

CORPORATE INCOME TAXATION IN UKRAINE UNDER THE CONDITIONS OF STRENGTHENING INTERNATIONAL EXCHANGE OF INFORMATION

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Introduction. The corporate income tax, performing a fiscal function, provides revenues to the budget and is one of the main taxes. Meanwhile, in the process of globalization and digitalization, the traditional system of corporate income tax taxation in Ukraine is undergoing significant changes, as new requirements are introduced and tax control by the state is strengthened to prevent tax evasion. There are also discussions among scientists about the possibility of replacing the corporate income tax with a tax on withdrawn capital or a destination based cash flow tax [1]. However, such innovations have not yet been implemented in practice in Ukraine. At the same time, since Ukraine has joined the global practice of combating base erosion and profit shifting (BEPS), there are changes and strengthening of fiscal control in this direction.

Analysis of recent research and publications. Domestic and foreign scientists such as Brekhov S., Vietska O., Vyshnevskiy V., Proskura P., Sushkova O., Yefimenko T.I., Lovinska L.G. covered the issue of corporate income tax in Ukraine in their works., Auerbach A., Devereux M. and others. O. Vietska analyzes the main alternatives to the corporate income tax, in particular the tax on withdrawn capital and the destination based cash flow tax. In the works of S. Brekhov, P. Proskura, and O. Sushkova, the problem of aggressive tax planning was investigated and the methodology for determining indicators of the presence of risks of such planning by taxpayers was substantiated [2]. Yefimenko T.I., Lovinska L.H. studied the main stages of development and the current state of corporate income tax in Ukraine, the tax payment control system, the methodology for determining the object of taxation, tax audit, the process and information support of corporate income tax reporting [3]. At the same time, there is lack of research on the aspects of income tax taxation in the process of strengthening the exchange of tax information between countries, the rules of tax administration and the risks of strengthening tax control for enterprises – members of international groups, which were introduced into the legislation during the last three years and did not find sufficient approval on practice.

Objectives of the article is to review the existing rules of corporate income tax taxation in Ukraine, the dynamics of tax revenues, summarizing the main requirements and risks for taxpayers associated with the strengthening of the international exchange of tax information.

The main material of the study. Income tax is one of the most important taxes, which obliges companies to pay a part of their profits to the budget.

In Ukraine, the basic corporate income tax rate changed during the period of independence from 35% to the current rate of 18%. For comparison, in 2022, the average global corporate income tax rate based on data from 180 jurisdictions was 23.37% [4]. In Ukraine, for certain types of activities, in addition to the basic rate, additional income tax rates are established [5]:

- 3% – for insurance companies – residents under insurance contracts from the subject of taxation;
- 0% – for long-term life insurance contracts, voluntary health insurance contracts and insurance contracts within the scope of non-state pension provision, in particular additional pension insurance contracts,
- 0%, 4%, 5%, 6%, 12%, 15%, 18%, 20% – to the income of non-residents and persons equated to them with the source of their origin from Ukraine in certain legally defined cases;

- 10% – from income received from gambling using slot machines;
- 18% – from the income received from bookmaking activities, gambling without taking into account the income from gambling using slot machines, reduced by the amount of payouts to the player;
- 30% – from the income from the activity of issuing and holding lotteries, taking into account the legally defined features of taxation of this activity;
- 18% – from the adjusted profit of the controlled foreign company;
- 9% – during activities carried out by Diya City residents. The tax on operations of residents of the special legal regime of Diya City is part of the income tax.

Both residents and non-residents pay corporate income tax in Ukraine. First of all, these are legal entities, but in some cases, natural persons can also act as payers. Resident tax payers of Ukraine include [5]:

- legal entities that carry out economic activities both on the territory of Ukraine and abroad;
- the manager of the fund of real estate operations regarding operations and results of trust management activities;
- natural persons who pay non-residents income with a source of origin in Ukraine and natural persons – entrepreneurs, including those who have chosen a simplified taxation system;
- legal entities formed in accordance with the legislation of other countries and having a place of effective management on the territory of Ukraine.

