TAX AMNESTY AS A MEANS OF FULFILLMENT OF BEPS REQUIREMENTS FOR IMPLEMENTATION OF TAX TRANSPARENCY: EXPERIENCE OF UKRAINE AND EU COUNTRIES

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ABSTRACT

The article is dedicated to analysis of tax amnesty as a means of fulfilling BEPS requirements in Ukraine and abroad. It is emphasized that the implementation of the BEPS Action Plan in Ukraine should ensure the application of unified requirements for the transparency of doing business according to international standards, increasing the efficiency of tax regulation, as well as financial stability in the context of the transition to free movement of capital. Within this framework, it is also advisable to have a language about harmonizing the requirements of the current legislation with the realities of the development of the modern legislation of the G20 countries, in particular, on the implementation of generally accepted standards for combating aggressive tax planning. Features and functions of tax amnesty are highlighted. It is proposed to improve the legal mechanism of tax amnesty through the consolidation of indirect methods for determining tax liabilities of taxpayers in the future.

Keywords: BEPS, One-Time Tax Declaration Fee, One-Time Tax Declaration, Public Interest, Tax Amnesty, Tax Rate, Tax Transparency

INTRODUCTION

In recent years, both in Ukraine and around the world, lawmaking in the area of taxation has undergone significant changes, due to the further integration of the tax systems of European countries. The joining efforts and coordination in this direction are facilitated by the implementation of the BEPS and BEPS 2.0 Plan developed by the Organization for Economic Cooperation and Development. The main purpose of the BEPS Plan is to ensure the taxation of profits in the jurisdiction where entrepreneurship is actually carried out, and to prevent artificial movement of profits to low-tax jurisdictions. It contains a kind of "roadmap" of measures, including recommendations for the implementation of national legislation aimed at preventing the practice of tax base erosion and moving profits. It should be noted that the BEPS Plan is a comprehensive document and provides for work in 15 areas, each of which provides for the implementation of a number of activities, for example, such as:

1) General measures within the framework of the BEPS report (solving tax issues in the area of digital economy; neutralization of differences in the regulation of hybrid instruments; strengthening the rules on controlled foreign companies; strengthening control over deduction of interest and other financial transactions; counteracting unfair taxation regimes.
2) Associated measures to the application of double taxation avoidance agreements (improving the effectiveness of dispute resolution mechanisms; development of legal instruments for the implementation of planned steps).

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3) Actions into permanent establishments (Pes) and transfer pricing (countering artificial evasion from the status of a permanent representative office; the ratio of transfer pricing rules with the creation of added value; review of transfer pricing documentation requirements).
4) Measures to ensure the exchange of information and transparency (mandatory disclosure by taxpayers of the structures used by aggressive tax planning methodology for collecting and analyzing information during the implementation of the BEPS project).

We state that while the BEPS Plan as a document is not mandatory for OECD member states, and science still expresses various considerations regarding the place of OECD acts among the sources of tax law, states actively use it to harmonize the provisions of national tax legislation with international standards to unify approaches to regulating the most relevant aspects of taxation.

It is indicative that the Plan inherently contributes to the transparency of doing business, including the transparency of the location of tax-free assets. In addition, the Common Reporting Standards (CRS) Standard was developed under the BEPS Plan (CRS). This is a system of legislative and facilities that provide the countries-participants of the Standard with the opportunity to automatically transfer and receive tax information about the assets of citizens once a year without additional conditions and efforts. Information will be received regarding those citizens who opened accounts (created other assets) not in their home state, but in the state that signed an agreement on the exchange of information. Based on the analysis of the above Standard, we state that the main purpose of its adoption is to equip tax authorities with an effective tool to combat tax evasion offshore, by providing more detailed information about the wealth of their residents held abroad. The Standard intends to equip tax authorities with an effective tool to tackle offshore tax evasion by providing a greater level of information on their residents' wealth held abroad. In order to maximise efficiency and minimise costs the Standard builds on the automated and standardised solutions that jurisdictions previously developed for the purposes of the intergovernmental operationalisation of the US laws commonly known as FATCA (Foreign Account Tax Compliance Act) (Standard for Automatic Exchange of Financial Information in Tax Matters, 2018).

Unconditionally, the Standards approved by the OECD require from national governments transparency in the process of exchanging tax information at the request of the partner country, and the information package includes accounting, banking information (regardless of the bank secrecy) and property ownership information. At the same time, the confidentiality of the received information and its use for purely limited purposes are protected (Country-by-Country Exchange Relationships, 2018).

