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TRANSFER PRICING: A GLOBAL CONTEXT

Summary. The article deals with transfer pricing (TP) as a mechanism of redistribution of assets and optimization of taxation in the TNC system. The historical and economic bases of transfer prices formation are analysed. The list of international organizations and documents issued by them on TP issues is systematized. The general model of TP system functioning in the global context is determined and the current state of international cooperation in the TC system is investigated. The objective necessity of interaction between international organizations and state institutions within the TC system is argued and it is proved that transfer pricing plays an important role in the economic mechanism of TNCs and the global economy as a whole. A number of recommendations to improve the efficiency of the process of regulation of shopping centres in Ukraine are given.

Key words: transfer pricing, transnational corporations, tax base erosion, arm's length principle, taxation, transfer pricing regulation.

Problem statement. The processes of globalization are connected with the formation of economic space, where the sectoral structure, exchange of information and technology, the geography of the location of productive forces are determined, taking into account the global situation. Owners of large companies are well aware that they can significantly expand the geography of their enterprises while saving some of the money they spent on payment of certain factors of production in one territory. This state of business certainly accompanies to the growth in the number and activities of transnational corporations (hereafter – TNCs). Now the volume of world trade is almost two-thirds of transactions between members of transnational corporations. TNCs typically have a list of various functions for affiliated entities, such as processors of raw material, contract manufacturers, distributors, centres of corporate services, profit centres, main offices, etc. This branched structure of TNCs requires effective management and coordination between group members. Important aspects of the activities of TNCs are economic relations carried out at intra-firm prices.

It is worth paying attention to the fact that the internal pricing policy requires compliance with certain pricing rules and is based on the application of management prices for objects of transfer (delivery) of departments of structures among themselves; in this case, we can talk about a special type of pricing – transfer.

At the same time, the prices established within the group of companies may differ from the objectively established level of prices in the market for such transactions between unrelated persons.

Analysis of recent research and publications. Research of problem aspects of transfer pricing (hereinafter – TP) is devoted to the work of many scientists around the world. Not only scientists but also state bodies and international organizations are engaged in this topical issue today. Consulting companies also show great interest in the problems of transfer pricing, their research is based on an array of professional information from many countries.

Modern trends in functioning of the transfer pricing are the subject of research of many foreign scientists, among which C. Drury, R. Fainsilber, P. Horvath, V. Pashkus, K. Nepesov, etc.

Among Ukrainian scientists, a significant contribution to the study of the theoretical issues of TP did A. Blakytka, P. Dzyuba, O. Zhukova, O. Desatnik, etc. Practical experience in the transfer pricing is reflected in the works of the chief of inspections of transfer pricing of the State Fiscal Service of Ukraine M. Mishyn. At another point, Y. Machinich thoroughly researched regularities of the development of European and national legal regulation of TP [1, p. 115-121].

However, despite a large number of scientific publications, there is currently no general model for the functioning of the TP system in the global context.

The purpose of the article is to study the existing system of TP functioning in the global context to improve the mechanism of TP in Ukraine through the introduction of the best world practices.

Materials and methods. The information base of the study is based on the analysis of developments of leading domestic and foreign experts in the field of transfer pricing. For the elaboration of the theme, the materials of international organizations were used, particularly, OECD, UN, World Bank, etc. in the chosen subject. In the process of preparing the article, the following general scientific methods of research are used: historical and logical analysis, synthesis, and grouping.

Results of research. The development of branched business structures in the twentieth century was quite rapid, which led to an increase in the number of intergroup operations within corporations. Therefore, the process of setting transfer prices has become quite natural for TNCs. Active use of the transfer pricing began on decentralization of management in industrial firms of the USA and Western Europe in the 20-30s of the XX century. One of the first companies that introduced this type of pricing was the American automobile company “General Motors”. The improvement of forms of capital consolidation, the development of corporate legislation and telecommunication technologies contributed to the creation of transnational corporations and, as a consequence, the rapid development of shopping centres. About 1.5 thousand companies have used the TP in the late 70s – early 80s of the XX century in the USA [2, p. 13]. Therefore, not without reason is that the United States was the first country to adopt specific legislation in the regulation of TP. The provision of the special legislation of the USA on regu-