Non-residents who must pay income tax are:

- legal entities that receive income from Ukraine;
- foreign companies that carry out their activities through a permanent representative office in Ukraine. At the same time, such non-residents must be registered with the supervisory body of Ukraine.

In the structure of budget-forming revenues for 2021, revenues from corporate income tax are one of the main ones (11.4%), second only to VAT (41.4%) and excise tax (12.5%).

Analyzing the dynamics of revenues from corporate income tax, it is worth noting that for the period 2013–2021, the lowest indicators were typical for 2015–2017, after which, starting from 2018, the indicators began to increase. The share of corporate income tax revenues in GDP from 2018 to 2021 exceeded 2.9% (with a slight drop in 2020 to 2.8%) and the share of income tax revenues in the sum of all tax revenues exceeded 10%. On average, for the period 2013–2021, the share of revenues from corporate income tax in Ukraine was 2.78% of GDP and 10.63% of all tax revenues. At the same time, the percentage of all tax revenues in GDP for the same period remained at a relatively stable level, with the highest indicators in 2016-2018.

In Ukraine, the rules for paying corporate income tax are regulated by the Tax Code, which is regularly amended in the context of the implementation of the BEPS Action Plan and the international exchange of tax information.

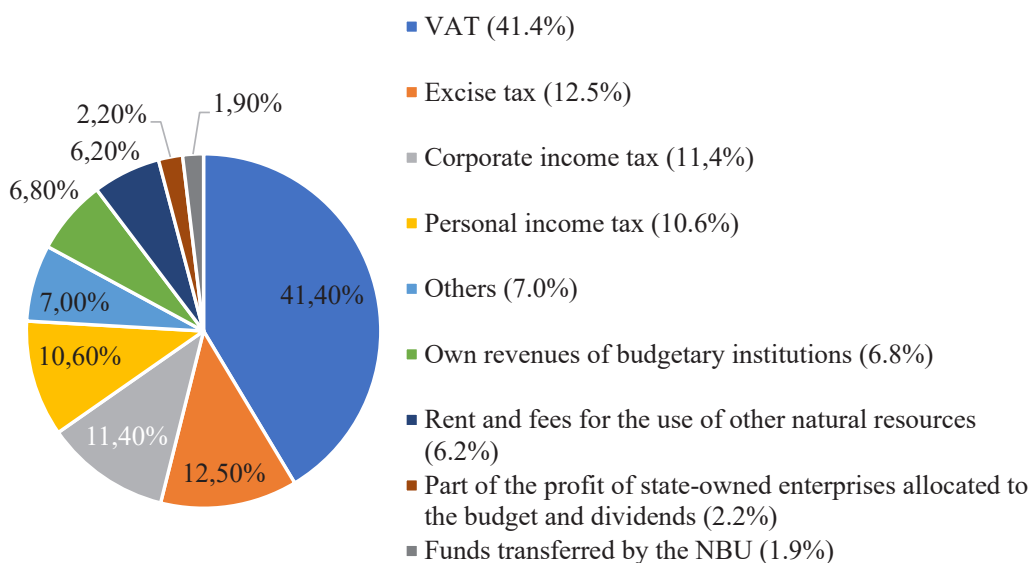


Figure 1. Budget-forming revenues of the State Budget of Ukraine in 2021

Source: compiled from [6, p. 16]