Since 2017, Ukraine has affiliated with the international program of expanded cooperation on the implementation of the BEPS Action Plan, which currently involves more than 135 countries and jurisdictions. It is revealing that Ukraine has already settled a number of issues necessary for the further implementation of certain steps of the BEPS Action Plan, which are aimed at ensuring greater transparency and expansion of the tax base by attracting taxpayers who avoided taxation, using methods built on the use of cross-border transactions. Principally, we are referring to the Law of Ukraine "On Amendments to the Tax Code of Ukraine on Improving the Administration of Taxes, Eliminating Technical and Logical Inconsistencies in Tax Legislation," which provides for measures to improve the transfer pricing rules and the introduction of taxation rules for controlled foreign companies. Implementation of the BEPS Action Plan in Ukraine should ensure the application of unified requirements for the transparency of doing business according to international standards, improving the efficiency of tax regulation, as well as financial stability in the context of the transition to free movement of capital. In this context, it is also advisable to have a language about harmonizing the requirements of the current legislation with the realities of the development of the modern legislation of the G20 countries, in particular, on the implementation of generally accepted standards for combating aggressive tax planning. Therefore, the transformation of Ukrainian tax legislation is a logical and objective consequence of Ukraine's integration into the European community.

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For the purposes of the implementation of the BEPS Plan in Ukraine predictably was the introduction in accordance with the Law "On Amendments to the Tax Code of Ukraine and other laws of Ukraine to stimulate the detinization of incomes and increase the tax culture of citizens by introducing a one-time (special) voluntary declaration by individuals of their assets and payment of a one-time fee to the budget" voluntary tax declaration, which in fact provides for the implementation of tax amnesty.

The Amnesty Institute is not new to research. Both Ukrainian and foreign lawyers resorted to his analysis, in particular: Belova T., Kucheryavenko M., Pivovarova I., Prykhodko I., Ryadinska V., Smychok E., Agustina L., Baroroh N., Sa'adah N. and others. At the same time, in modern conditions, the legal mechanism of its implementation has undergone corresponding transformations, which necessitates the analysis of modern approaches to the definition and regulation of tax amnesty.

The purpose of the article is to consider the legal mechanism of tax amnesty in Ukraine and in the countries of the European Union.

RESULTS AND DISCUSSION

Investigating the content of the category "amnesty" in the tax sphere, scientists have identified two main approaches to determining its essence. According to the first approach, amnesty is considered as an institution for maximizing the fiscal function of the state. In this context, we are talking about: the ability of taxpayers to independently settle the consequences of tax offenses; protection of the violator of tax discipline from applying ordinary tax sanctions to him in exchange for payment of the corresponding compensation; introduction of a new form of tax policy of the state (Franzoni, 1996). As a result, for the state as a possessive party in tax relations it is important to replenish the budget by paying the corresponding fee.

In accordance with the second approach, tax amnesty is considered as a temporarily available special proposal of the government, which: is temporarily available; allows you to increase the income of the state; such an increase in budget revenues is due to the amnesty of the selective group of taxpayers; signs of such payers is a tendency to evade taxation. Within the framework of this approach, amnesty is defined as a kind of discrimination - depending on the possibilities of tax evasion, some taxpayers prefer to pay their "tax indulgences," paying taxes provided by the law in a timely manner, while others prefer to "pull" the time and make a payment in accordance with the conditions of amnesty (Franzoni, 1996).

As is evident from the foregoing, the emphasis is placed on the priority of replenishment of public funds through the implementation of tax amnesty, as well as the withdrawal from the shadow of a large number of taxpayers who have tax-free income or capital (although they are subject to taxation in accordance with the legislation). However, it is obvious that the tax amnesty performs a number of other functions (tasks). Their aggregate can be represented as follows: a) fiscal - provides for the filling of revenue parts of budgets of different levels; b) economical - aimed at the return of capital and assets of taxpayers exported abroad to their home state; c) stimulating - acts as an incentive for the formation of legitimate (legal) behavior of the payer, is carried out in order to establish partnerships between the state and the taxpayer; d) prognostic, which provides for the creation of such a future basis for the relationship between the state and the taxpayers, the latter of who encourage the taxpayers to perform properly their tax duties.

Traditionally, scientists consider tax amnesty as:

a) State legal act, by which the state guarantees exemption from tax liability of persons who have not fulfilled in accordance with the procedure established by law the obligation to pay tax, provided that such persons voluntarily and in full contribute to the budget all available inefficiencies;
b) The method of financial activity of the state used for the systematic formation of public funds;
c) A legal institution, which constitutes a separate complex of interrelated tax and legal norms regulating public relations regarding tax collection on the basis of the adoption of the state legal act on the declaration of tax amnesty (Belova, 2015).

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However, revealing the content of the tax amnesty in each of these aspects, we face the presence of certain controversial aspects. Firstly, when regulating tax amnesty, the state does not issue a corresponding special act on amnesty (unlike criminal law, in which a separate normative legal act is issued, for example, the Law of Ukraine "On Amnesty," which provides for provisions on: the relevant categories of persons subject to amnesty in accordance with this law; list of persons on whom such law does not apply; some aspects of the application of such law, etc.). Amendments to the Tax Code of Ukraine regarding the introduction of tax amnesty and payment of a one-time fee to the budget were introduced by the Law of Ukraine "On Amendments to the Tax Code of Ukraine and other laws of Ukraine on stimulating the detinization of incomes and increasing the tax culture of citizens by introducing a one-time (special) voluntary declaration by individuals of their assets and payment of a one-time fee to the budget " (which we have already mentioned by text, hereinafter referred to as the Law № 1539). Even based on the name of the above and foregoing act of legislature, we can note on the record the absence of special importance.

