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## EFFECTIVE MEANS OF LEGAL REGULATION OF FOREIGN TRADE

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*The article proposes means of state-legal regulation of foreign trade, in particular legal, economic (in particular tax), political, financial and administrative instruments. The main shortcomings of the legislation are analyzed, which make it possible to effectively optimize taxation, carry out illegal export of capital and demand compensation from the budget. In order to avoid erosion of the tax base and profit shifting, a single object of taxation is proposed – value added, which is determined by the sum of factor incomes of the payers: wages fund and profit. Substantiated formation principle of the fair market value (price), which is equal to the sum of added value, VAT, charged on it, depreciation of means of production and costs, determined by the fair market value of goods/services, used in production. The established correspondence between the fair market price and the added value allows you to accurately determine the size of the tax base (VAT, personal income tax, profit tax and social contributions) and excludes any known methods of tax optimization. The amount of taxes paid determines the monetary equivalent of the added value and the increase in the sales price at each stage of production and distribution, which excludes the possibility of artificially reducing the tax base and/or transferring profits to jurisdictions with low taxes. The introduction of added value and its components as a single base of basic taxes and fees excludes weak capitalization and any other deductions from the tax base. The proposed definition of a single tax base significantly simplifies the administration of basic taxes and contributions and exhausts measures for the implementation of paragraphs 3, 4 and 5 of the BEPS plan.*

**Keywords:** value added, factor income, market value, BEPS plan, income, profit.

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### 1. Introduction

State regulation of foreign trade involves the use of a wide arsenal of tools that are aimed at achieving optimal participation of the country in the international division of labor, protecting the national economy from the negative phenomena of the world economy, and promoting the growth of competitiveness of national producers in the international market.

The regulation of foreign trade requires the use of various legal means, which can be classified depending on the sources of law (laws and regulations); an element of the legal system (rule of law, legal institutions, legal regimes, procedures and principles); the element and method of exercising the right (subjective rights and legal obligations, law enforcement acts and contracts, legal facts and acts of exercising legal rights and obligations); method of legal regulation (prohibitions, benefits, incentives and punishments, restrictions). Legal remedies have certain characteristics. They are based on law. The law determines, regulates their application and provides means of coercion. The most important property of legal means is their expediency. Means only make sense in the context of achieving a specific goal.

The mechanism of legal regulation of foreign trade is a special case of the mechanism of state legal regulation, the purpose of which is to satisfy the interests of society, the state and subjects of foreign economic activity. The mechanism of legal regulation of foreign trade covers the system of legal means and instruments of a legal nature, and state legal regulation includes, in addition to legal means, economic (including tax), political, financial and administrative instruments.

Economic instruments of state regulation of foreign trade through cost indicators affect the dynamics, volume, structure and geography of foreign economic flows. These are duties and customs duties, taxation of export-import operations, customs nomenclature, the procedure for determining the customs value, the system of tariff benefits, etc. Administrative means allow the state to directly intervene in the process of foreign economic operations. These are quotas, licensing, the establishment of bans on the movement of certain goods, sanitary and veterinary regulations, technical standards, etc. Financial regulatory instruments provide for import deposits, export subsidies, and export crediting.

An integral part of the legal regulation of foreign trade is currency regulation, which is understood as the activities of state bodies, aimed at regulating the procedure for carrying out currency transactions. The tax authorities exercise currency control over compliance with the requirements for repatriation of foreign currency earnings by residents, issue a transaction passport, and provide supporting documents. The current legal regulation of currency control includes the Law of Ukraine [1] and the NBU Instruction [2].

Control over currency transactions, carried out by residents and non-residents, as well as compliance of these transactions with the requirements of acts of currency legislation and acts of currency regulation bodies, is performed by currency control bodies and agents. To increase the efficiency of currency control, methods should be developed that make it impossible to carry out illegal export of capital abroad and cancel the bulk of the established schemes. However, the result cannot be achieved by strengthening administrative control.

It is possible to arrange foreign economic relations, which are diverse in content, only by such a system of means, in which legal instruments dominate, but are not exclusive. This is due to the specifics of foreign economic relations between independent economic agents, as well as the cross-border nature of transactions, which leads to the impossibility and inadmissibility of using exclusively imperative methods and purely legal means of regulating this area. The most urgent task is to develop measures of state and legal regulation that ensure an effective combination of the interests of an individual economic agent, society and the state. It is about finding a balance between public law and private law methods in the field of regulation of foreign trade.