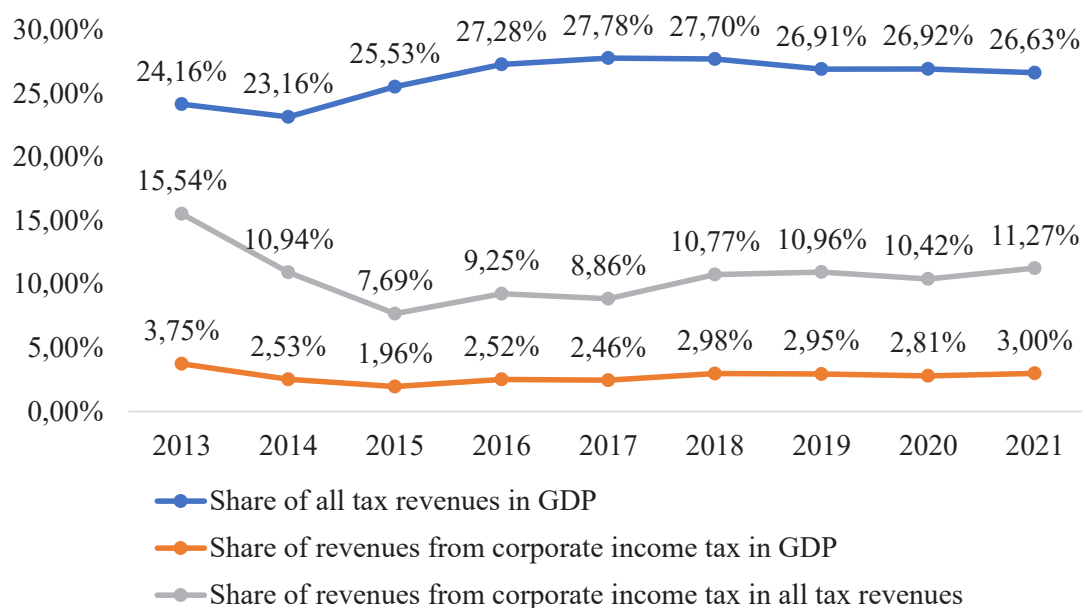


Figure 2. Receipts of corporate income tax in Ukraine for 2013–2021

Source: compiled from [6, p. 17; 7, p. 19]

In particular, income tax payers are required to prepare three-level transfer pricing documentation, which includes local and global documentation (master file), as well as a country-by-country report. The master file must be prepared by companies that are part of international groups of companies, if the aggregate consolidated income of the group for the financial year preceding the reporting year is equal to or exceeds the equivalent of 50 million euros. For the preparation of the report by country (hereinafter – CbCR), the consolidated income criterion is set at the level of 750 million euros. The master file contains information about the directions and geography of the group of companies, organizational structure, main products, key principles of value formation, intragroup agreements, as well as intangible assets and financial transactions. In the CbCR, enterprises that are part of international groups must disclose information about the place of registration of group members, main types of activities, revenue structure and income taxation. The obligation to submit CbCR belongs to the parent company or another authorized member of the international group of companies [5].

In the world, the first automatic exchange of CbCR took place in 2018, and as of the beginning of 2023, more than 90 countries, including Ukraine, have joined the Multilateral Agreement of Competent Authorities on the Automatic Exchange of Reports by Country (CbCR MCAA) [8]. In this regard, tax authorities will collect CbCR and exchange them with other states. For taxpayers, the risk of disclosure of information about the activities of international group enterprises in different jurisdictions will increase, mainly regarding the structure of income and income taxation.

EU Council Directive 2018/822 (hereinafter – DAC6) has been developed for EU member states in the context of strengthening the exchange of information between countries and with the aim of combating tax evasion. Intermediaries (lawyers, consultants, insurance companies, banks, auditors, etc.) or in some cases the enterprises themselves must report on international transactions that meet special characteristics (hallmarks). Such characteristics include those related to the main benefit test, as well as those related to beneficial owners, cross-border payments, and transfer pricing. To determine the ultimate purpose of the agreement, the main benefit test is conducted. It is considered fulfilled if the result establishes that the main benefit or one of the main benefits of the operation is the receipt of a tax benefit. If Ukrainian companies are involved in international transactions that have the characteristics specified in DAC6, there is a risk that tax authorities may obtain information about the details of such transactions [9]. Quick and timely receipt of information will ensure a quick response of tax authorities in order to combat tax evasion.

In Ukraine, one of the innovations regarding income tax is the taxation rules for controlled foreign companies (hereinafter – CIC), regulated by the provisions of the law. If a legal entity or an individual who is a resident of Ukraine exercises control over a legal entity, corporate entity or entity without the status of a legal entity, which are non-residents, such companies are CICs. The controller is obliged to submit a report on the

CIC, as well as to notify the tax authorities about the acquisition or alienation of a share in the CIC, establishment or termination of actual control. The object of taxation is a part of the adjusted profit of the CIC in proportion to the share of ownership of the controller [5].