Secondly, tax amnesty is actually one of the methods that the state uses to fill budgets in the implementation of public financial activity. However, the introduction of such a "method" has a limited temporal effect. It is, in particular, that according to paragraph. 2 p. 1 subsection. 9^4 Part XX of the Tax Code of Ukraine, tax amnesty is held from September 1, 2021 to September 1, 2022. In fact, the validity of the analyzed method is only one calendar year and with its help public funds can be filled only this period. In addition, it is unlikely to agree with the systematic filling of public funds from the use of tax amnesty, since at the moment we cannot clearly establish the amount of funds that will go to budgets in this way, as well as clearly establish the terms of such revenues (except for the established period of such a regime).

Our understanding is that any mechanism used in the field of taxation should be evaluated systematically, since the introduction of inconsistent and disparate mechanisms will negatively affect both taxation as a whole and the administration of taxes and fees. Thus, one-time voluntary tax declaration must be responsible, first of all, for the constitutional principles of the rule of law and the definition of Ukraine as a legal state (Articles 1 and 8 of the Constitution of Ukraine), as well as to take into account the legal positions of the European Court of Human Rights and the Constitutional Court of Ukraine.

It is revealing that in the decisions of the Constitutional Court of Ukraine repeatedly stressed that the defining elements of the rule of law are the principles of legal certainty, clarity and uncertainty of the legal norm, since the rest cannot ensure its equal application, does not exclude the unlimited interpretation in law enforcement practice and inevitably leads to arbitrariness (Paragraph 2 of subparagraph 5.4 of paragraph 5 of the motivational part of the Decision of the Constitutional Court of Ukraine of 22.09.2005 № 5, from 29.06.2010 № 17-rp, from 11.10.2011 10-rp). Therefore, clarity of the wording of norms is an indispensable requirement for the legal regulation of tax amnesty.

The European Court of Human Rights has also repeatedly stressed that the laws must comply with the standard established by the Convention on the Protection of Human Rights and Fundamental Freedoms, which requires a sufficiently clear wording of legal norms in the text of normative legal acts. In particular, ... "the Law should be accessible to stakeholders and formed with sufficient accuracy in order to enable them to regulate their behavior in order to be able - if necessary, with the appropriate consultation - to anticipate to the extent reasonable under the appropriate circumstances the consequences that its action may entail" (decision in the case "Vierentsov *vs* Ukraine, 2013). In addition, in the practice of the ECHR, three main criteria have been developed that should be evaluated for compliance with the interference in the right of a person to peaceful possession of his property with the principle of lawful intervention, compatible with the guarantees of Article 1 of the First Protocol, such as: (a) whether the intervention is legal; (b) whether it pursues “public interest” (general interest, general interest of the community); (c) whether such measure (interference with the right to peaceful possession of property) is proportional to the intended purpose (must be a reasonable relationship of propriety

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between the means employed and the aims pursued). The ECHR states the violation by the state of Article 1 of the First Protocol, if at least one criterion is not observed (The Supreme Court of Ukraine summarized recommendations on protection of property rights, 2015). Simpliciter, they must also be adhered to.

When the mechanism of tax amnesty is implementing, it is also of special importance to ensure compliance with the principles of equality of all before the law and humanism. Among the tools aimed at realizing the principle of humanism are amnesty as an act of mercy in the form of liberation from responsibility of persons who committed an offense. Therefore, the announcement and implementation of tax amnesty can lead to both positive (formation of trust relations between the state and society, prevention of offenses, budget revenues of additional funds) and negative consequences (destabilization of relations in the tax sphere, increase in the number of non-taxpayers). Achieving positive results requires careful consideration of the conditions and details of the legal regulation of tax amnesty (Belova, 2015). We agree that the introduction of tax amnesty can have both positive and negative sides. This approach is quite understandable, because in practice it is not always possible to create an ideal model, statutory concept, mechanism. Moreover, by introducing relevant legislative innovations, their real effectiveness can only be assessed after a certain temporal period of their application.

Krynytskyi deal with the negative aspect, stressing that tax amnesty negatively affects the creation of law and order in the field of taxation, because the principles of justice and equality are violated, since persons who evade the performance of one of the constitutional duties receive significant preferences from the state and receive a kind of "indulgence," as a result of which the tax burden is fully relied on "positive" person, not only not supported, but, on the contrary, receives "punishment," because in order to obtain planned tax revenues, the state steals lost funds from payers who are in the legal area (Krynytskyi, 2012). To some extent similar to the above are the considerations of Ryadinska. The researcher, analyzing the tax amnesty, emphasizes that their application is a dubious, unethical and immoral step, which will be regarded by society as the desire of high officials to legalize their own illegal income and amnesty of persons who have acquired capital as a result of their own criminal activity (Ryadinska, 2015).