## 2. Literary review

The main thrust of the modern world economy is globalization and interdependence. Strengthening the role of the international division of labor and, as a result, the growth of exchanges of goods and services between producers and consumers from different countries. International trade relations are formalized by foreign economic transactions, which in their essence are close to civil law. At the same time, an international commercial transaction has a number of features and differences: The agreement is regulated not by one state, but by two (or more) states; The cost of the goods is calculated by two (or more) parties; When concluding commercial transactions, one should take into account the existing interstate agreements that may affect the rights and obligations of the parties.

Different countries have different legislation on issues that may arise in the preparation and implementation of international agreements. The existing differences in the conditions of foreign trade are effectively used by unscrupulous taxpayers to optimize the tax base and/or illegal withdrawal of capital in jurisdictions with more favorable tax conditions.

The problem of capital migration, including its illegal export, did not become the subject of special attention of the state authorities exercising monetary regulation. According to a study by the American non-governmental organization Global Financial Integrity, from 2004 to 2013, \$ 116,762 billion was illegally exported from Ukraine [3]. The largest volumes of exported capital fall on 2008 – 2013: in 2008 – \$ 16,922; in 2009 – \$ 10,574; in 2010 – \$ 13,843; in 2011 – \$ 17,949; in 2012 – \$ 21,001; in 2013 – \$ 13.911 billion respectively. In terms of exported capital, Ukraine is in fourteenth place among 149 countries.

The huge scale of illegal export of capital from Ukraine deprives the economy of financial resources that could be used for investments, tax payments, reforming the pension system and other social insurance programs. The influence of illegal export of capital on such fundamental macroeconomic indicators as the volume and growth rate of GDP, savings, investment, the exchange rate, budget deficit, income of the population and enterprises is very significant. The export of capital was facilitated by globalization, which led to a sharp increase in capital mobility and the integration of financial markets. As a result, any local event can provoke an intensive outflow of resources from the country and lead to destabilization of the situation. And the national financial crisis, in turn, can in a fairly short time cause not only a chain reaction of non-payments in the system of international settlements, but also lead to serious disruptions in the work of world financial markets.

The movement of capital abroad is often used as a way to legalize (launder) money, obtained from crime. The fight against money laundering has grown into an international problem. This is due to the fact that the underworld uses for this purpose, in addition to domestic channels, international settlement systems and offshore zones, and also conducts fictitious export-import operations.

Particular difficulties are posed by the fight against semi-legal export of capital, when financial transactions are carried out within the framework of legal schemes, the purpose of which is to transfer capital abroad. For example, lending to a subsidiary or related company abroad, financial settlements through a non-performing enterprise, operations with junk securities through offshore companies. Such transactions contain signs of a crime and are subject to special monitoring in international law. Attempts to legalize shares and securities of offshore jurisdictions in Russia were carried out several times, but no big effect was obtained [4].

The stabilization of the national currency, the growth of gold and foreign exchange reserves, and accurate forecasting of the country's balance of payments can help prevent illegal export of capital abroad. An important element of preventing the escape and illegal export of capital is the development of a system of foreign exchange regulation, since all operations for the withdrawal of capital abroad go through currency exchange operations. That is why the existence of an effective system of foreign exchange regulation is a necessary condition for preventing illegal international capital flows from the country both in the form of escape and permanent export of capital, obtained illegally. The effectiveness and level of development of the country's economy, its place in the international financial system largely depend on the effectiveness of measures to prevent the illegal export of capital. Foreign trade is used as the main method of illegal withdrawal of capital. Capital export can be carried out in order to conceal profit from taxation; withdrawal of the organization's monetary assets for further appropriation; turnover of financial flows of the shadow economy, hidden from state control; further legalization of proceeds from crime.

There are a sufficient number of legal schemes that allow for the export of capital and optimize tax payments. The widespread use of undervaluation of exported and/or overvaluation of imported goods is well known [5]. This scheme is especially often used for export, usually with the use of offshore jurisdictions. The documents often indicate the underestimated weight and quantity of goods.

The schemes for overstating the value of imported goods are not so popular, since in this case the importing organization has to pay at least value added tax, and in most cases also import duty. This method was extremely common in the 1990s, but it is still used today. The import of goods is carried out through an offshore company, which purchases goods at a real price and resells at a significantly inflated price. The difference in value remains in the offshore organization, controlled by the buyer. Such schemes can be actively used if the owners or management of the organization, for some reason, are not interested in its further development and have begun to withdraw capital. The scheme is common when purchasing goods/services for the funds of the state budget or companies with a significant share of capital of the state.

