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IMPLEMENTATION OF BEPS PACKAGE IN UKRAINE: CURRENT STATE AND PROSPECTS

Base Erosion and Profit Shifting (BEPS) – is a plan of actions developed by the Organisation for Economic Co-operation and Development (OECD) on countering the erosion of the tax base and withdrawal of profits from taxation.

The main goal of the BEPS package implementation is to develop a multilateral single mechanism for fighting against aggressive tax planning, which is aimed at artificial reducing the tax base and moving taxable income to low-tax jurisdictions.

Expected effect from its implementation is to establishing common transparent tax rules for all countries (jurisdictions) in order to prevent tax evasion by business entities.

This plan consists of 15 actions that are general proposal in a specific area of taxation and are recommended for implementation in national laws and international treaties. These actions include:

- address the tax challenges of the digital economy (Action 1);
- neutralise the effects of hybrid mismatch arrangements (Action 2);
- strengthen CFC rules (Action 3);
- limit base erosion via interest deductions and other financial payments (Action 4);
- counter harmful tax practices more effectively, taking into account transparency and substance (Action 5);
- prevent treaty abuse (Action 6);
- prevent the artificial avoidance of PE status (Action 7);
- assure that transfer pricing outcomes are in line with value creation: intangibles (Action 8);
- assure that transfer pricing outcomes are in line with value creation: risks and capital (Action 9);
- assure that transfer pricing outcomes are in line with value creation: other high-risk transactions (Action 10);
- establish methodologies to collect and analyse data on BEPS and the actions to address it (Action 11);
- require taxpayers to disclose their aggressive tax planning arrangements (Action 12);
- re-examine transfer pricing documentation (Action 13);
- make dispute resolution mechanisms more effective (Action 14);
- develop a multilateral instrument (Action 15) [1].

Each country must implement so called Minimum standard of BEPS Action Plan that includes four obligatory actions (namely actions 5, 6, 13, 14) of fifteen that were proposed [2].

Analysis of Ukrainian legislation shows that a number of actions have already been implemented, namely:

- on January 1, 2017 Ukraine has joined the BEPS inclusive framework and made a commitment to implement Minimum standard of BEPS Action Plan (actions 5, 6, 13 and 14);

- on July 23, 2018 our country signed Multilateral Instrument, which is the basis for the implementation of actions 6, 7, 14 and 15.

- on January 16, 2020 Ukraine has adopted the Law of Ukraine № 466 “On Making Amendments to the Tax Code of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation” [3] that contains norms for implementation of actions 3, 4, 6, 7, 8-10, 13 and 14, and since May 23, 2020 it is obligatory to apply its provisions.

As for the prospects of further implementation of BEPS package in Ukraine, analysis of national legislation and current practice allowed to figure out next steps that are being developed by authorities right now:

- till the end of 2021 our country must implement controlled foreign companies (CFC) rules and new criteria for rules on capitalization (actions 3 and 4);

- in 2022 there must be the first submission of Country-by-country (CbC) reports for 2021 (action 13) [4].

Considering the results of the conducted research, the development of effective and rational BEPS package implementation steps can be provided by means of careful analysis of experience of foreign countries (namely, members of OECD) in BEPS package implementation and further putting its results into the basis of legal and methodological basis of Ukrainian practice (taking into account its peculiarities).

References

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