Instead, Pivovar, examining the matter Indonesia's experience in the context of amnesty tax regulation, emphasizes the rather controversial nature of the decision on the implementation of tax amnesty. The researcher convinces that the consolidation of such a tax-legal institute led to a number of negative phenomena, such as: (1) the weakening of the morale of law-abiding taxpayers who paid taxes; (2) failure of tax amnesty in the long term to influence the behavior of taxpayers who have used it (such persons will not see the need to pay taxes in general and will wait for the next tax amnesty from the state); (3) a potential means for taxpayers to launder money (Pivovar, 2018).

In our opinion, in this context, constructive reasoning is I. V. Prykhodko, who focuses on stipulate the positive and negative consequences of tax amnesty. The first group includes the following: 1) replenishment of the state budget at the expense of revenues from overdue or hidden taxes, which in other circumstances would hardly be possible or would require significant administrative costs for the implementation of tax control and other measures in the field of law enforcement and operational-search activities (reduction of these administrative costs); 2) correction of shortcomings and errors in the existing tax system, which was characterized by a shift in the balance of public and private interests when taxing in favor of public interests; 3) restoration of tax discipline, raising the level of conscientious payment of taxes; 4) increase in the tax base. To the second - violation of the principle of fairness and equality of taxation; is a form of interporal (intermediate discrimination); significantly affect the weakening of tax discipline and tax morality (Prykhodko, 2015).

According to the analysis of the practice of applying the mechanisms of tax amnesty in different countries of the world, in each specific state, this process took place in its own way and had both a positive and not quite a result. In most cases, the expectations of such events significantly exceed the results. In general, it can be argued that the effectiveness of amnesty

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programs differed not only between countries, but even in the same countries depending on the period of application and the conditions of conduction, methods and goals of amnesty. At the same time, in this situation it is unlikely to determine any single or a number of factors that would guarantee the success of such initiatives of the state. It is advisable to talk about a comprehensive approach, which takes into account not only the tax rates on amnesty capital, but also the level of justice awareness of society, the level of trust in the government, financial literacy, as well as the effectiveness of the system of incentives and measures of responsibility.

It is revealing that one of the most effective is the tax amnesty in Ireland, which was conducted by the Government in 1988. The funds collected as a result of the 10-month amnesty amounted to approximately $ 750 million (2.5% of GDP), which three times exceeded the size of the state budget deficit. At the same time, expectations were much lower, at the level of $50 million.

Some lawyers consider it quite successful tax amnesty conducted in Indonesia in 2016. It is noteworthy that for the first time in Indonesia tax amnesty took place in 1964. and the authorities called them "fiscal incentive programs." In 2016 Indonesian authorities estimated that more than 300 billion dollars, earned in Indonesia, their owners are kept in areas with a preferential tax regime. When returning these funds to Indonesia, it was possible to pay half as much tax as if the declared funds remained offshore. And in Indonesia, these funds could not only be deposited in a bank, but also invested in government bonds or infrastructure projects. Then citizens of the country declared 366 billion dollars, which was 40% of the country's GDP. Tax revenues to the country's budget based on the results of the voluntary declaration campaign amounted to the equivalent of USD 8 billion. Scientists who have studied the effectiveness of the Indonesian amnesty tax program argue that such a legal phenomenon has improved the tax base and tax revenues in the short term, as well as positively influenced the compliance of tax regulations with tax relations participants (Hajawiyah, Suryarini, Kiswanto & Tarmudji, 2021). However, there are other considerations. Thus, Linda Agustina, Ema Suprapti, Heri Yanto, Santi Susant, Niswah Baroroh, on the example of 22 manufacturers, analyzed the changes that took place in the tax administration after the tax amnesty in Indonesia. Based on the analysis, scientists have found that there are no significant differences in tax management before and after tax amnesty (Baroroh, Suprapti, Agustina, Yanto & Susanti, 2021).

Somewhat different results of the introduction of tax amnesty took place in Italy. The fact is that in Italy, tax amnesties were so frequent that the Organization for Economic Cooperation and Development even gave the government a recommendation to abandon such practice altogether so as not to completely undermine the tax system. However, in 2001. and 2009. tax amnesty was still successful. An interesting factor was the opportunity for individuals who owned assets abroad to simply declare them to the government. Thus, in 2001, the Government of the State offered two models of tax amnesty to taxpayers, in particular, (1) provided only payment of tax for those assets that are in offshore; (2) mandatory return of capital to Italy and payment of tax at a reduced rate (2.5% of the total amount of returned wealth).

At the same time, taxpayers, at their own discretion, had the right to choose the model that they considered more optimal for themselves. In fact, the state has established certain dispositive levers and granted discretionary powers to the obliged participants of tax legal relations. However, during the tax amnesty in 2009. Italian authorities have changed the approach to determining the tax rates of repatriated assets and set a single rate of 5%. As a result, about 80 billion euros of assets were declared, and additional taxes were received in the amount of 4 billion euros (Orozco-Aleman & Gonzalez-Lozano, 2018).

