Member States.

In Ukraine, there is a shortage of multi-authors and individual researches with the subject of legal regulation of relations in the field of digital service, and single monographs (Vinnyk 2018), scientific articles (Krehul & Batrymenko 2019), conference abstracts (Kostenko 2019) or expert projects (Ukrainian Institute… 2019) do not address international taxation of cross-border digital services as a whole and in the context of the BEPS Action Plan and the EU acquis in particular. The results of the scientific literature review create the ground to consider this article the one-of-a-kind in Ukraine on this issue of comparative legal analytical and prognostic nature. It is believed that its provisions and findings will have both scientific value and practical importance for the legislative and executive authorities which are responsible for the formation and implementation of the state tax policy in the context of European integration strategy of Ukraine.

The complicated and non-linear nature of the processes in the legal area of the European Union which is in focus of attention (the ontological component) determines the epistemological fundamentals defining the structure and content of this article. The research was conducted and its findings were obtained applying, in particular, elements of methods of analysis (comparative, factor, situational), modeling (cognitive, matrix), forecasting (extrapolation of trends, scenario building). These methods have considerable cognitive potential and have been used effectively by members of the authors team within previous interdisciplinary analytical and forecasting studies (Korol 2013) of key trends in other regions, particularly in the Greater East Asia (Korol & Nebyltsova 2015).

DETERMINANTS AND BARRIERS TO THE MODERNISATION OF LEGAL MECHANISMS FOR DIGITAL TAXATION

The slow dynamic of the development of new tax rules under BEPS Action 1 “Tax Challenges Arising From Digitalisation” agreed internationally can be considered as one of the key determinants of the controversial processes of modernization of legal mechanisms in the field of cross-border digital services taxation both at the regional European level within the EU acquis and at the level of the legislation of the EU Member States (OECD/G20 2019).

This, in turn, is of considerable importance for Ukraine both in conceptual and legal and international treaty terms. Thus, pursuant to the Art.

353 of the Association Agreement with the EU and its Member States and Ukraine it's stipulated gradual approximation to the taxation structure set out in the EU acquis which shall be carried out in accordance with Annex XXVIII (Association Agreement… 2017). In particular, Ukraine has undertaken to harmonise legislation in the field of indirect taxation where value-added tax plays an important role. Within the structure of this article, the specific peculiarities and gaps of VAT legislative regulation and administration in the EU and Ukraine when services importing will be considered further as a logical continuation of the analysis of legal issues in the field of direct taxation.

In 2018, the European Commission launched a law-making initiative to introduce a tax on the gross revenues of large companies-providers of certain digital services to the EU single market, i.e. a new tax, by adopting the act of secondary legislation – directive. The draft p. 1 of Art. 3 of this Directive provides for the taxation of income resulted from the provision of three types of digital services, namely: 1) the placing of targeted advertising on digital interfaces; 2) providing access to multi-sided interfaces; 3) transfer of data collected about users and generated on the basis of their activity on digital interfaces (Proposal for a Council… 2018).

The quintessence of the European Commission's general vision, which has determined the peculiarities of its conceptual approaches and the draft directive rules, is the statement that "The application of the current corporate tax rules to the digital economy has led to misalignment between the place where the profits are taxed and the place where the value is created notably in case business models heavily reliant on user participation" (Proposal for a Council… 2018).

Indeed, a common feature of digital services potentially taxed in the EU is supposedly unique and significant involvement of users in value creation. This particular aspect is considered as an indispensable constitutive prerequisite for non-residents to obtain gross revenues in the territories of the countries of users' location, however, without tax liabilities commencement concerning income tax towards these countries.

At the same time, the conceptual and legal approach of the European Commission regarding revenues resulting from provision of the certain range of digital services which are not to be regarded as taxable deserves consideration. Focusing on one of the most complex segments concerning multi-sided interfaces for direct user interaction, it is worth noting that, in accordance with p. 4(a), Art. 3 of the directive's draft, it is proposed to exclude from its scope: providing access to the digital interface by economic entity, where the sole or primary purpose is to supply digital content to users; supplying communication and payment services. This approach is based on

the fact that the revenues of providers' intermediary services consisting in making available interfaces for direct multi-sided interaction of participants of the relevant market (e.g., guests and hotels – Booking, passengers and drivers – Uber) will be derived from the network effect (Proposal for a Council… 2018).