The overstatement price of imported goods is aimed at exporting capital for private companies and stealing public funds if the company has a sufficiently significant share of state capital. The real purpose of the import operation can be found out by analyzing the beneficiaries of the offshore exporting company. If residents have a direct or indirect influence on the distribution of income in an offshore company, it can be considered, that the purpose of the import operation is the export of capital and/or theft of public funds. And the size of the exported capital and/or the stolen amount is easy to find out.

A variation of this method of exporting capital can be called the purchase of commercial documents at inflated prices. Such schemes are used mainly by large manufacturing companies. For example, along with the purchase of equipment, a firm may also purchase documentation that allegedly pertains to it. In this case, it is extremely difficult to verify the reliability of the declared price, especially if an offshore company acts as the seller country. A serious drawback of this scheme is the need to pay value added tax when the goods are actually imported, but VAT is paid from the organization's money, and the transferred capital, as a rule, becomes personal property.

Within the framework of increasing the efficiency of tax control through the formation of electronic databases in theory and practice, it is proposed to introduce a mandatory for exporters taxpayers: "passport of an export transaction", which must be filled in by all regulatory authorities as the exported goods move before crossing the state border; special bank accounts, through which the movement of funds related to VAT settlements would be carried out, which would be beneficial to bona fide legal exporters, since this would allow tax authorities to quickly distinguish a bona fide taxpayer from a pseudo-exporter.

It should be noted the low efficiency of such measures, since they try to introduce strict control over inaccurate information. Neither the transaction passport nor special bank accounts related to VAT calculations can prevent not only the illegal export of capital, but also the illegal receipt of compensation from the budget.

One of the ways to avoid currency control of import operations is to conclude an agreement providing for the purchase of goods by a resident from a non-resident on FCA terms according to Incoterms. A non-resident is deemed to have fulfilled his/her obligations to deliver the goods from the moment the goods are delivered to the resident at the named place of delivery. The agreement does not provide for the period of import (receipt) of goods into the customs territory of the state or the period for the return of funds for not imported (not received) goods into the customs territory. In addition to delivery under FCA terms, a resident may provide in the contract for the delivery of goods by a non-resident to a third country without subsequent import into the territory of the state.

This way of avoiding currency control is provided for in Art. 1 of the Law of Ukraine "On Foreign trade" [6], which defines the concept of "import": "Import (buying goods from abroad) – purchase (including with payment in non-monetary form) by Ukrainian subjects of foreign trade from foreign economic entities of goods with or without import of these goods into the territory of Ukraine, including the purchase of goods, intended for their own consumption by institutions and organizations of Ukraine, located outside its borders " ... The territory of institutions and organizations of Ukraine regardless from

their actual location outside the internationally recognized borders of Ukraine is the territory of the country. The given definition does not reveal the content of the concept "import", which comes from lat. importare – to import, but it introduces illegal export of capital into the legal field of Ukraine and legalizes the export of capital outside the customs territory of the state.

A fundamentally different definition of the concept of "import" is found in Art. 74 of the Customs Code of Ukraine [7]: "Import (release for free circulation) is a customs regime, according to which foreign goods, after payment of all customs payments, established by the laws of Ukraine for the import of these goods, and the fulfillment of all necessary customs formalities, are released for free circulation in the customs territory of Ukraine ". This definition assumes the mandatory import of goods into the customs territory of Ukraine. Import is buying from abroad goods, services (sometimes it can be used for capital, knowledge, technology). And the procedure for importing goods into the customs territory of the country is regulated by the Customs Code of Ukraine. We propose to agree on the definition of "import" in the Law of Ukraine "On Foreign trade" and the Customs Code of Ukraine. In the Law of Ukraine "On Foreign trade" we offer the following definition: "import – buying from abroad goods, works, services, results of intellectual activity (including exclusive rights to them) into the customs territory of Ukraine without an obligation to export them back" ... The fact of import is recorded at the moment the goods cross the customs border of Ukraine, when a purchaser receives services and rights to the results of intellectual activity.