Tax amnesty in Argentina is also periodic and includes various mechanisms: from amnesty of capital on the terms of their repatriation and investing in special funds and state enterprises to reduced tax rates for "hopeless" debtors and tax holidays for employer companies. The effectiveness of such shares is not high enough, but they allow to reform the state tax system and fight crises in the economy. Apparently, in some countries of the world, different models of tax amnesty or its types are established. Each state, taking into account its own

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(national) legal regulation of tax relations, chooses the most optimal approach to the regulation of tax amnesty. Such a position is quite understandable and acceptable, the state is in search of sustainable, effective models (especially in crisis conditions).

Tax amnesty in the United States has a fairly long history. Thus, it was first held in 1980, while we note that the tax amnesty programs applied to all categories of taxpayers. Their main goal was to ensure the reduction of taxpayers' tax liabilities established by law. Depending on the appointment, tax amnesties in the United States were divided into those aimed at the abolition of penalties, tax duties for certain categories of taxpayers, tax prosecutions, etc. In the UK, the 2007 tax amnesty, called Offshore Disclosure Facility, provided for a return to the country and taxation at a reduced rate of capital withdrawn to offshore areas. Reduced penalties and fines to 10% of the amount of hidden income to replace the usual 100% fine (Smirnykh, 2009).

Taking into account the world experience, we state that in order for the tax amnesty to be successful, it must involve as many taxpayers as possible, offer favorable conditions, have clearly prescribed rules in the legislation, be one-time, after the end of the amnesty, the punishment must be inevitable. At the same time, one of the main risks of applying tax amnesty is the legalization of income received illegally ("money laundering").

At first glance, there is an impression of building trust relations between the state and taxpayers by introducing appropriate mutual "incentives." The state allows taxpayers to voluntarily declare their assets, which were not properly reflected in accordance with the provisions of tax legislation, and avoid liability for committed violations of tax and legal norms. Taxpayers, using such innovations, pays a fee to the budget. In our opinion, such innovations in the tax legislation may ultimately be positive only for the state, and what consequences will happen for taxpayers in Ukraine after the end of the temporal action of such a regime cannot be clearly stated in the case. In our opinion, when introducing tax amnesty, the legislator must necessarily regulate the issue of what will next with the wealth that has not been declared, as well as what the consequences will be for the taxpayer in this situation.

In this context, it is advisable to cite the experience of implementing tax amnesty in Georgia, which turned out to be negative. Yes, shadow wealth declared only 8 people, and it was about 35 thousand dollars, while the country counted on 4 million (Tax Code. Georgia, 2014). However, already in 2014, the tax legislation of Georgia clearly regulated the legal mechanism of tax amnesty and provided for the abolition of all penalties under expenditure obligations for the relevant tax periods, as well as the impossibility of their application to taxpayers who used tax amnesty in the future (Tax Code. Georgia, 2014). We should state that in the tax legislation of Georgia as of 2020, there are no provisions on tax amnesty (Tax Code. Georgia, 2020).

In modern conditions, there is no clear understanding of the Government of Ukraine, what indirect methods should be used to determine tax liabilities of taxpayers in the future. As it seems, in addition to controlling the taxpayer's income, the relevant procedures for controlling the expenses of taxpayers should be regulated after the corresponding voluntary declaration of the payer's assets. This approach will allow to carry out comprehensive control over tax liabilities of taxpayers, as well as to really assess the completeness of their definition and payment in the future.

It is obvious that this issue was formerly settled in some way. According to the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Methodology for Determining the Amounts of Tax Liabilities by Indirect Methods" the indirect methods of determining the amounts of tax liabilities of taxpayers mean determining the amounts of their tax liabilities according to the assessment of the taxpayer's expenses, growth of its assets, the number of persons who are in a relationship with it, as well as the assessment of other elements of tax bases that are taken to calculate the tax liability for a particular tax, fee (mandatory payment) in accordance with the law. At the same time, the assessment of elements of tax databases is carried out using information obtained from sources other than reporting or primary documents. The above-mentioned Resolution had rather limited actions in time (expired in

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2005), and indirect methods for determining tax liabilities of taxpayers did not find their consolidation in the Tax Code of Ukraine.

Again, we emphasize that the introduction of tax amnesty without understanding the state's actions after its completion (in the context of determining tax liabilities of taxpayers) will have a one-time short-term effect. Obviously, in order to build partnerships between the state and taxpayers, it is necessary to introduce qualitative, really functioning legal mechanisms.

Furthermore, we will focus attention on a detailed review of the provisions of the Tax Code of Ukraine regarding the analyzed phenomenon - tax amnesty. First of all, we note that the legislator does not use the category "tax amnesty" in this act, but uses the category "one-time (special) voluntary declaration," which in its meaningful content is similar to tax amnesty. According to item 1 subsection 9^4 Section XX of the Tax Code of Ukraine, it is a special procedure for voluntary declaration by an individual, defined by a point of 3 of this unit, its assets placed in the territory of Ukraine and/or abroad, if such assets of an individual were received (acquired) by such an individual at the expense of income that was subject at the time of their accrual (obtaining) taxation in Ukraine and of which were not paid or paid in full taxes and fees in accordance with the requirements of the legislation on taxation and/or international treaties, consent to the obligation of which was granted by the Verkhovna Rada of Ukraine, and/or which were not declared in violation of tax and currency legislation, control over the observance of which is entrusted to the supervisory authorities, during any of the tax periods that took place before January 1, 2021.