Therefore, granting an access to a multi-sided interface to users by the economic entity with the aim at providing of digital content which it owns or it has the right to provide (movies, videos, music) from the European Commission's opinion cannot be qualified as supply of intermediation services consisting in making available an access to the interface, which makes it necessary to exclude them from the scope of taxation. At the same time, this does not mean that digital content is proposed to put in place a more favourable tax treatment which requires focusing attention on the parties of the relationships. Thus, in the case of uploading and sharing digital content to users by the non-business entity but by other users on multi-sided digital interfaces, providing an access to the interface by such entity will have all the attributes of intermediary services for interaction between users, determining tax liabilities commencement.

The above-mentioned legislative proposals of the European Commission are being criticised both by experts in the field of international taxation and by a number of EU Member States. For example, Johannes Becker and Joachim English emphasize that the presumption of a "essential input" to the value creation of digital services, firstly, blurs the conceptual dividing line between production and consumption, and secondly, denies that digital services which the European Commission intends to consider taxable are pure consumption of online services through the free use of platforms in the course of which data is created just with its subsequent using and monetizing through the sale of space for advertising to other entities that are different from the users of the platforms - targets of this advertising (Becker & Englisch 2018).

The basic concepts of value creation, in particular, the "value chain", the "value network", are sufficiently explained in complete detail in the 2018 OECD interim report. Herewith business models that represent each concept are quoted instances where the provision of intermediary services with the use of multi-sided digital platforms takes place in the fields of both e-commerce tangible and intangible goods and the provision of intermediary digital services (OECD 2018).

In the broader context, it's worthwhile paying attention to the risks of a negative systemic effect within a single BEPS Action Plan taking into account the linkages of its separated components. Noteworthy is the attitude of Professor Adolfo Martín Jiménez pointing out that the preconditions are

being created to introduce significant incompatibility of international law implementation of the economic concept of "value creation" in the areas of, on the one hand, taxation of the digital economy (Action 1), on the other hand, Action (8-10) price transferring (Jiméne 2018).

There is no unanimity of conceptual approaches concerning the role of users in value creation in the field of digital business, and therefore, the real need and optimal vectors for modernising the legal basic principles of international taxation not only between the European Commission and EU Member States at the regional level, but also between the members of Inclusive Framework BEPS. So, for some members, the role of users is recognized as a unique and important driver in value creation for digital business, then other members take precisely the opposite position considering that data collection from users, users participation and provision of user generated content is nothing but a transaction between users and digital businesses, where financial or non-financial compensation is provided to users for data delivering or content providing (OECD 2018).

The common position of the three countries – Sweden, Denmark and Finland became the significant barrier to the adoption of the new directive concerning the digital services taxation in the EU. Aiming at ensuring both the private interests of resident companies acting as digital services exporters, and their own public interests (for the purpose of budget revenues of corporate income taxes), it is quite logical acting as opponent towards the European Commission's conceptual and legal approach to reallocation taxing rights between states in favour of countries where digital service users are located. The official joint statement by the Ministers of Finance of these states contains a number of important emphases, among which the following is worthy of note: firstly, they emphasise that such approaches do not comply with internationally established principles of taxation; secondly, the conceptual approach regarding cross-border taxation at destination is contrary to the interests of both the Member States creating favourable conditions for digital business and the European Union as a digital services exporter as a whole (Government Offices… 2018).

In the context of defining a proper taxable person in bilateral agreements on the avoidance of double taxation with all of EU Member States, the key terms are "resident" and "permanent establishment", which correspond to the statutory provision of Art. 4, 5 of the UN Model Convention (UNCTAD 2017) and the OECD Model Convention (OECD 2017a). The a permanent establishment may exist in a variety of formats and may include, inter alia, a factory, an office, an oil or gas well, a mine, as well as caring out business activity through an agent with no independent status, the common

feature of which is consisting of the physical presence of a non-resident in the territory of a particular state.