In the Law of Ukraine "On Foreign trade" it is necessary to give a new definition of the concept of export from lat. exporto – take out. "Export – taking abroad goods, works, services, results of intellectual activity, including exclusive rights to them from the customs territory of Ukraine without an obligation to re-import." The fact of export is recorded at the moment the goods cross the customs border of Ukraine, services and rights to the results of intellectual activity are provided. "

If the goods are not delivered to the customs territory of the state, such an import operation should be considered fictitious or such that it pursues another goal – in fact, the resident realizes the export of capital. In order to avoid the export of capital, it is necessary to adequately define the concept of import and the method of foreign exchange control of import operations. Legislation should introduce such a method of payment for imported goods, which provides for the payment of VAT and import duties on all imported goods. Moreover, the payment of VAT and duties must be carried out at the time of payment for the goods (simultaneously with the transfer of funds to the supplier outside the state). In this case, it can be guaranteed, that real imports are carried out, and the imported goods will be brought into the customs territory of the state as soon as possible. If the purpose of the agreement is the export of capital, which does not provide for the import of goods, then the proposed method of foreign exchange control of import operations automatically introduces a tax on the export of capital, the rate of which is equal to the rate of internal VAT plus the rate of customs duty. The customs service controls only the quantitative indicators of the imported goods and the declared assortment. Along the way, the source of corrupt income at customs is being eliminated.

The largest value of illegal bulk of the export of capital is accounted for by fictitious contracts for the import of services and transactions with securities. When concluding an agreement for the provision of services, a transaction passport is opened. However, instead of the cargo customs declaration, which is necessary in fulfilling the obligations under the contract for the sale of goods, an act of acceptance and transfer of the services rendered will be sufficient to close the transfer amount. An effective method of controlling operations for the provision of services is the payment of VAT directly to the budget when making payments for the services provided. To determine the legality of such transactions, it is important to establish the country of registration of the supplier, the residence of the supplier's beneficiaries, the state's share in the capital of the customer of the services.

The main part of the capital outflow is made up of dubious transactions: timely non-received export earnings and not imported goods under import contracts; unreceived services under import contracts, to which funds were transferred; transfers were made for suspicious transactions with securities; transfers for dubious transactions with loans granted; investing in large development projects, on the basis of agency agreements to find buyers for goods, works and services [8].

To ensure proper control of foreign economic transactions, it is necessary to interact with the bodies and agents of foreign exchange control. Some of them (customs authorities, professional participants in the securities market, authorized banks and the NBU) have information about foreign exchange transactions, open accounts outside the territory, while others (Customs Service, Tax Service) are authorized to apply sanctions for violation of acts of currency legislation and acts of currency regulation authorities without such information. In this regard, the authors proposed to organize a system of information interaction between currency control authorities and agents. The information interaction system is aimed at conducting coordinated activities of foreign exchange control institutions, which makes it possible to increase the efficiency of control over the observance of foreign trade by foreign exchange legislation and thereby contribute to reducing the scale of illegal export of capital abroad.

Finally, there are also openly illegal ways of transferring capital abroad, for example, agreements that did not initially envisage the return of foreign exchange earnings or the import of goods, or fictitious

imports. To implement such a scheme, a one-day company is usually created with a fictitious director, an international sale and purchase agreement is concluded, a transaction passport is opened in the bank, after which a prepayment is made under the contract (when importing) or the goods are exported (when exporting) for a significant amount. In the future, responsibility for non-fulfillment of contractual obligations will fall entirely on the firm and its nominee director. Paying VAT and duties directly to the budget at the time of payment for goods, even for fictitious imports, will allow you to remove tax (VAT and import duties) from the capital that is exported. Responsibility for the return of export proceeds should be borne by the owner of the goods. Title to the goods is transferred only after full actual payment. In these conditions, the economic feasibility of the activities of one-day firms and gasket firms disappears.

The export of goods at an inflated value is carried out mainly when the main purpose of the agreement is to obtain illegal VAT refunds from the budget. Given the low competitiveness of domestically produced goods, an overestimated value is possible only if fictitious exports, exports of raw materials and/or goods with low added value are carried out. In the latter case, most likely, a fictitious export operation is being carried out. To close this scheme, it is enough to make an amendment to the Tax Code, which provides for the right to VAT refunds only in the case of export of goods, the added value of which is at least 30 %.

### **3. The aim and objectives of the study**

The aim of the work is to develop effective means of legal regulation of foreign trade and making proposals on the necessary changes to the legislation.