lation and control of shopping centres was formed gradually from the 60s years of the XX century. Such provisions are now set forth in the U.S. Internal Revenue Code, in particular, in paragraph 482, “Redistribution of income and expenses between taxpayers”, part III, subsection “E”, section 1, Chapter A, Chapter 26, of the U.S. Internal Revenue Code (as amended and supplemented) (hereinafter referred to as paragraph 482 of the U.S. CPA), and in regulation 26 CFR 1.482 issued by the Federal tax service of the U.S. Department of the Treasury on 11.07.2006 to ensure proper enforcement of paragraph 482 of the U.S. CPA. These regulations and rules are the main, but not the only U.S. documents on regulation and control of the transfer pricing [3].

This example was followed by other countries, firstly the UK and France, and then Canada, Japan, Australia, the Netherlands, companies of which are particularly active in the markets of developing countries.

And in 1976, the TP issues were settled at the international level. In particular, there was a document on the problems of the TC system for tax purposes, called the OECD Report “Transfer Pricing and Multinational Enterprises”. Further, in 1995, the following important document was adopted – a Guide on transfer pricing for multinational enterprises and tax administrations. This is the main recommendation and methodological document of TC tax regulation, the provisions of which are more or less taken into account in the legislation of different countries, including those that are not members of the OECD.

The process of improving the mechanisms of control over the transfer pricing has more than half a century of history but still continues. Nowadays, there are a number of international organizations, fruitfully working towards the creation of new and improvement of existing documents on the legal regulation of the transfer pricing.

Within Europe, the main initiators of the creation of international rules in the field of shopping centres are the following organizations:

- OECD, which includes 35 developed countries;
- European Union (hereinafter – EU), which includes 28 countries;
- The United Nations (hereinafter – UN).

In the development of methodological and advisory documents regulating issues in the field of TP, these organizations cooperate with each other, including due to the fact that most of the EU Member States are also members of the OECD, and all EU Member States and OECD Member States are members of the UN.

The intensification of activities of international organizations (OECD, UN, etc.) in the field of regulation and control of shopping centres took place as a result of the financial crises of 1998 and 2008. The relevant documents on the issues of TP were prepared:

EU – in 2002 with the creation of a special Joint Transfer Pricing Forum of the European Commission of the European Union (EU Joint Transfer Pricing Forum (abbreviated JTPF));

UN – in 2009 the preparation of the draft UN manual on TC, adopted by the UN 29.05.2013, began.

From the full title of the UN guide to TP 2013, it follows that unlike the OECD, which develops recommendations primarily for developed countries, the UN guide addresses developing countries. The provisions of the UN manual on TP are largely based on the OECD 2010 Recommendations but are not completely identical. [3].

Table 1 presents the international organizations and methodological and guidance documents on transfer pricing issues.

The documents developed by international organizations can be classified as soft law. They are not legally binding but only auxiliary sources of regulation. Nevertheless, most of the documents are implemented in national legislation on TP in a number of European countries.

The OECD Guidelines disclose the general methodology of control over the TP, in particular, in the application of methods for establishing compliance with the conditions of the controlled operation of the arm’s length principle, conducting functional analysis and analysis of comparability, preparation of documentation, procedures for pre-approval of pricing, etc. The Guidelines provide guidance to assist taxpayers in the creation of documentation that is most appropriate to submit to the regulatory authorities to prove that their transactions comply with the arm’s length principle [4].

Most developed countries, as well as developing countries, are implementing OECD Guidelines in their national TC control and regulation systems. In 2017, more than 117 countries of the world have introduced the rules of control over the shopping centre.

Despite the fact that the issue of TC extends to many areas of economic life, all parties are interested in the harmonious interaction between the participants of the process.

Thus, the problems of regulation of shopping centres are also engaged: the World Bank, the World Trade Organization (WTO), the World Customs Organization (WCO), which create special bodies working to improve the methodological part. International consulting companies, on the other hand, take an active part in public discussions of documents as part of working groups and offer their initiatives and proposals.