In turn, major challenges in the field of international taxation of the digital economy (OECD 2015) and further interim results of participatory development highlighted within the OECD as far back as in 2015 indicate the intention to change substantially conceptual and legal approaches commonly-accepted and introduce novelties that will determine other nexus rules of non-resident importers and the territories of the States (OECD 2019a).

The quintessence of one of the important approaches regarding the introduction of which a coherent vision at the international level is being formed gradually is that "highly digitalised businesses can be taxed in in states where users and consumers are located even though they are not physically present there" (OECD 2019b). At the same time, at the present stage, there is no single economic and legal position of the states regarding the optimal principles for the allocation between them taxing rights on companies' income derived from cross-border digital economic activity. Discussions revolve around three alternative conceptual approaches, namely "user participation", "marketing intangibles", and " significant economic presence" which, nevertheless, have a common target vector aimed at extending taxing rights of market jurisdiction (user location) (OECD 2019c), and an identical mechanism of application that goes beyond the current arm's length principle (OECD 2019d).

At the regional level, the European Commission proposed to implement the concept of a "significant digital presence" as being subject to incorporation as an integral part of the Permanent establishment institute. For Ukraine, this can also have some implications in the international treaty area, since it will necessitate harmonisation of amendments and supplements to agreements (conventions) on avoidance of double taxation with each EU Member State with further ratification of new rules of international agreements by the Parliament.

The issue of determining the proper taxation object, where the profits and the gross revenues will be competing, becomes significant in terms of both conceptual and legal as well as applied importance. In Art. 7 "Business profits" of The United Nations Model Double Taxation Convention between Developed and Developing Countries, which provides for additional clauses "b" and "c" in comparison with Art. 7 of the OECD Model Tax Convention "Business Profits" (OECD 2019c), the word "only" was used twice regarding profits precisely which shall be taxable. The provisions of both Model Conventions provide, firstly, for the taxation of profits only in the State where an entity of a cross-border activity is considered to be the resident entity, and

secondly, the right of another State to tax the profits of a non-resident only from its business activity in its territory through a permanent establishment.

All bilateral treaties of Ukraine with EU Member States contain relevant provisions on the right to levy a tax on non-resident's profits from business activities, but only with respect to the part relating to this permanent establishment (Treaties of Ukraine… 2019). Although the above-mentioned joint statement by the Ministers of Finance of the three Northern European countries does not specify exactly what kind of internationally established principles of international taxation are in conflict with the legislative proposals of the European Commission, it is worth noting that such approach has some reason. Indeed, at least compliance with the principles of neutrality, efficiency and justice can be called into question. In support of this statement, one should pay attention, in particular, to corporate income tax (its name may differ in the countries, for example, "income tax to state" in Denmark, "state income tax" in Sweden) which is calculated and paid on the basis of legislative requirements relating to recognising not only revenues but also expenses. In this case, the expenses of companies exporting digital products for research and development, market research are quite significant, so that in certain tax periods, profits in the territory of the state of their residence may not be obtained.

In this context, the topical matter is quite how fair the conceptual and legal approach would be assuming that the state of users location will be entitled to receive a tax on the gross revenues of a non-resident without physical presence in its territory , on the sole ground that there is an export of a digital product rather than a physically manufactured goods. In doing so, it is necessary to proceed from the axiomatic fundamentals of the nonidentity of the categories of "profits (or income)" and "revenues" so that the state of location of users will receive tax revenues in any case, regardless of financial results of a company. In turn, the state of residence of an exporter will bear the risk of receiving smaller taxes or not receiving them at all if the costs exceed revenues from the sources from all over the world.

Since non-resident permanent establishment is subject to income tax, it is logical that, under its calculating in accordance with the rules of all bilateral agreements on avoidance of double taxation with EU Member States, the general and administrative expenses incurred for such establishment are deductible. Therefore, if to consider the concept of "significant digital presence" as being subject to incorporation as part of the permanent establishment institute, then the topic is an idea of the extrapolation of existing and generally accepted principles of international taxation of non-residents as passives incomes - dividends, interest, royalties,

as well as profits, which, at the same time, can be taxed only in so far as the permanent establishment is concerned.