To achieve the set goal, the following tasks were formed:

1. To investigate general methods of tax optimization not prohibited by national legislation;
2. To justify the criteria for distinguishing the concepts of "fair market value" and "normal or free price";
3. To propose the necessary changes to the Tax Code of Ukraine, which make it impossible to use legal and illegal methods of optimizing taxation and ensure effective regulation of foreign exchange.

### **4. Research materials and methods**

The methodological basis of the research was general scientific and special methods of scientific knowledge. Using the methods of analysis and synthesis, the processes of optimization of taxation and illegal export of capital during the implementation of foreign trade are comprehensively investigated. The dialectical method is applied in defining key concepts and categories, used in scientific research. The formal-legal (dogmatic) method made it possible to analyze normative legal acts, the practice of their application in the field of foreign trade. The comparative legal method made it possible to identify conflicts in national legislation.

### **5. Research results**

To ensure the effectiveness of control, it is necessary to determine the components of the price and/or the procedure for calculating the tax base not only for VAT. Cost manipulation schemes are very common and are only possible due to the fact that the Tax Code of Ukraine do not define the concept of "fair market value", but use the concept of "normal or free price". When attracting a chain of intermediaries in the form of gasket firms and fly-by-night firms at different stages of the production and sales cycle, the usual price is limited only by the desire of the company, which optimizes the tax burden or plans the capital export. This optimization is greatly facilitated by the establishment of tax legal relations between taxpayers. The Tax Code introduces an intermediary between the state and a real VAT payer. Payment of VAT between taxpayers allows you to arbitrarily choose the size of the tax base and transfer tax liabilities to fly-by-night firms. Non-payment of tax by the counterparty does not prevent the receipt of reimbursement from the budget of those amounts that have not been paid by anyone and will never be paid to the budget. In this case, any form of tax payment control is absolutely ineffective. Moreover, the corruption potential of such control is too high.

Pricing for goods and services that are exported is entirely determined by the legislation of the exporting state. Therefore, with appropriate adjustments to the legislation, it is possible to ensure proper control of export operations by economic means. Tax optimization schemes based on price manipulation lose economic sense if the legislation establishes a direct relationship between price and value added. This relationship is used in Japan. Value added tax is paid at various stages of production, distribution and sales cycles, and the tax base is value added (the sum of the wages fund and profit). Allocation of added value in each link of production and sale eliminates the possibility of both optimization of taxation and illegal VAT refunds from the budget. The definition of price as the sum of value added, created at all stages of production, sale and distribution, has other consequences [9]:

- All elements of the price of the goods are clearly limited, which allows manufacturers to track the potential for reducing production costs;
- The state receives income before the sale of goods to end consumers, i.e. real payers of the full amount of tax;
- The macroeconomic situation is always transparent, since in the process of calculating the tax, the state authorities continuously receive updated data on the rates of turnover of industrial and commercial capital.

In the absence of objective criteria for determining the fair market value, foreign exchange control of foreign trade cannot be effective even if special bank accounts are opened.

The added value assessment should also be clearly specified. The added value should be determined by the sum of the following components: wages found and profits. Such an assessment of value added should be used at each stage of the production, distribution and sales cycles in all areas of production of goods and provision of services, including for extractive companies. When selling raw materials, the sale price includes rental payments, the size of which is determined by the situation on the world market and the added value, associated with their production [10]. If the total added value excluding VAT is less than 30% of the selling price, no VAT refund will be made.

When importing goods/services, the price is difficult to control as it is determined in the country of the supplier. Due to this feature, the customs value cannot be unambiguously established. This is used by taxpayers. When importing goods into the customs territory of the country, business entities try to reduce the customs value of goods in order to reduce payments to the budget (in particular, VAT, and in many cases also import duties). A direct consequence of the underestimation of the customs value is a significant underestimation of the amount of customs payments and a decrease in the efficiency of foreign trade regulation; distortion of information about the value of foreign trade volumes. Indirect consequences are: negative impact on the development of a civilized domestic market, caused by unfair price competition; legalization of funds, obtained illegally; illegal export of funds abroad. There is another aspect of this problem. The export of goods at a lower cost may cause their deficit in the domestic market, which will entail an increase in domestic prices and may make these goods inaccessible to domestic consumers.

The customs value serves as the basis for calculating administrative fines, imposed for committing administrative offenses in the field of customs – violations of customs rules, provided for in Art. 472, 482–485 of Section XVIII of the Customs Code of Ukraine.