International organizations and countries cooperate with each other; such cooperation is quite productive because it takes into account the interests of both countries and corporations.

The IMF, OECD, UN, and the World Bank Group have launched the Platform for Collaboration on Tax, a joint initiative to enhance cooperation on tax issues.

Table 1

International organizations and methodological and advisory documents on transfer pricing issues

International organizations of regulation of TP	Methodological and advisory documents on TR issues
OECD (Department of the Centre for Tax Affairs of the OECD)	– Methodical recommendations for the development of legislation in the field of TC, aimed at harmonizing the approach used; – OECD Guidelines for TCs for Transnational Companies and Tax Services; – Model (typical) OECD convention
EU (Common Forum of the European Commission)	– EU Arbitration Convention; – Code of Conduct for TC documentation for associates in the EU; – EU order to conclude preliminary pricing agreements; – Code of Conduct for the effective application of the provisions of the Convention on the avoidance of double taxation in connection with the adjustment of profits of associates; – EU Regulation on intergroup services with low value added.
UN (Subcommittee on TP of the Committee of Experts of the United Nations on International Cooperation in Tax Matters)	– Modular (typical) UN Convention for the avoidance of double taxation; – United Nations TB Guide for Developing Countries; – United Nations Directory on Certain Administration Issues in the Sphere of Double Taxation.

The Platform is designed to hold regular discussions among four international organizations in order to strengthen their tax support in capacity-building for developing countries. The Platform will facilitate a more systematic exchange of information on relevant activities, the preparation of common conclusions and toolkits, as well as improved interaction and synergies between established standards and capacity development. Also, this Platform will raise awareness of the importance of transparency and effective and comprehensive exchange of information mechanisms in order to eliminate tax evasion and combat illegal financial flows. Cooperation within the framework of the platform aims to provide guidance to developing countries on how to formulate and address tax issues related to the informal economy. In addition, the Platform will provide space for coordination and exchange of information on a variety of priority tax issues, such as income statistics, diagnostics of tax administration and taxation of natural resources [5].

One of the priorities of the new platform will be the creation of a set of tools through which developing countries can move towards the achievement of internationally set goals [6].

The OECD and the G20 have joined forces in international cooperation to counter the erosion of the tax base and the withdrawal of profits from taxation. In 2013, the participants approved the BEPS Action Plan and the enhanced cooperation Program to establish the so-called rules of the game, according to which countries should form tax planning strategies. In particular, the question of TP is dedicated to the directions 8, 10, and 13 of the BEPS Action Plan (Action Plan on Base Erosion and Profit Shifting) [7].

The main objective of the BEPS Plan is to develop a comprehensive, balanced, and effective strategy to combat the problem of tax base erosion and profit shifting. The most important developments are already being implemented in the legislation of the participating countries, international agreements and conventions, and open issues remain the subject of discussion and further research.

BEPS Action Plan defines approaches and methodological principles for further improvement of tax legislation in the subject area:

- 1) a comprehensive approach to the problem of combating the undesirable movement of the tax base, based on the harmonization of legislation on shopping centres, controlled foreign companies, the resident status of the payer, the use of financial instruments, etc.;

- 2) disclosure of value chains in the taxpayer's business, on the basis of which the fair distribution of tax claims between the countries is carried out;

- 3) priority of economic content over the legal form; analysis of the taxpayer's material activities, as a result of which the compliance of the taxpayer's income with the economic activity that generates this income is determined;

- 4) further development of methods to counter the use of low-tax jurisdictions. This refers not only to the definition of indicators to classify the tax regime as preferential but also to the transformation of research towards the identification of legislative differences (for example, a special procedure for accounting for income from financial activities and intangible assets in each jurisdiction);

- 5) focusing on the problem of abuse of provisions of double taxation treaties and the role of these treaties in the processes of profit withdrawal to low-tax jurisdictions;

- 6) recognition of the priority of an integrated approach to the problem, the role of transparency, and effective exchange of information between tax authorities, interaction with taxpayers in terms of disclosure of aggressive tax planning schemes (hereinafter – ATPS) by fiscal authorities.