Such approach has significant potential in the practice-oriented field as it allows not only to preserve but also extend correctly the valid effective principles of international taxation, resulting in:

– the object of taxation will remain profits not gross revenues which will allow a non-resident to account not only revenues but also the relevant expenses in calculating the amount of tax payable to a budget of a country in which a certain proportion of digital services are provided;

– a state will have the right to tax the profits of a non-resident in accordance with the principle of territoriality upon condition its significant presence, in this case not physical in the format of permanent establishment, but digital;

– it will facilitate to eliminate quite real problem of double taxation, since, at first, a non-resident gross revenues will be taxed by a state in which digital service users are located, and subsequently the same revenues will be taken into account in calculating the net profit taxable to corporate income tax in a state a resident of which is a provider of such digital services.

Although the attempt to adopt the new directive appeared to be unsuccessful in the EU, the provisions of its draft can be considered as reflecting the conceptual and legal positions of the EU institutions. Such positions are already being found and are highly likely to be only partially implemented within the process of autonomous modernisation of legislation by individual EU Member States, however, beyond the process of harmonisation within the EU acquis.

France became the first EU Member State implementing novelties of tax legislation relating to the introduction of a direct tax on digital services revenues. The main provisions of the new law of France No. 2015-759 of July 24, 2019 (which contains among others a provision for retrospective application from January 1, 2019) provide for a 3% income tax levy on both residents and nonresidents supplying two categories of services in the territory of France, namely “digital interfaces” and “targeted advertising”. In doing so, economic entities will acquire legal status as taxpayers only if the amount of revenues from sources from all over the world from providing these categories of digital services exceeds EUR 750 million and the amount of revenue generated by French users exceeds EUR 25 million (Law of France… 2019).

Comparative law analysis of the issue of the correlation between the legislative proposals of the European Commission and the rules of the French law on taxation of digital services reveals both common and distinct conceptual and legal approaches that can generate different economic and

legal consequences. Thus, common approaches are related to the introduction of extraterritorial effect of tax legislative acts on non-residents without a physical presence on the market, tax rates (3%), an object of taxation, which is recognised as gross revenues non-inclusion of certain types of digital services to the scope of legislative acts, in particular, streaming services which involve the supply of digital content.

In turn, European Commission's proposals contain a broader range of digital services for cross-border businesses resulted in obtaining of taxable revenues. According to paragraph 1 of Art. 4 of the directive's draft mentioned above, in EU taxable persons will be recognised only large entities hypothetically, primarily, multinational companies, whose cross-border activity will exceed both of the following thresholds during the tax year: EUR 750 million - total amount of revenues from sources from all over the world and EUR 50 million – the total amount of taxable revenues from the sources within EU. At the same time, if the European Commission proposed to take into account the toted amount of revenues of a cross-border business entities from all kinds of activities, the French legislator focused on highly digitalised companies that would receive the same level of gross revenues – 750 million Euros, but exclusively from digital services. In this context, it should be emphasised that the change in the criterion will determine the narrowing of the circle of potential taxpayers whose activities are, mainly, related to the provision of digital services without taking into account, for example, revenues from cross-border e-commerce of tangible goods.

ANALYTICAL AND FORECASTING MODEL OF EU LEGAL FRAMEWORK FOR CROSS-BORDER DIGITAL SERVICES TAXATION

All the above creates a favourable information base for the development and presentation of a structured and integrated model of EU legal area formation in the field of taxation of cross-border digital services within this article as a European institutional legal context for the modernisation of Ukraine's tax legislation. Creation a structured insight into is fulfilled by the method of cognitive modeling, and the proper level of integrity is achieved through the application of a forecast method of scenario building. The optimisation of the research process was facilitated by the existing of a common methodological component of these methods which involves the identification of links between key factors (internal and external, objective and subjective, positive and negative), the nature of direct and feedback relationships, and the degree of their mutual impact.