The methods of customs valuation, applied at present, make it possible to underestimate or overestimate it by two or three times. Real payments to the budget are underestimated in the same proportions. In order to levy an adequate amount of taxes corresponding to the cost, at which the goods are sold to the final consumer, the elements of the price must be clearly defined by law. The components of the price are: value added, VAT charged on it, costs of the manufacturer (seller) and depreciation of equipment. When importing goods, expenses include additionally the customs value and taxes and fees, paid at customs:

Import costs = customs value + taxes and duties already paid.

Further sale of the goods occurs in the same way as for any goods, produced in the country, taking into account the fact that the costs include two components: the cost of import plus the costs of the seller (manufacturer). The price, at which the product is actually, sold is:

Price=VA+VAT+import costs+seller costs+depreciation,

where VA – added value equal to the sum of the wages fund and the seller's profit;

VAT – value added tax;

Import costs –declared customs value plus the amount of VAT and import duty paid;

Seller (manufacturer) costs (expenses) – any expenses, confirmed by the payment of the proper amount of VAT.

The proposed price structure does not limit its magnitude. The price is absolutely free. Instead of controlling the selling price, the proposed price structure provides for the control of its components, which actually constitute the tax base: the value added is a tax base of VAT, and its components – the base of social contributions, personal income tax and income tax. Any selling price, set by the seller, must be matched by a clearly defined amount of taxes and social contributions paid.

The proposed method of pricing is effective regardless of whether a controlled or uncontrolled transaction is being carried out. In this case, the price is determined by the amount of taxes actually paid (VAT, personal income tax, income tax) and social contributions. To control the fulfillment of tax obligations in the tax return, four lines are sufficient: one line for each tax and social contribution. The amount of taxes and social contributions paid allows you to calculate the proceeds from the sale of

goods/services. If the declared revenue does not coincide with the calculated one, you should recalculate taxes and social contributions or use other methods of reimbursement of budget and social funds losses.

For example, the amount of revenue in excess of the amount, from which taxes and social contributions were paid, is subject to transfer to the budget or increases the added value, created by the seller of the goods. This amount includes VAT payable to the budget, personal income tax, income tax and social contributions. Usually, the seller will limit him/herself to additional income tax, that is, the difference between the calculated and actual selling prices will be added to the profit. The reason is that the established tax rates for the value added components – wages and profit fund in the Tax Code of Ukraine are not optimized. Thus, profits are taxed at a rate of 18 %, and the wage fund is taxed at a rate of 37.21 % (22 % social contributions + 0.78.(18 % personal income tax + 1.5 % military duty)). Due to the suboptimal ratio of tax rates and social contributions, the wage fund in Ukraine is at the level of the minimum wage, creates a deficit of the Pension Fund of Ukraine and causes other problems in financing the social sphere, in particular, it requires additional expenditures from the state budget to pay subsidies for housing and utilities.

There may be cases when the customs value of imported goods/services is overstated. The actual purpose of such an import operation can only be discovered by analyzing the price of subsequent sales. If the added value ensures the size of the wage fund, at least at the level of the minimum wage, and profit provides an average profitability, then we can assume that the import of goods is explained by a business purpose and is not associated with optimization of tax or with the capital export. If the selling price corresponds to the minimum wage fund and insignificant or zero profit, or losses are declared, the operation performed has a dubious purpose and is subject to careful examination by the tax authorities.

The proposed definition of the value added and fair market value exhausts all the necessary changes in tax legislation that ensure the implementation of paragraphs 3, 4, 5 of the BEPS plan [11].

Any foreign company, whose ultimate beneficiaries are residents of the country, residents unknown or not disclosed, regardless of the reasons should be considered controlled. Any transactions involving the attraction of controlled foreign companies should be subject to capital export tax (paragraph 3 of the BEPS plan).

The only result of the work of any firm and the only source of any taxes is the newly created added value, equal to the sum of factor incomes – the wage fund and profit. The wage fund is income from the factor of labor production, profit is income from the factor of production capital and entrepreneurial talent. Therefore, any production costs, including loans and interest on them, must be paid from net profit, after all taxes and other mandatory payments provided for by law have been paid. The definition of value added in the tax legislation of the country exhausts recommendations for the implementation of paragraph 4 of the BEPS plan (limit base erosion via interest deductions and other financial payments).