Both in Ukraine and in the world, tax specialists pay considerable attention to the analysis of the economic feasibility of conducting transactions. The concept of a reasonable economic reason (business purpose) was initially applied to business transactions between residents of Ukraine, and after 2020 it was extended to transactions with non-residents. As Mishin M. notes regarding the essence of this phenomenon: "for taxation purposes, it is considered that a transaction carried out with non-residents does not have a reasonable economic reason (business purpose), if: the main purpose or one of the main purposes of the transaction is non-payment (incomplete payment) of the amount taxes and/or reduction of the taxpayer's taxable income; under comparable conditions, a person would not be ready to purchase (sell) such goods, works (services), intangible assets, other items of economic transactions, other than goods, from unrelated persons" [10, p. 107–108]. As a result of verifying the presence of a business purpose and proving its absence, tax authorities can reduce the costs of the corporate income tax payer and, accordingly, increase the tax base. The concept of a business goal was actively implemented in transfer pricing during inspections of the conditions for the implementation of controlled transactions.

Conclusions. Revenues from corporate income tax in Ukraine, as one of the main budget-forming taxes, have been at a relatively stable level over the past ten years, with the exception of minor deviations. Despite this, in the context of globalization and the strengthening of international information exchange, measures to combat tax evasion are being introduced at the legislative level, and control over tax reporting and tax payment is being strengthened. Among the main changes introduced during the last three years are the development and expansion of the scope of the concept of business purpose, rules for taxation of controlled foreign companies, joining the international exchange of reports by country. Meanwhile, it is worth noting that part of the requirements that are not directly implemented in the legislation of Ukraine, for example, the reporting requirements regulated by DAC6, indirectly affect domestic enterprises when they carry out cross-border operations. Such reforms are promising and bring the domestic tax system closer to international practices. The gradual implementation of tax avoidance and tax control measures will contribute to the transparency of business operations and reduce the risk of profit shifting. At the same time, it is important that any changes take into account the specifics of the domestic economy.

REFERENCES:

1. Pomerleau K., Entin S. J. (2016). The House GOP's Destination-Based Cash Flow Tax, Explained. Tax Foundation. Available at: <https://taxfoundation.org/destination-based-cash-flow-tax-explained/> (accessed 10 March 2023).
2. Brekhov S., Proskura K., Sushkova O. (2017). System of indicators of risks of aggressive tax planning. *Economic analysis*, vol. 27, no. 1, pp. 107–119.
3. Yefymenko T.I., Lovinska L.H. (2013). Improvement of corporate income taxation in Ukraine. Kyiv: DNNU "Akademiia finansovoho upravlinnia".
4. Enache C. (2022). Corporate Tax Rates around the World. Tax Foundation. Available at: <https://taxfoundation.org/corporate-tax-rates-by-country-2022/> (accessed 12 March 2023).
5. Podatkovyi kodeks Ukrainy [Tax Code of Ukraine]. *Verkhovna Rada of Ukraine*. Available at: <https://zakon.rada.gov.ua/laws/show/2755-17#Text> (accessed 30 March 2023).
6. Ministry of Finance of Ukraine (2022). Statistical publication "Budget of Ukraine 2021". Kyiv, p. 278.
7. Ministry of Finance of Ukraine (2018). Statistical publication "Budget of Ukraine 2017". Kyiv, p. 307.
8. OECD. Activated exchange relationships for Country-by-Country reporting. Available at: <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm> (accessed 18 March 2023).
9. Council Directive 2018/822/EU of 25 May 2018. European Council. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0822> (accessed 18 May 2022).
10. Mishyn M. (2021). Implementation of the doctrine of reasonable economic reason (business purpose) in the national legislation on transfer pricing. *Actual problems of economic activity in the conditions of the development of the economy of Industry 4.0*. Kharkiv: NDI PZIR NAPrN Ukrainy, pp. 106–114.