In a concentrated view, the key intra-European factors being in the cause-effect relationships worth attributing: 1) the submission of legislative

initiatives and by the European Commission their failure; 2) uncompromising blocking position of a number of EU Member States; 3) the lack of legal mechanisms at the level of EU institutions to overcome the resistance of Member States owing to their fiscal sovereignty; 4) France's unilateral action to adopt the law whose rules do not correspond to the conceptual and legal approaches of the directive's draft in essential aspects.

In turn, it is appropriate to take into consideration two important external factors one of which is already mentioned in this article and which can be qualified as a trigger process. Definitely, it has determined and will to a significant extent determine the content and dynamics of intra-European processes in the field of digital economy taxation in the future. Such an impact will last stay until elaborating internationally agreed solutions, with a time horizon that is, along with that, a poorly forecasted parameter. Indeed, a set of factors – objective (extremely complex, systematic and dynamic nature of relationships in the digital economy) and subjective (different conceptual vision of quintessence of issues, for instance the role of users in value creation in cross-border digital services) can be considered, on the one hand, as the main causes of the slow dynamics of developments within the BEPS Project at the global level, on the other, as one of the main determinants of European Commission legislative initiatives at the regional level.

The other external factor, which was additionally involved and included with the aim at developing of the factor matrix at the preparatory stage of the study, on the one hand, is extremely influential, on the other, it is not disclosed in detail within this article because it deserves to become singled out as a subject of a separate analytical and prognostic study. In this case, it is about China and the US in the sense that the leading multinational digital services exporting companies are residents of these countries (UNCTAD 2019), with the consequence that their global economic interests, both state's public and companies' private, may adversely be affected by the EU of secondary legislation or the laws of the EU Member States.

Thus, the sustaining upward trends in digital services exports and imports in the global and regional dimension generates and retains in the EU a further twofold motivation for the legislative introduction of the digital services tax. Indeed, the EU is interested in introducing this tax, acting as a market jurisdiction for multinational companies from China and the US, but is not interested in introducing a similar tax on European digital services exporters.

Implementing the scenario that is desirable for EU institutions will simultaneously create the risk of aggravation of international trade and economic relations with countries whose companies are powerful exporters of digital services. Countermeasures may be taken to protect their interests,

both symmetrical (similar in tax) and asymmetrical, for example, raising tariff barriers for EU goods and services within the GATT and GATS of the World Trade Organization. The EU's unilateral action on the introduction of the digital services tax shows that the EU institutions are pessimistic about reaching a concerted position on reallocation of taxing rights between countries under BEPS Action 1 in the nearest future. At the same time, the position of the EU institutions is significantly weakened by two factors where the former is likely and the latter is highly possibly to remain constants in the future.

Firstly, the lack of the necessary powers at the level of the EU institutions, legal and legitimate law instruments capable of ensuring, within the framework of existing procedures (which do not require decisions by the qualified majority, but require consensus), the adoption of legislative acts, directed at harmonization and unification within the EU acquis. Secondly, the lack of intention by EU Member States to cede tax policy sovereignty and to introduce new tax rules on digital services at EU level, as this is contrary to their public interests and to the private commercial interests of companies which are residents of those countries and conduct successful cross-border activities in the field of digital economy.

The logical consequence of the weak institutional and legal positions of the European Commission and the uncompromising position *contra* of the three Northern European states (which is supported by other Member States, for example Ireland) became unilateral action of France to adopt the relevant law. In this context, it worthwhile emphasising that another key apologist for European integration processes – Germany – has no intention to introduce such a tax.

The extrapolation of trends within the EU gives grounds for putting forward the hypothesis that the triumph of individual states' interests over values shared by all is highly likely to determine the irreversible nature of current processes. The trajectory of their deployment will store a sufficiently dangerous vector that will indicate the movement towards to split approximately down the middle within the EU and fragmentation of legal regulation due to the chain reaction of other EU Member States which are sovereign in matters of tax policy implementation. Even, if in the context of Brexit, not to take into account the United Kingdom (which in 2020 aims at introducing 2% tax on revenues obtained from UK users by companies offering such digital products as search engines, social media platforms and online markets), France will not remain the only one in the path of unilateral modernisation of legislation. This thesis is supported by the already announced and highly probable legislative introduction of such a tax in 2020 by other Member States, the list of which is not exhaustive – Austria, Italy,

Spain, Greece, Hungary, Czech Republic, Slovenia, Slovakia (KPMG LLP 2019).