The definition of value added as the sum of factor income – the wage fund and profit ensures the automatic fulfillment of clause paragraph 5 of the BEPS plan (counter harmful tax practices more effectively, taking into account transparency and substance). The actual presence of the company assumes the payment of all taxes, provided for by the tax laws of the country. For example, the actual presence in Ukraine involves the payment of: VAT, social security contribution, personal income tax, profit tax and other taxes (if any). An additional bonus of the proposed taxation method is the ultimate simplification of the administration of taxes and contributions.

## 5. Conclusions

The results of the study made it possible to substantiate the following conclusions:

1. Globalization and the expansion of world trade have spawned numerous schemes to optimize tax payments and illegal export of capital. For this, controlled foreign companies, registered in offshore jurisdictions, are used. Overstating the prices of imported goods/services allows you to transfer profits to low-tax jurisdictions and receive VAT refunds from the budget. Reduced prices are used to reduce VAT and customs duties on imports. Administrative and currency control of such transactions is extremely difficult and has a high potential for corruption.

2. The paper proposes a means of effective control of foreign economic transactions through automatic price control. For this, two concepts should be defined: price as the monetary equivalent of value added; added value as the sum of the factor income of the firm – the wage fund and profit. The tax legislation of each country includes value added tax and its components. The amount of taxes paid allows you to determine the payroll and profit, value added and VAT. And the added value and VAT determine the price increase at each stage of the production, distribution and/or sales cycle. The identification of price with the monetary equivalent of value added solves the problems of transfer pricing. An incidental result is the utmost simplification of tax control: one line for each established tax, regardless of the size of the company and the number of employees. Sources of corrupt income are also eliminated.

3. For the implementation of paragraphs 3, 4 and 5 of the BEPS plan into tax legislation, it is necessary to define the concepts: value added as a sum of the company factor incomes – the wage fund and profit and fair market price.

### Conflict of interest

The author declares that he has no conflict of interest regarding this research, including financial, personal, authorship or other nature, which could affect the research and its results, presented in this article.

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### Data availability

The manuscript has no associated data.

### References

1. Pro valiutu i valiutni operatsii (2018). Zakon Ukrainy No. 2473-VIII. 21.06.2018. Available at: <https://zakon.rada.gov.ua/laws/show/2473-19#Text>
2. Pro zatverdzhennia Instruksii pro poriadok valiutnoho nahliadu bankiv za dotrymanniam rezydentamy hranychnykh strokiv rozrakhunkiv za operatsiiamy z eksportu ta importu tovariv (2019). Postanova Natsionalnoho Banku Ukrainy No. 7. 02.01.2019. Available at: <https://zakon.rada.gov.ua/laws/show/v0007500-19#Text>
3. Spanjers, J., Kar, D. (2015). Illicit Financial Flows from Developing Countries: 2004–2013. Global Financial Integrity.
4. Shelkovich, M. T., Stepanova, A. I. (2017). Problemy zakonodatelstva ob amnistii kapitalov s ispolzovaniem inostrannykh tcennykh bumag i doveritelnogo upravleniia. Vestnik RGGU. Seriiia Ekonomika. Upravlenie. Pravo, 2 (8), 134–146.
5. Tishchuk, T. A., Ivanov, O. V. (2012). Shliakhi protidii prikhoivanomu vidplivu kapitalu z Ukraini. Kyiv: NISD, 88. Available at: [https://niss.gov.ua/sites/default/files/2013-02/Kapital\\_Tuschuk-72ec2.pdf](https://niss.gov.ua/sites/default/files/2013-02/Kapital_Tuschuk-72ec2.pdf)
6. Pro zovnishnoekonomichnu diialnist (1991). Zakon Verkhovoi Radi No. 959-XII. 16.04.1991. Available at: <https://zakon.rada.gov.ua/laws/show/959-12#Text>
7. Mytnyi kodeks Ukrainy (2012). Kodeks Ukrainy No. 4495-VI. 13.03.2012. Available at: <https://zakon.rada.gov.ua/laws/show/4495-17>
8. Kheifetc, B. A. (2013). Deofshorizatsiia rossiiskoi ekonomiki: vozmozhnosti i predely. Moscow: Institut ekonomiki RAN, 63.
9. Tait, A. (1988). Value Added Tax: International Practice and Problems. Washington: IMF.
10. Pyroha, I. S. (2018). Target character of rental fees for use of bowels. Law and State Management, 1 (30), 157–163.
11. Action Plan on Base Erosion and Profit Shifting (2013). OECD Publishing. doi: <https://doi.org/10.1787/9789264202719-en>

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