At the same time, the key areas of development within the framework of directions 8-10 of the BEPS Action Plan were the following: provision of a new definition of intangible assets; establishment of the procedure for the distribution of profits from the transfer and use of intangible assets in accordance with the size of the value created with its help; update of recommendations on the allocation of costs for intangible assets between associated parties; introduction of the rule that unjustified income should not be accumulated by a party that assumes risks on the basis of contractual relationships or provides capital; the introduction of a provision that the profit should correspond to the established value; a departure from the requirements of using comparable transactions (operations) and focusing on the analysis of financial results; definition of the circumstances in which the transaction (operation) can be reclassification; development of measures to protect against common tools of the tax base erosion, etc. [8, p. 25].

As a part of the implementation of the activities of the direction 13 of the BEPS Action Plan, it is planned to develop unified approaches to the documentation of the TP in order to increase the transparency of the relevant control practices in different countries by developing new unified rules for the documentation of the TC taking into account the costs of business for their compliance, as well as the requirements for disclosure by the group of enterprises of the necessary information on the distribution of income, economic activities and taxes paid in different countries. Implementation of recommendations in direction 13 will cardinal change approaches to the preparation of the transfer pricing documentation, in particular, provides for TNC application of the three-tier documentation: the master file, the local file, and the country-by-country reporting (for companies and groups with income during the financial year of more than 750 million euros).

The master file provides an overview of the group's TP methods in the context of the global economic, legal, financial, and tax conditions of its operations; TP policy.

In the local file, there is more detailed information on controlled transactions relating to a specific country, indicating their scope and results of the analysis from the viewpoint of compliance with the principle of arm's length.

The country-by-country reporting presents a summary of the group's activities on the global distribution of income, taxes paid, and certain indicators of economic activity in the context of all jurisdictions, in which the group operates.

Some European countries have already prepared amendments to the legislation on the implementation of the new rules for the preparation of documentation on TC, in particular, the requirements for the preparation and submission of the country-by-country reporting [9].

The scheme reveals the relationship of transnational corporations, international organizations, countries, regulatory authorities, and other participants.

The activities of TNCs lead to the erosion of the tax base (the country does not receive the required tax revenues). There is a question of identifying bottlenecks in existing legislation and making the necessary amendments, so the state attracts experts and interacts on the basis of jointly created platforms. The platforms are designed to enhance cooperation between countries and international organizations on tax issues – the development and implementation of standards, the creation of recommendations, as well as the exchange of information on the activities of TNCs worldwide. Developments of international organizations are implemented by states in local legislation and are reflected in international treaties, that is, the feature of this system is the presence of feedback between the participants in the process.

It can be argued that the approved recommendations under the BEPS Action Plan (with regard to improving the rules them-

selves and the format of reports on controlled transactions) will make the TP rules more objective in the future and thus contribute to greater transparency in the activities of TNCs. In addition, the presence of such an array of data from the shopping centre will allow the tax authorities to improve the methods of identifying unscrupulous taxpayers, as well as determining the prerequisites for inspections, which will contribute to improving the efficiency of tax control in this area. As a result of the growing interest of fiscal authorities and interest on the part of payers to prevent the negative consequences of the use of transfer pricing, in recent years, there is a question about the importance of identifying the risks of transfer pricing in advance. The analysis of world experience indicates the effectiveness of this approach because through the risk analysis of the transfer pricing, the selection of controlled transactions for inspections is carried out, as well as the issues that should be investigated during the tax audit are determined.

Conclusions. The mechanism of the TP, introduced to the tax system of Ukraine on 01.09.2013, requires improvement of regulation based on the experience of countries that already have significant experience in this area. Now it is very important for Ukraine to cooperate with international institutions and partner countries, which will provide a synergetic effect in the framework of inter-state cooperation.