The analysis undertaken makes it possible to generate a subjective synthesised vision that the European Union is in a rather unfavourable situation. On the one hand, EU institutions are unlikely to expect positive results of international legal instruments modernisation within the OECD in the near term. On the other hand, the EU does not currently have the internal institutional and legal tools to introduce a digital services tax through the adoption of acts of the secondary legislation. Such an integrated statement makes the the situation for EU institutions extremely difficult, which are forced to maximise collective efforts within the OECD and have great hopes for a positive impact on the processes of another external factor. This factor implies that achieving a positive result to a large extent will depend on the degree of common interests and synergy of the efforts of the BEPS project initiators – OECD and G20.

The above manifests that the EU runs the risk of an inefficient cyclical algorithm, when further slowing down the OECD processes will again actualise for EU institutions the issue of resuming unilateral actions aimed at adopting new legal acts at the regional level within EU. In turn, the prospects for their implementation are unlikely to be more favourable than the previous ones in 2018 since neither the number of factors, their level of impact nor the nature of the mutual relations are likely to change significantly, at least in the short term.

FEATURES OF EU AND UKRAINE LEGISLATION IN THE FIELD OF VAT TAXATION FOR CROSS-BORDER DIGITAL SERVICES

Bilateral international agreements on avoidance of double taxation with EU Member States set aside indirect taxation, where value added tax (VAT) plays an important role in the international trade in services and intellectual property rights. This makes it necessary to refer to the provisions of the Tax Code of Ukraine (2010) and relevant EU legislative acts. According to Art. 185 of the Tax Code of Ukraine, VAT-taxable activity also includes the provision of services the place of delivery of which is located in the customs territory of Ukraine. In such a context, it is important to emphasise that the state budget of Ukraine receives tax revenues from import VAT within the B2B business model in the event that consumers of import services are business entities that are counterparties under international commercial contracts and registered as VAT payers.

Differentiation of consumers of services according to the criterion of the presence or absence of legal status of a business entity is important both from a theoretical and methodological and applied point of view. It stipulates

the essential specifics of the current tax legislation, as well as the existence of legislative loopholes on import VAT in the provision of services due to the objective lack of customs control at the border and the selection of two business models, namely, the above mentioned B2B (business-to-business) as well as B2C (business-to-consumer).

It is worth noting that the peculiarities of taxation of VAT on import of services are due to objective factors, first of all, the lack of legal status of a taxpayer in Ukraine by a non-resident. As a result, the Tax Code of Ukraine stipulates a system of tax rules in the case of providing services by non-resident that is not registered as a taxpayer and the place of providing is located in the customs territory of Ukraine to a person registered as a taxpayer. If, as a general rule, when a service is provided between two residents of Ukraine, VAT is charged to a provider, then, in the case of importing services, the recipient is legally obliged to calculate VAT which should be based on the basic tax rate which is the contract value. In this case, it is a matter of introducing one of the possible mechanisms for solving the problem within the B2B model at the legislative level in Ukraine, applied not in all countries, namely, the mechanism of reverse charge.

Significant digital presence of non-residents in the Ukrainian market, what is more, without the emergence of tax liabilities to the state, which is the source of revenues, takes place in cross-border transactions for the sale of intangible goods and digital services (computer programs, games, mobile applications) to individuals, who are not VAT payers. In this context, attention should be paid to the existence of a less favourable tax treatment for residents compared to non-residents of Ukraine providing analogue or similar digital services to other residents of Ukraine – legal entities or individuals within the B2C (business-to-consumer) model.