As we can see, such declaration

a) Only taxpayers - individuals can apply;
b) Is voluntary - the taxpayer, at his own discretion, decides whether to use such legislative innovations or not;
c) Has limited validity in time (only from September 1, 2021 to September 1, 2022);
d) Implies the consequence of mandatory payment of the fee to the budget for such declaration;
e) Has a special procedure for submission;
f) Provides for the declaration of assets due to the payer, if such assets were received (acquired) by such individual at the expense of income that were subject to their accrual (receipt) of taxation in Ukraine and of which were not paid or paid in full taxes and fees, and/or which were not declared in tax violation and currency legislation. At the same time, an individual can choose any tax period that took place before January 1, 2021, and assets can be placed both on the territory of Ukraine and abroad;

(f) funds from such declaration are credited to a specially opened bank account.

It is indicative that according to item 2 subsection 9^4 Section XX of the Tax Code of Ukraine, the fee for one-time (special) voluntary declaration is a one-time mandatory payment, the amount of which is independently calculated by the declarant from the value of the assets owed to him, taking into account the rates of such a fee determined by this unit, and is displayed by it in a one-time (special) voluntary declaration.

Given the above, the question arises as to the legal nature of such a gathering. Thus, this fee is regulated by the Tax Code of Ukraine, where its elements are defined, but it is not included in the state tax system. This conclusion is made based on the fact that in the list of both national taxes and fees, and local this payment is absent (Article 9 and 10 of the Tax Code of Ukraine). On the one hand, the approach chosen by the legislator is clear: why make changes to the "basic" articles of the code, if this payment is made and the corresponding legal mechanism is only a year old. On the other hand, a similar situation took place when establishing a military gathering.

It is revealing that Ukraine already has a negative experience in introducing tax payments contrary to the provisions of the Tax Code of Ukraine (Dmytryk & Tokarieva, 2021). We are talking about the military fee, which is not in the list of taxes and fees. 9 and 10 of the Tax Code of Ukraine, and the legal mechanism of which is defined in paragraph 1 of paragraph 16-1 of subsection 10 of section XX of the Tax Code of Ukraine. At the same time, we emphasize that the above paragraph states that the military fee is temporary - is established before the Verkhovna Rada of Ukraine decision on the completion of the reform of the Armed Forces of

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Ukraine. Changes to the introduction of military fees were made 28 Dec. 2014 and these provisions have become legal since Jan 1, 2015. As of June 2021, the reform of the Armed Forces of Ukraine is still ongoing, and the legal mechanism of military collection is still not properly regulated (Dmytryk & Tokarieva, 2021). The above allows us to conclude on the possibility of repeating a similar situation and on such voluntary declaration and payment of the corresponding fee.

Returning to the consideration of the legal mechanism of collection for one-time (special) voluntary declaration, we focus on the analysis of such an element as a bet. According to p. 8 subsection 9^4 Section XX, the amount of collection from a one-time (special) voluntary declaration on declared objects is determined by applying to the base for charging a fee from a one-time (special) voluntary declaration, the following rates: 5 interest; 9 percent; 2, 5 percent.

For example, the rate of collection of 5 percent is provided: (1) for currency values placed on accounts in banks in Ukraine in compliance with the requirements set by clause 9 of the sub-agreement. 9 4 Section XX of the Tax Code of Ukraine, and on the right of monetary claim to residents of Ukraine defined by subpara. "a" p. 4 subsection 9^4 Section XX;

(2) regarding the objects of declaration defined by pp. "b" - "e" p. 4 subsection 9^4 Section XX of the Tax Code of Ukraine located (registered) in Ukraine, except those taxed at the rate defined by subparagraph 8.3 the same paragraph. At the same time, for the purpose of one-time (special) voluntary declaration for the application of the rate of one-time (special) voluntary declaration of 5 percent on the date of submission of a one-time (special) voluntary declaration of the declarant's funds in national and foreign currencies, bank metals should be placed on accounts in banks of Ukraine. This is about: real estate (land plots, residential and non-residential real estate). Real estate also includes objects of unfinished construction, which: not accepted into operation or ownership of which is not registered in accordance with the procedure established by law, but property rights to such objects belong to the declarant on the right of ownership; not commissioned and located on land plots belonging to the declarant on the right of private property, including joint ownership, or on the right of long-term lease or on the right of superfiction; movable property, including: vehicles and other self-propelled vehicles and mechanisms; other valuable movable property (objects of art and antiques, precious metals, precious stones, jewelry, etc.); shares (shares) in the property of legal entities or in entities without the status of a legal entity, other corporate rights, property rights to intellectual property; securities and/or financial instruments defined by law; the right to receive dividends, interest or other similar property benefits, not related to the right to ownership of securities, shares (shares) in the property of legal entities and/or entities without the status of a legal entity; other assets of an individual, including property, bank metals not placed on accounts, commemorative banknotes and coins, property rights belonging to the declarant or from which the declarant receives or is entitled to receive income on the basis of an agreement on the management of a property or other similar transaction and does not pay the owner of such property part of the proper owner of income.