The format of international cooperation, as well as the way of implementation of the BEPS Action Plan, which are directly related to the regulation of transfer pricing processes, remains a priority issue. In this case, the creation of the BEPS Plan is an example of how the global system of transfer pricing functions in time to respond to certain changes in the behaviour of TNCs. Unfortunately, the initiatives are not a panacea and the vast majority of companies continue the policy of aggressive tax planning. Summarizing the above, we can conclude that the necessary prerequisites for effective control of the shopping centre in Ukraine will be the implementation of the following steps:

- fulfilment of commitments to implement the BEPS Action Plan;
- taking into account international experience and coordination of TC activities with international organizations (OECD, UN, EU);
- definition of TP as a special systemic phenomenon within the framework of tax policy and creation of appropriate regulatory and infrastructure support for the effective coordination between the participants of the process;
- improvement of monitoring processes and creation of transfer pricing risk assessment methods.

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ТРАНСФЕРТНЕ ЦІНОУТВОРЕННЯ: ГЛОБАЛЬНИЙ КОНТЕКСТ

Анотація. У статті розглянуто трансфертне ціноутворення (ТЦ) як механізм перерозподілу активів та оптимізації оподаткування у системі ТНК. Розглянуті трансфертні механізми є невід’ємною частиною глобальної системи фінансового менеджменту ТНК. Це пояснюється тим, що обсяг світової торгівлі майже на дві третини складається з транзакцій між членами транснаціональних корпорацій, що потребує ефективного управління та чіткої координації між членами транснаціональних корпорацій. Визначено, що важливу роль у економічному механізмі ТНК та глобальній економіці в цілому відіграють трансфертні ціни. Проаналізовані історико-економічні засади формування трансфертних цін. Відзначено, що процес вдосконалення механізмів контролю за трансфертним ціноутворенням має вже більш ніж півстолітню історію, але й до цього часу триває. Систематизовано перелік міжнародних організацій та виданих ними документів з питань ТЦ. Визначена роль міжнародних організацій в сфері регулювання та контролю ТЦ. Узагальнена інформація про методологічні та організаційні документи, які були розроблені міжнародними організаціями в сфері ТЦ. Визначена загальна модель функціонування системи ТЦ в глобальному контексті та досліджено сучасний стан міжнародної співпраці в системі ТЦ. Аргументовано об’єктивну необхідність взаємодії міжнародних організацій та державних інституцій в рамках системи ТЦ. Розглянуто особливості застосування та значення Платформи співробітництва з податкових питань та її ролі у сприянні більш систематичного обміну інформацією про діяльність в сфері ТН, підготовці спільних висновків, а також поліпшенню взаємодії між встановленими стандартами щодо ТН. Надано ряд рекомендацій по підвищенню ефективності процесу регулювання ТЦ в Україні. Сутність рекомендацій полягає в потребі удосконалення нормативного регулювання трансфертного ціноутворення в Україні з врахуванням досвіду країн, які мають вагомий напруження у цьому питанні, розробці формату взаємодії. У висновках надані рекомендації щодо реалізації заходів ефективного контролю та моніторингу щодо трансфертного ціноутворення.

Ключові слова: оподаткування, трансфертне ціноутворення, транснаціональні корпорації, розмивання податкової бази, принцип «втягнутої руки», оподаткування, регулювання трансфертного ціноутворення.

ТРАНСФЕРТНОЕ ЦЕНООБРАЗОВАНИЕ: ГЛОБАЛЬНЫЙ КОНТЕКСТ

Аннотация. В статье рассмотрено трансфертное ценообразование (ТЦ) как механизм перераспределения активов и оптимизации налогообложения в системе ТНК. Проанализированы историко-экономические основы формирования трансфертных цен. Систематизирован перечень международных организаций и выданных ими документов по вопросам ТЦ. Определена общая модель функционирования системы ТЦ в глобальном контексте и исследованы современное состояние международного сотрудничества в системе ТЦ. Аргументировано объективную необходимость взаимодействия международных организаций и государственных институтов в рамках системы ТЦ, а также доказано, что важную роль в экономическом механизме ТНК и глобальной экономике в целом имеют трансфертные цены. Предоставлен ряд рекомендаций по повышению эффективности процесса регулирования ТЦ в Украине.

Ключевые слова: трансфертное ценообразование, транснациональные корпорации, размывание налоговой базы, принцип «вытянутой руки», налогообложение, регулирование трансфертного ценообразования.