Taking into account that residents-digital service providers, such as streaming, are legally required to levy VAT, while non-residents as similar service providers do not have the same obligations, there is a distortion of competition in favour of non-residents through price disparities and shortfall in the state budget of Ukraine of VAT on imports of digital services. At the same time, it can be considered axiomatic that such a price disparity is advantageous for residents-users of digital services. At the same time, it can be considered axiomatic that such a price disparity is advantageous for residents users of digital services at the expense of their lower cost from non-residents of Ukraine. Based on the assumption that reverse charge mechanism is problematic within the B2C model, it will require legislative implementation of other mechanisms that have proven effective in practice, including in the EU.

Controversial regional context for Ukrainian legislation modernization

Alongside with the fact that the European Union has put on the back burner the introduction of a tax on gross revenues from the provision of cross-border digital services, with regard to legal regulation and administration of VAT the EU-optimised mechanism for registering non-residents as VAT payers deserves attention. Such a mechanism was implemented within the EU acquis by adopting, as a tool for harmonisation of EU legislation, first of all, Council Directive 2006/112/EU of 28.11.2006 on a common system of value added tax (Articles 358-369k) (Council Directive... 2006), which is formalized in Annex XXVIII to the EU-Ukraine Association Agreement directly, as well as the instruments of legislation unification providing for the implementation of VAT rules, in particular, EU Regulation No 282/2011 (Articles 57-63c) (Council Implementing... 2011). In this case, it is about Mini One Stop Shop for the provision by residents of states which are non-EU Members to its single market for digital services and intangible assets to EU residents which do not pay VAT. This reduces the administrative burden for non-residents by giving them the option of not registering as a VAT payer in each individual EU Member State when providing services such as web hosting, making available databases, supply software, supply applications, supply music, supply distance teaching (Council Directive… 2002).

The reverse charge mechanism and VAT registration procedures for the import of digital services are also in the focus of the OECD within which several documents have already been developed and made public. First and foremost, it's noteworthy the mechanisms for the effective collection of VAT in the field of digital services taxation when the supplier is not located in the jurisdiction of taxation (OECD 2017b) which is critical to be considered within systemic links to previous developments in this area (OECD 2011). The elaboration of these documents gives grounds for affirming that, despite the necessity for further collaborative work in an international format, a sufficient conceptual and legal basis has already been formed which can be adapted to the specifics of the national legal and economic systems of Ukraine with the aim at introducing effective novelties of tax legislation regarding non-residents paying of VAT to the state budget of Ukraine on operations of provision of cross-border digital services to consumers.

CONCLUSIONS

Summarising the above, it worthwhile noting that the European Union, as a powerful digital exporter but weakened by internal contradictions, and Ukraine, as a market tax jurisdiction for digital services imports, are interested in successfully completing the BEPS Action 1 within a reasonable timeframe. The contradictory European institutional and legal context outlines two alternative options for law enforcement for Ukraine within law-

making activity, where the first may stipulate legislative introduction of a tax not on gross revenues but on the non-resident's profits from cross-border provision of digital services for users in the territory of Ukraine under the condition of a significant digital presence. An important aspect should be considered stipulating a sunset clause, which will provide that these amendments and additions to the Tax Code of Ukraine will be of a temporary nature and will be valid until the relevant agreed decisions at international level within the BEPS project adopted.

In turn, the second option involves the expectation of positive outcomes within the OECD, which will allow saving resources for the development of changes to the Tax Code of Ukraine and temporary administration of the tax at the domestic level. Moreover, at the bilateral level with the EU Member States, as well as interested countries representing other regions, in particular, the Greater East Asia and America, this will facilitate to avoid problematic discussions related to the compliance of the temporary rules of the Tax Code of Ukraine with the rules of the existing bilateral treaties on avoidance of double taxation.

In the field of indirect taxation, the general vector of improvement and adaptation of the tax legislation of Ukraine to the legislation of the European Union in the field of import of digital services directly to consumers within the B2C model can be defined appropriate in the context of the effectiveness of the mechanisms provided for in the current acts of harmonisation and unification within the EU acquis, as well as taking into account the quintessence and peculiarities of conceptual and legal developments at universal and regional levels. In these circumstances specific mechanisms for registering online non-residents as VAT payers will remain the matter of disputes, which will require an appeal to the best VAT administration practices in the field of provision of cross-border digital services in OECD and EU members.

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