The rate of 9 percent applies to: a) the currency values placed on accounts in foreign banks or stored in foreign financial institutions, and the right of monetary claim to non-residents of Ukraine determined by the subparagraph "a" of paragraph 4 of this subsection; b) regarding the objects of declaration defined by pp. "b" - "e" item 4 subsection 9^4 Section XX of the Tax Code of Ukraine, which are located (registered) abroad, except those that are taxed at the rate specified by p. 8.3 p. 8 subsection 94 Section XX of the aforementioned normative legal act.

For the purpose of one-time (special) voluntary declaration to apply the rate of collection of 9%, the funds of the declarant in foreign currency on the date of submission of such declaration must be placed on accounts in banks and/or other financial institutions abroad. The fee rate of 2,5% is set in relation to the nominal value of state bonds of Ukraine with a turnover period of more than 365 days without the right of early repayment purchased by the declarant from September 1, 2021 to August 31, 2022 before submission of a one-time (special) voluntary declaration.

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At the same time, the legislator consolidated the ability of the taxpayer to choose alternative rates that are higher than the above, but the taxpayer is given the opportunity to installment tax liabilities into three equal parts and pay them annually. So, p. 8.1 and 8.2 sub. 9 4 Section XX of the Tax Code of Ukraine regulates the right of the taxpayer to choose the rate of 6 interest (instead of 5%) with payment of tax liability in three equal parts annually, the rate of 11.5 interest (instead of 9%, respectively) with payment of tax liability in three equal parts annually, as well as the rate of 3 interest (instead of 2.5%) with payment of tax liability in three equal parts annually (On amendments to the Tax Code of Ukraine and other laws of Ukraine…, 2021).

In this regard, let us point out a few aspects that we consider important. First, among the types of tax rates fixed in Article 26-28 of the Tax Code of Ukraine, alternative rates do not appear. Therefore, a completely logical question arises regarding the compliance of the establishment of alternative rates with the provisions of the Tax Code of Ukraine.

Additionally, the methodology of tax rates is the most difficult and at the same time the problem when establishing appropriate taxes and fees. The level and mechanism of application of tax rates should ensure the filling of public funds without violating the balance of public and private interests (social and economic balance), based on the optimal combination of the principles of taxation and tax legislation (such as: equality, justice, fiscal sufficiency, economics). At the same time, its size depends on the level of economic development of each particular state, the content of tax policy, etc. (GULE, 2020).

In fact, some categories of taxpayers are given the right to independently establish a more convenient or even profitable (on the part of each specific taxpayer) tax rate in the amnesty tax regime. It is clear that in this situation, there is still a certain imperative, since the taxpayers choose from the options clearly regulated by the legislator. At the same time, this approach, in our opinion, does not only violate the general logic and methodology of regulation of relations in the field of taxation, but it can be regarded in some way as a violation of the principle of equality of all payers before the law, prevention of any manifestations of tax discrimination, which provides for the same approach to all taxpayers regardless of social, racial, national, religious belonging, form of ownership of a legal entity, citizenship of an individual, place of origin of capital (Tax Code of Ukraine, 2010, p. 4.1.2 Art. 4). However, such complexity should not become an obstacle to compliance with the norms of the current legislation or a justification for the satisfaction of accepting the norms contrary to the current provisions. The above indicates that at the moment the provisions of the tax legislation on the allocation of types of tax rates and fees need coordination.

Speaking about the rates of one-time (special) voluntary declaration, we once again emphasize that the legislator not only established a new type of tax rates for individuals - taxpayers, but also combined this with the introduction of installments of tax liabilities of the respective taxpayers. As it is seen, the above-mentioned approach of the legislator indicates a special interest of the state in declaring the assets of individuals and paying the corresponding amounts of fees, and therefore in filling the revenues of the budget, since the corresponding stimulation of taxpayers is applied in a different way from the generally established order.

In fact, when applying such preferences, payment of a one-time (special) voluntary declaration is made by the declarant: the first payment - within 30 calendar days from the date of submission of a one-time (special) voluntary declaration; the second payment - until November 1, 2023; the third payment - until November 1, 2024. And for taxpayers who choose rates that are not alternative, the payment of the fee is made by the declarant within 30 calendar days from the date of submission of a one-time (special) voluntary declaration.