UDC 336.2

JEL H20, H26

Olha Kuvaldina, PhD student, Institute of Industrial Economics of National Academy of Sciences of Ukraine.**Corporate income taxation in Ukraine under the conditions of strengthening international exchange of information.**

The article examines the current state of corporate income tax in Ukraine, in particular – categories of tax payers and tax rates applicable to each category, analyses the dynamics of the income tax revenues' share in GDP and total tax revenues. Current issues of taxation by income tax in the context of strengthening international information exchange and combating tax evasion are considered. In the context of gradual introduction of global practices, tax control over payment of income tax is being strengthened and changes are being implemented into tax legislation. One of the latest changes and risks for taxpayers is the obligation to prepare three-level transfer pricing documentation, which includes local documentation, master file and country-by-country report, enabling tax authorities to obtain information about enterprises that are part of international groups of companies, and their taxable income. The rules for controlled foreign companies in Ukraine provide for a number of new legislative requirements to strengthen control over the payment of corporate income tax. In particular, such rules include the submission of reports, as well as notification to the tax authorities about changes in shares in a controlled foreign company. Council Directive (EU) 2018/822 was developed with the aim of informing tax authorities about cross-border agreements that potentially provide mechanisms for aggressive tax planning and achieving automatic exchange of information between tax authorities of EU member states. Cross-border transactions between several EU countries or between EU countries and non-EU countries (including Ukraine) that meet a number of criteria are subject to mandatory disclosure. The article describes the main content of the concept of business purpose, which is used to prove the reality and economic feasibility of tax payers' reconciliation of transactions with both residents and non-residents. The concept of a business purpose has been actively implemented in transfer pricing. As a result of checking the existence of a business purpose and proving its absence, tax authorities can reduce the costs of the corporate income tax payer and, accordingly, increase the tax base.

Keywords: corporate income tax, exchange of tax information, tax evasion, tax control, business purpose.

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Кувалдіна Ольга Олександрівна, аспірантка, Інститут економіки промисловості Національної академії наук України. **Оподаткування податком на прибуток підприємств в Україні в умовах посилення міжнародного обміну інформацією.**

У статті досліджено сучасний стан податку на прибуток підприємств в Україні, зокрема – категорії платників податку та ставки податку, що застосовуються до кожної категорії, проаналізовано динаміку частки надходжень від податку на прибуток у ВВП та загальних податкових надходженнях. Розглянуто актуальні питання оподаткування податком на прибуток у контексті посилення міжнародного обміну інформацією та боротьби з ухиленням від сплати податків. У контексті поступового впровадження світових практик посилюється податковий контроль за сплатою податку на прибуток та вносяться зміни до податкового законодавства. Однією з останніх змін та ризиків для платників податків є обов'язок підготовки трирівневої документації з трансфертного ціноутворення, яка включає локальну документацію, майстер-файл та звіт у розрізі країн, що дозволяє податковим органам отримувати інформацію про підприємства, які входять до складу міжнародних груп компаній, та їх оподатковуваний дохід. Правила для контрольованих іноземних компаній в Україні передбачають низку нових законодавчих вимог, спрямованих на посилення контролю за сплатою податку на прибуток підприємств. Зокрема, такі правила передбачають подання звітності, а також повідомлення податкових органів про зміну часток у контрольованій іноземній компанії. Директива Ради (ЄС) 2018/822 була розроблена з метою інформування податкових органів про транскордонні угоди, які потенційно передбачають механізми агресивного податкового планування, та досягнення автоматичного обміну інформацією між податковими органами країн-членів ЄС. Обов'язковому розкриттю підлягають транскордонні операції між кількома країнами ЄС або між країнами ЄС та країнами, що не є членами ЄС (включаючи Україну), які відповідають низці критеріїв. У статті розкрито основний зміст концепції ділової мети, яка використовується для доведення реальності та економічної доцільності узгодження платниками податків операцій як з резидентами, так і з нерезидентами. Концепція ділової мети активно застосовується у трансфертному ціноутворенні. В результаті перевірки наявності ділової мети та доведення її відсутності податкові органи можуть зменшити витрати платника податку на прибуток підприємств і, відповідно, збільшити базу оподаткування.

Ключові слова: податок на прибуток підприємств, обмін податковою інформацією, ухилення від сплати податків, податковий контроль, ділова мета.