By contrast, the Tax Code of Ukraine established appropriate control measures. Thus, in order to confirm the application of the appropriate rate of collection from a one-time (special) voluntary declaration, the State Tax Service of Ukraine, during the chamber audit of the corresponding one-time (special) voluntary declaration, has the right: 1) to check the registration of transactions and/or assets in state registers, including by contacting the relevant state bodies; 2) apply to the declarant with a request to confirm the availability of the declarant specified in

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the corresponding one-time (special) voluntary declaration of property, property and non-property rights, if the results of the verification provided for in paragraph two of this subparagraph revealed a discrepancy between the declared information and the data of the state registers.

Also, the Tax Code of Ukraine stipulates that if the controlling body, within 365 days from the date of submission of a one-time (special) voluntary declaration by the declarant violation of the conditions of placement of currency values in banking and/or other financial institutions, the absence of a document confirming the right requirements (including the absence of a loan agreement between the declarant and the legal entity and/or notarization of the loan agreement between the declarant and another individual), and/or the absence of copies of documents provided by this section, provided that the declarant within 15 working days the next day after receipt of the request, will not provide explanations and documentary evidence, and/or relevant copies of documents at the written request of the central executive body implementing the state tax policy, which indicates the inaccuracy of data and/or list of unsubmitted documents provided by this section, next to defined by this Code, a documentary unscheduled on-site inspection is carried out and monetary liabilities are accrued.

At the same time, such currency values and claim rights (including funds borrowed to third parties), reflected in the one-time (special) voluntary declaration, and/or assets, the value of which must be documented, in cases provided for by this unit, are taxed at the rate of 18 percent. In this case, the central executive body implementing the state tax policy carries out the calculation of monetary obligations in the general procedure. Thus, from the above it is seen that in case of taxpayers failure to comply with the terms of such declaration, in particular, violation of the terms of placement of currency valuables or failure to provide relevant documents confirming the relevant rights, the controlling authorities conduct an audit of such a payer in general order, and therefore - in case of detection of violations of the measures of influence for violation of tax legislation will be applied according to the general rule.

It is indicative that the relevant control measures within the framework of tax amnesty are also applied abroad. For example, in the UK, the mechanism for conducting tax amnesty included checking the completeness of the information provided by the applicant and announcing a decision on the possibility of amnesty after its completion. Under that approach, the regulatory authorities acted only in the public interest, and not in the interests of the obliged participants in tax relations. In fact, the state highlighted the undeclared wealth of taxpayers, carried out an appropriate analysis, and in the end - many taxpayers were denied tax amnesty, and in the future, the taxpayers applied liability measures for violation of tax and legal norms. As it is seen, this was one of the factors that adversely affected the attitude of taxpayers to conducting tax amnesty and, as a result, significantly reduced the expected effectiveness of the action.

CONCLUSION

It is deemed that tax amnesty is an important factor in ensuring the fulfillment of BEPS requirements for the implementation of tax transparency in Ukraine.

Based on the analysis of foreign experience in the implementation of tax amnesty, we emphasize that there is no ideal model of tax amnesty, its features depend on a number of different factors. Modern tax amnesty is characterized by such features as: 1) special subject composition - only individuals-payers taxes; 2) specific objects of declaration - assets of individuals, located on the territory of Ukraine and/or abroad, if they are received (acquired) by such an individual at the expense of income that was subject at the time their accrual (receipt) of taxation in Ukraine and of which were not paid or paid not in full taxes and fees, and/or which were not declared in violation of tax and currency legislation; 3) voluntary nature - the taxpayer at his own discretion decides to use such legislative innovations or not; 4) temporal limitation (only from September 1, 2021 to September 1, 2022); 5) payment - the subject of declaration pays a fee to the budget for use special voluntary declaration, the amount of which is calculated

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from taking into account specific rates; 6) special procedure for submitting such declarations; 7) funds from such declaration are credited to a specially opened bank account.

The emphasis is placed on the priority of replenishment of public funds through the implementation of tax amnesty, as well as the withdrawal from the shadow of a large number of taxpayers who have tax-free income or capital (although they are subject to taxation in accordance with the legislation). However, it is obvious that the tax amnesty performs a number of other functions (tasks). Their aggregate can be represented as follows: a) fiscal - provides for the filling of revenue parts of budgets of different levels; b) economical - aimed at the return of capital and assets of taxpayers exported abroad to their home state; c) stimulating - acts as an incentive for the formation of legitimate (legal) behavior of the payer, is carried out in order to establish partnerships between the state and the taxpayer; d) prognostic, which provides for the creation of such a future basis for the relationship between the state and the taxpayers, the latter of who encourage the taxpayers to properly perform their tax duties.

It is established that the legal mechanism of tax amnesty is not perfect, in modern conditions there is no clear understanding of the government of Ukraine, which indirect methods should be used to determine tax liabilities of taxpayers in the future. As it seems, in addition to controlling the taxpayer's income, the relevant procedures for controlling the expenses of taxpayers should be regulated after the corresponding voluntary declaration of the payer's assets. This approach will allow to carry out comprehensive control over tax liabilities of taxpayers, as well as to really assess the completeness of their definition and payment in the future.

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